

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(I) Is it possible to effectively segregate or ring-fence the originator's assets on its balance sheet, i.e. without transferring the assets and the related ancillary rights (securities interests, pledges etc.) to an SPV (for example, by entering them on a register)?
Austria	This is possible by establishing a trusteeship (<i>Treuhandenschaft</i>) with respect to the relevant assets, whereby it is agreed that the assets are to be held by the originator in its own name, but for the account of the SPV. Note that such an agreement will not lead to the desired legal segregation if it constitutes a secured transaction (in which case, the segregation of the asset would have to be duly perfected). [In the response to question 1(III), trusteeship is referred to as <i>Treuhand</i> . Are they different concepts? – They are not different concepts. - If not, which is correct <i>Treuhandenschaft</i> or <i>Treuhand</i> ? – Either term can be used.-]
Belgium	
Denmark	
England and Wales	Yes, by way of a charge or by declaring a trust over such assets.
Finland	No.
France	No.
Germany	It is not possible to segregate or ring-fence the originator's assets without transferring the assets and the related ancillary rights and title to a separate legal entity. The SPV must be a legal entity that is not affiliated to the seller of the assets, under company, partnership or indeed employment laws, nor by way of capital participation. Nevertheless, the SPV can be subject to a consolidation on the seller's balance sheet under international financial reporting standards (International Accounting Standard 27, 39.15; SIC 12). It is planned to create a register for mortgage-backed loan receivables [do you know when?]. [Original text not clear. Please check the edited version reflects the intention of the author. More specifically, note that I have replaced "corporation" by "legal entity"]
Greece	No.
Ireland	There is no statutory mechanism for segregating securitised assets for insolvency purposes whilst permitting ownership of such assets to remain with the originator. A security interest can be created over assets (and the proceeds thereof) held by an originator to support obligations owed to investors; however, such a security interest is generally subject to risks which are considered too material to achieve effective ring-fencing. Therefore, it is generally considered necessary to transfer assets to an SPV in order to isolate effectively those assets from the insolvency estate of the originator. As mentioned above, there is no specific statutory mechanism for effecting a transfer of assets to an SPV in the context of a securitisation transaction, but general Irish legal principles apply.
Italy	As stated in the answer to question 1(III), Law No 130 of 30 April 1999 (hereinafter the 'Securitisation Law') also applies to securitisations where the issuer grants a loan to the originator, funded by the notes. Pursuant to the Securitisation Law, such a loan is made on a limited recourse basis i.e. the originator's obligations under the loan would be linked to and conditional on the originator receiving amounts in respect of an identifiable pool of receivables remaining in its possession (i.e. not transferred by way of assignment). Further, in the absence of clarification in the Securitisation Law, it is reasonable to assume that all payments received by the issuer from the originator will

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	<p>constitute assets segregated for all purposes from all other assets of the issuer, and that they will be available exclusively to meet the obligations of the issuer under the notes.</p> <p>It is not however clear, as the Securitisation Law is silent on this point, whether the receivables would be segregated from the originator's other assets solely for the benefit of the lender (i.e. the issuer) and, ultimately, the note holders. Commentators tend to agree that the legal ring-fencing of receivables is more likely to be effective if the loan is secured by an assignment of the receivables [by way of security to the issuer repetitive, delete?] perfected under the regime laid down by the Securitisation Law.</p> <p>Articles 2447<i>bis</i> et seq. have recently been inserted in the Civil Code, providing for: (i) [the establishment within a company please clarify] of segregated portfolios, in order to guarantee a specific venture; and (ii) the financing of a specific venture that is guaranteed by the proceeds of the venture (<i>patrimoni destinati ad uno specifico affare</i> and <i>finanziamenti destinati ad uno specifico affare</i>, respectively). The legislative structure for these two latter schemes (<i>patrimoni destinati</i> and <i>finanziamenti destinati</i>) was put in place when company law was reformed in 2003, and has not yet been tested in judicial proceedings.</p>
Luxembourg	No, the assets cannot remain on the balance sheet of the originator, unless the risks linked to the assets are securitised by way of guarantee, sub-participation or credit derivative. [Is this what you mean? Please check]
The Netherlands	No. In order to isolate the assets, they have to be transferred to the SPV.
Portugal	Under Decree-Law 453/99 of 26 October [1999?] (hereinafter the 'Securitisation Law'), it is not possible to segregate or ring-fence assets of the originator, i.e. without transferring the assets and the related ancillary rights to an SPV. The Securitisation Law only provides for traditional securitisation involving the transfer of the assigned assets from the originator's balance sheet to the SPV balance sheet.
Spain	No, the only way for the originator to retain the assets [on its balance sheet] is if the securitisation is effected through credit derivatives.
Sweden	We have a system for floating charge by registration regarding most movable assets without distinction but such have not been used for securitisation. Real property and airplanes and certain other assets could be registered as security for debt, and be used in a loan structure or a transfer can be registered for a true sale structure. We can also register sale of movable property (without transfer of possession) but not debt. I.e. transfer of possession by delivery of promissory notes or for other types of debt by notice to the debtor is generally required both for a true sale and a secured loan structure. A sale of promissory notes by a financial institution is feasible without change of possession, as a specific exception to this rule.

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	(II) What are the types of SPV available in your jurisdiction for the purpose of securitisation transactions (whether or not provided for,by law)? Please specify whether SPVs can be set up as securitisation funds (with or without legal personality) or companies, and provide a brief description.
Austria	Until 1 June 2005, it was considered that SPVs conducted a banking business pursuant to the Banking Act [year?](<i>Bankwesengesetz</i> , BWG)BWG. Therefore (with one exception) only offshore SPVs were used for Austrian transactions. We believe that the new § 2(60) BWG which came into force on 1 June 2005 (see question 1(I)) will enable the use of domestic SPVs. It is likely that such a domestic SPV will take the form of a limited liability company (<i>Gesellschaft mit beschränkter Haftung</i>) which has a minimum statutory capital of EUR 35 000. [Is this set down in the new provision? If so, the words “it is likely that,” should be deleted – No this is not set down in the new provision, so the words “it is likely that,” should be kept.] Austrian law does not provide for securitisation funds.
Belgium	
Denmark	
England and Wales	There are no laws specifically providing for the establishment of SPVs in the UK. Typically, an SPV would be incorporated as a PLC (PLC) to enable it to issue debt securities. This is because private limited companies are prohibited from issuing debt securities to the public.
Finland	An SPV is normally a joint -stock company, which has been formed for a certain purpose. In Finland, an SPV cannot take form of a limited liability company, a limited partnership company or an investment fund.
France	The only securitisation vehicle available in France is the mutual debt fund or securitisation fund created by Law No 88-201[1201?] of 23 December 1988 (hereinafter the ‘Securitisation Law’), which defines the common pool of debts (<i>fonds commun de créance</i> , FCC) as a co-ownership (<i>co-propriété</i>) without legal personality. FCCs have no share capital, no board of directors and no employees. FCCs are considered as bankruptcy-remote vehicles by rating agencies because (i) their activities are limited to participation in the securitisation; (ii) they have no contractual liabilities unrelated to the securitisation; and (iii) their assets are limited to the securitisation assets. Furthermore, the investor’s recourse is limited to the securitisation assets. FCCs are managed by a management company and a custodian (see answers to other questions below – please provide more detail here – which questions?). FCCs fall under the generic definition of collective investment schemes (<i>organismes de placement collectifs</i>).
Germany	German law does not specify the types of SPVs available for the purpose of securitisation transactions. SPVs can be organised using any of the structures for bankruptcy-remote vehicles provided for by German company law. [What are the criteria of “bankruptcy remotes”?]
Greece	Pursuant to Article 10(2) and 3 of Law 3156/25.6.2003 (hereinafter the ‘Securitisation Law’), the SPV must be a legal entity having as its exclusive object the acquisition of business claims for the purpose of their securitisation in accordance with the Securitisation Law. If the SPV is a company registered in Greece, it has to be a <i>société anonyme</i> . The shares of the SPV must be registered in Greece, irrespective of whether it was set up in Greece. [Is this what you mean? Please check.] An SPV cannot take the form of a securitisation fund.
Ireland	An Irish SPV is generally constituted as a company (with separate legal personality) under the Companies Acts 1963 to 2003. A company may be established as a public or private company, with or without limited liability. A private company is restricted from offering its securities to the public. Therefore, where it

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Italy	<p>is intended that the SPV will raise funds through a public securities issue, it is usual for an Irish SPV [for a securitisation transaction?] to be established as a public limited company (PLC). A PLC must have at least seven shareholders and a minimum issued share capital of EUR 40 000, of which at least one quarter must be paid up.</p> <p>Pursuant to Article 3(3) of the Securitisation Law, an SPV (i.e. the purchasing company, or the company issuing the notes if other than the purchasing company) shall have as its exclusive [corporate delete?] object the realisation of one or more securitisation transaction(s), and must be registered as a financial intermediary and enrolled in the special register of financial companies held by the Banca d'Italia. [As only companies may be enrolled in such a register, it follows that an SPV may not be established as a partnership. Please clarify. Contrast with the following sentence which states that an SPV may be a limited partnership]. It is nevertheless possible to incorporate an SPV as a joint-stock company (<i>società per azioni</i>), as a partnership limited by shares (<i>società in accomandita per azioni</i>) or as a limited liability company (<i>società a responsabilità limitata</i>). No other corporate structures are allowed. As stated at question 1(III) above), one of the possible structures provided for by the Securitisation Law for carrying out a securitisation transaction is the assignment to closed-end investment funds or 'securitisation funds', which are devoid of legal personality and established and managed by a specialised financial intermediary.</p>
Luxembourg	<p>SPVs are called 'securitisation undertakings' under Luxembourg law. Like undertakings for collective investment, they may be set up either in the form of a company with legal personality or as a fund (without any legal personality) managed by a management company (Article 2 of the Law of 30 April 1999, hereinafter the 'Securitisation Law'). A securitisation company must be set up as a public limited company (<i>société anonyme</i>), a corporate partnership limited by shares (<i>société en commandite par actions</i>), a private limited liability company (<i>société à responsabilité limitée</i>) or a cooperative company organised as a public limited company (<i>société coopérative organisée comme une société anonyme</i>) (Article 4(1) of the Securitisation Law). Securitisation funds consist of one or more coownership[s] [vehicles] (<i>copropriétés</i>) or one or more fiduciary estates. The management regulations of the fund must expressly specify whether the fund is subject to coownership rules or to trust and fiduciary rules. Securitisation funds do not have legal personality. They are managed by a management company (Article 6 of the Securitisation Law).</p>
The Netherlands	<p>A trust is not possible in the Dutch jurisdiction. Therefore, the SPV is set up as a corporation (besloten vennootschap met beperkte aansprakelijkheid = private company with limited liability), with a limited charter and brought into existence only for the securitisation transaction. The shares of the corporation are held by a foundation (stichting). In its Solvency Regulation on Securitisation, The Nederlandsche Bank has set as requirements for credit institutions to be able to qualify under solvency relief provisions in relation to securitisation transactions, inter alia that:</p> <ul style="list-style-type: none"> (i) the originating credit institutions may not hold any share capital or other form of proprietary interest in or control over the issuing special purpose entity; (ii) the issuer is not in any way affiliated to the originator; and <p>the name of the issuer does not include the name of the originator nor implies any connection with it.</p>

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Spain	<p>An SPV takes the form of a securitisation fund, with no legal personality, managed by a management company (<i>sociedad gestora</i>). The fund's assets are the credits held, and its liabilities are the securities issued, or the loans granted by credit institutions. [It would be of interest to further elaborate on the different legal structures of SPV available in Spain – of the answer for Portugal]</p>
Sweden	<p>SPVs would typically be a normal share company under the Swedish company act. They could be held by another company or be orphan and held by a trust. Sweden has modern trust legislation but it is different from the UK concept. In short, the trust would be created by setting aside certain property for a particular purpose. Most securitizations with Swedish originators have used offshore SPVs.</p>

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	(III) Does the law provide any specific restrictions regarding the place of establishment of the SPV?
Austria	No (other than as described in the answer to question 2(II)).
Belgium	
Denmark	
England and Wales	No.
Finland	The law does not lay down any restrictions, but due to uncertainty surrounding taxation, SPVs are usually established outside Finland.
France	FCCs must be established in France (see question 2(VI))
Germany	No, not directly. However, tax implications may lead to the establishment of the SPV offshore, in the Cayman or Channel Islands in particular.
Greece	No.
Ireland	In common with all Irish companies, an SPV established as an Irish company must have a registered office in Ireland.
Italy	The Securitisation Law does not restrict the place where an SPV in securitisation transactions originated by an Italian company can be established. It is nevertheless uncertain whether securitisation transactions can in fact be carried out through a foreign SPV. It is prudent to assume that the Securitisation Law (and all its benefits, notably fiscal) only applies to securitisations in which both the originator and the SPV are resident/incorporated in Italy or carry out their activities exclusively in Italy.
Luxembourg	Yes, the Law applies only to securitisation undertakings situated in Luxembourg. For the purposes of the Securitisation Law, the following are deemed to be situated in Luxembourg: securitisation companies which have their registered office in Luxembourg; and securitisation funds whose management company has its registered office in Luxembourg. [Is there a need to elaborate here on the distinct acquisition/insurance for SPV?]
The Netherlands	
Portugal	Yes, the SPV must be established in Portugal for the Securitisation Law to apply.
Spain	Although Spanish law does not lay down any express restrictions, it is assumed that the funds are incorporated [Use “established” instead of incorporated? “Incorporated” implies a company but the fund (SPV) has no legal personality] in Spain, governed by Spanish law and registered in the Central Mercantile Register (<i>Registro Mercantil Central</i>).
Sweden	No. If in Sweden the SPV is likely to be subject to regulatory treatment, with the exception mentioned above in 1.1 (a). A group company could also be

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	exempt from regulatory treatment, if the funds obtained through the securitisation is used in the business of the group, e.g. to extend financing in connection with sale of products.

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Austria	The purchase of receivables on a commercial basis is defined as ‘factoring’ under § 1(1)(16) of the BWG and requires a bank licence. However the new § 2(60) of the BWG (see question 1(I)) states that special securitisation companies (the activity of which is described in § 2(60)) do not conduct a banking business.
Belgium	
Denmark	
England and Wales	(i) SPVs are not generally considered to be credit institutions. (ii) SPVs do not usually require a licence. However, in securitisations involving consumer loans, the possible application of the Consumer Credit Act 1974 needs to be considered. The Consumer Credit Act applies to certain agreements with consumers (if the loan is above the threshold of GBP25 000). A purchaser of such agreements is likely to require a licence under the said act.
Finland	An SPV is the buyer of the receivables; it is a company constituted solely for the purposes of the securitisation transaction. The Finnish Banking Supervision Office has stated [where?], that an SPV is not a credit institution under the Act on Credit Institutions, because SPVs do not offer credit or other financing to the public. The SPV is therefore not a credit institution, [which would need permission please clarify] but is considered to be a financial institution within the meaning of the Act on Credit Institutions [year?].
France	FCC are not, strictly speaking, considered to be credit institutions although they do benefit from specific legislation. Article 10 of the Banking Law (codified in Article L 511-5 of the Monetary and Financial Code (<i>Code monétaire et financier</i> , CMF) provides that only credit institutions may carry out credit operations on a regular basis. According to Article 3 of the Banking Law (codified under Article L 313-1 of the CMF) the acquisition of non-matured receivables from originators in France, on a regular basis, is considered to be a credit activity. However, despite the fact that FCCs are not considered to be credit institutions, Article L 511-6 of the CMF provides that they may purchase non-matured receivables.
Germany	SPVs are not considered to be credit institutions under the Banking Act [year] (<i>Kreditwesengesetz</i>). The activity of acquiring receivables is not a credit operation within the meaning of German banking legislation. No specific formalities or licences are therefore required.
Greece	An SPV is not considered to be a credit institution and the activity of acquiring receivables is not considered to be a credit operation as, pursuant to the Securitisation Law, it must not perform a regulated activity (e.g. it is not allowed to make public offerings, etc.). No formalities are required to exercise the activity of acquiring receivables and no specific licence is necessary.
Ireland	An Irish SPV established for the purposes of a securitisation transaction is not usually considered as a credit institution for the purposes of Irish banking legislation, provided that it does not engage in the business of accepting deposits from the public. Generally, no formalities are required to exercise the activities typical of a [securitisation SPV – an SPV?] and no governmental or regulatory licences are

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	necessary.
Italy	<p>Pursuant to Article 2(1)(b) of the Ministerial Decree [No?]of 6 July 1994, a financing activity includes ‘any kind of financing related to [among others] credit purchase transactions’.</p> <p>An SPV is therefore considered to carry on a financial activity, as in securitisation transactions, SPVs are the assignees of the receivables.</p> <p>The provisions of Title V of Legislative Decree No 385 of 1 September 1993 (hereinafter the ‘Consolidated Banking Law’¹), as well the corresponding sanctions set down in Title VIII thereof, therefore apply to SPVs (see also, in this respect, Article 3(3) of the Securitisation Law).</p> <p>Finally, under Article 3 of the Securitisation Law SPVs must be registered in the general register held by Foreign Exchange Office (<i>Ufficio Italiano dei Cambi</i>) pursuant to Article 106 of the Consolidated Banking Law, and in the special register of financial intermediaries held by the Banca d’Italia pursuant to Article 107 of the Consolidated Banking Law.</p> <p>As a consequence, SPVs are subject to the prudential supervision of the Banca d’Italia, even if their activities do not, in a strict sense, appear to require a banking licence.¹</p>
Luxembourg	<p>No, they are not considered to be credit institutions.</p> <p>The activity of acquiring receivables is not considered a credit operation within the meaning of national banking legislation.</p> <p>There are no specific formalities required for acquiring receivables and issuing securities. However, a securitisation undertaking will only be covered by the Securitisation Law if its articles of incorporation, management regulations or issue documents provide that it is subject to the Securitisation Law.</p> <p>Further, securitisation undertakings which issue securities to the public <u>on a regular basis</u> (hereinafter ‘authorised securitisation undertakings’) must be authorised by the supervisory authority for the financial sector, namely the <i>Commission de surveillance du secteur financier</i> (CSSF). [“continuous” means “without interruption”]</p>
The Netherlands	<p>An SPV issuing bonds falls within the definition of ‘credit institution’ of the Act on the Supervision of the Credit System 1992 (Wet Toezicht Kredietwezen 1992). Falling under this definition, in principle a SPV should have a license and falls under the supervision of The Nederlandsche Bank. However, the ASCS 1992 has a few exemption rules. On conditions, typical securitisation vehicles will not be considered as credit institutions.</p>
Portugal	<p>SPVs established under the Securitisation Law are not considered to be credit institutions.</p> <p>The activity of acquiring receivables is not considered a credit operation within the meaning of banking legislation. Nevertheless:</p> <ul style="list-style-type: none"> ▪ The establishment of an FTC must be authorised by the CMVM, which also supervises the FTC’s activities [is this what you mean?]. Where the originator is a credit or financial institution, the FTC’s establishment is also subject to the Banco de Portugal’s approval. As stated at question 2(II), FTCs are managed by special companies called SGFTCs. The incorporation of an SGFTC must also be authorised by both the Banco de Portugal and the CMVM. The

¹ The English version of the Consolidated Law on Finance can be found at: http://www.consob.it/mainen/legal_framework/index.html.

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Spain	The securitisation fund is not a credit institution. The fund is supervised by the Securities Commission (<i>Comision Nacional del Mercado de Valores</i>) and has to observe certain specific formalities when performing its activities. [Or do you mean that it must be authorised to carry out its activities, if so, by whom?]
Sweden	<p>(a) Yes if it extends financing and obtains funds from the public. However, please see exceptions above (2.3 and 1.1 (a)).</p> <p>(b) Yes, if funded publicly.</p> <p>(c) Normal license requirements as a credit company including capital adequacy requirements. If an exception applies there are no such formalities.</p>

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	(V) What is (are) the authority(ies) in charge of supervising SPVs in your jurisdiction?
Austria	There is no specific supervisory authority for SPVs.
Belgium	
Denmark	
England and Wales	No, although an SPV, if listed on the London Stock Exchange, will be supervised by the FSA/UK Listing Authority. In certain cases (for example, involving the securitisation of consumer loans), SPVs may also need to comply with consumer credit legislation (supervised by the Department of Trade and Industry), and data protection legislation (supervised by the Information Commissioner).
Finland	In most cases the Finnish Banking Supervision Office supervises the SPV.
France	FCCs are not supervised by any regulatory body. Only the founders [is this the right word?] of the FCC are supervised by the Financial Markets Authority (<i>Autorité des Marchés Financiers</i> , AMF). Pursuant to Article L 214-47 of the CMF, the incorporation of the management company (which is a commercial company must be approved by the AMF. The management company must meet certain criteria which are set out in AMF Regulation 94-01 and the AMF [Instruction] of 1 July 2004. According to Article L 214-48 of the CMF, the custodian must be a French credit institution (or a French branch of a credit institution incorporated in the European Economic Area, or any institution approved by the Committee on credit institutions and investment firms - <i>Comité des établissements de crédit et des entreprises d'investissement</i>). The only responsibility of FCCs vis-à-vis the Banque de France is to communicate to the latter the necessary information relating to monetary statistics.
Germany	Given that SPVs do not require a licence, no authority, not even the German Banking Supervisory Authority (<i>Bundesanstalt für Finanzdienstleistungsaufsicht</i> , hereinafter the 'BaFin') is responsible for supervising SPVs in Germany.
Greece	The Securitisation Law does not provide for the prudential supervision of SPVs. If the SPV is a Greek <i>société anonyme</i> , the supervising authority is the competent <i>prefecture</i> , which, however, only supervises the SPV as regards compliance with the law on <i>sociétés anonyme</i> (foreign SPVs are not governed by the Securitisation Law or any other provision of Greek law). The Hellenic Capital Market Commission does not have any supervisory authority, given that the securitisation can only take place through private placement and not (at least for the time being) through public offerings. As regards SPVs which are subsidiaries or affiliates of Greek banks, they are subject to the consolidated supervision of the Bank of Greece, as supervising authority of the banks.
Ireland	Generally, typical securitisation SPVs fall outside the financial services regulatory regime in and therefore are not subject to supervision by Irish financial or banking regulators. In common with all Irish companies, Irish SPVs are subject to the jurisdiction of the Office of the Director of Corporate Enforcement with respect to their compliance with general company law. Where an SPV has listed securities on a regulated stock exchange (such as the Irish Stock Exchange) it will, of course, be subject to the rules of that exchange. With regard to tax matters, an SPV is subject to the jurisdiction of the Revenue Commissioners (tax authorities).

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(V) What is (are) the authority(ies) in charge of supervising SPVs in your jurisdiction?
Italy	A securitisation company is subject to the supervision of the Banca d'Italia. Securitisation companies are required to disclose certain information to the Banca d'Italia related to the performance of the securitisation transaction with reference to both the securitised assets and the issued notes.
Luxembourg	The CSSF supervises authorised securitisation undertakings (see question 2(IV))
The Netherlands	The Nederlandsche Bank
Portugal	As stated above [where?], principally the CMVM and, to a lesser extent, the Banco de Portugal.
Spain	<ol style="list-style-type: none"> 1. The Securities Commission (<i>Comision Nacional del Mercado de Valores</i>) is the agency in charge of supervising and inspecting the Spanish stock markets and the activities of all the participants in those markets. 2. The Central Mercantile Register).
Sweden	If the SPV would be subject to supervision/regulated it would be supervised by SFA, the Swedish Financial Supervisory Authority (Sw: Finansinspektionen) which also supervises banks and credit companies etc.

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(VI) Is it more common to use an offshore SPV or an SPV in the local jurisdiction of the originator, in the context of securitisation transactions? Is it possible to use an SPV in the same company group as the originator? Is the SPV normally owned by such a group or by a trust or a management company?
Austria	In the vast majority of cases, only offshore SPVs are used. It is possible to use a company in the same group as the originator. The SPV is normally owned by a trust or management company.
Belgium	
Denmark	
England and Wales	(i) No. (ii) Yes. (iii) An SPV is usually (but not always) established as an ‘orphan’ company. ²
Finland	No.
France	The legal framework applicable to FCCs has been relaxed and amended on many occasions since the Securitisation Law was adopted. The Financial Securitisation Law of 1 August 2003 and Decree No 2004-1255 of 24 November 2004 have made recourse to offshore securitisation vehicles more unlikely. [Please check.].
Germany	Securitisation transactions normally have recourse to offshore SPVs. Effective separation of the sold receivables requires the use of an external SPV, which does not belong to the same group as the originator. SPVs are normally owned by trust companies, which are refunded by banks directly on the capital market.
Greece	Securitisation transactions normally use foreign SPVs, mainly because the legal framework applicable to SPVs in Greece is costly and burdensome. In Greece, an SPV must be established as a société <i>anonyme</i> . Such companies are expensive to set up and must comply with numerous provisions concerning capital, publication requirements, etc.). The Securitisation Law does not prohibit the use of a company in the same group as the originator as the SPV, although it is not the preferred solution, at least for banks (which, as stated at question 1(III), are the companies which, in Greece, represent the main, if not the only, category of originators). The establishment of an SPV in the same group as the originating bank is not recommended. The Bank of Greece (as the supervising authority) has discretion to request the originating bank not to participate directly or indirectly in the share capital of the SPV, in order not to include the SPV in the consolidated supervision of the banking group. Further requirements for the SPV not to be included in the consolidated supervision of the group are the following: (i) the SPV’s registered name must not include nor be indirectly related to the originating bank’s registered name; (ii) the SPV’s management must not include more than one representative of the bank; (iii) the bank must not be liable for the SPV’s debts; and (iv) the SPV must not be the bank’s swap counterparty in swap transactions which have not been concluded pursuant to market rates. [Please check] <i>[The above information is subject to confirmation by the Bank of</i>

² An orphan company is one which is not corporately related to any other. This is usually achieved by the SPV’s shares being held by a professional corporate services provider on trust for charitable purposes.

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(VI) Is it more common to use an offshore SPV or an SPV in the local jurisdiction of the originator, in the context of securitisation transactions? Is it possible to use an SPV in the same company group as the originator? Is the SPV normally owned by such a group or by a trust or a management company?
	<i>Greece.]</i> Generally, the participation of the SPV in the originating company's group will be reflected in the rating of the securitisation. It cannot be ruled out that future case-law on securitisation may consider the application of the 'piercing the corporate veil' doctrine in the event of fraudulent use of the SPV. [Could you explain this doctrine?]
Ireland	Irish originators have used both Irish and offshore SPVs for securitisation transactions. If it is desired that the SPV should be fully insolvency-remote from the originator (as would be typical), it is not possible to use a company in the same corporate group as the originator (see also question 6(I)). It is usual for an SPV to be structured as an 'orphan' company. This is achieved by having the shares in the SPV held by a trustee company on trust for charitable objects. Legal title to the shares is thus held by the trustee company (which would usually be an affiliate of the corporate administrator - see question 2(XI)) and a trust is declared over the beneficial interest in the shares (see also question 2(XIII)). The SPV is thereby kept separate from the originator's group.
Italy	As stated at question 2(III), securitisation transactions under the Securitisation Law are carried out using an Italian SPV. It is possible to use a company in the same group as the originator as the securitisation company. Under Article 2(2) of the Securitisation Law, in the event that notes are offered to professional investors, the obligation is on the securitisation company itself to prepare a prospectus containing information about 'the ownership relationship, if any, between the selling entity and the purchasing company' (letter I of Article 2(2)).
Luxembourg	Securitisation transactions under the Securitisation Law perform use a local Luxembourg SPV. However, the originator is rarely a Luxembourg company. It is possible to use a company in the same group as the originator as the SPV, provided that it fulfils the conditions provided by the Law. The SPV is usually set up by the originator. [Distinct acquisition/insurance?]
The Netherlands	Please read the answer on question 2.2. However, The Nederlandsche Bank can make an exception to the rule that the SPV can't be a group company of the originator, if a subsidiary of a <i>bank</i> will be the SPV.
Portugal	The majority of the securitisation transactions carried out in Portugal are two-step transactions, which usually involve FTCs and an offshore SPV..The SPV issues the securitisation units or the securitisation notes, which are then bought by an offshore SPV which will thereafter issue bonds and place them in the international market. The securitisations structures recently used in Portugal have involved Portuguese SPVs only. [Why? - Please explain further, not coherent with the first sentence of the next paragraph] As mentioned above, although not a legal requirement, a non-Portuguese SPV (offshore SPV) has been included in almost all FTC securitisation transactions completed to date in Portugal. The offshore SPV acts as the issuer; however, it can only be used for a single transaction. The issuer will typically be an insolvency-remote entity whose share capital is owned by a charitable trust. Its main role is to purchase all the units issued by the FTC, and to fund this purchase via the issuance of global bearer notes to investors. The purchase of the units conveys an undivided ownership interest in the fund's assets on the issuer, as sole unit holder. Security (by way of a beneficial ownership in the units granted by the issuer to the trustee on behalf of the note holders) is usually created over the global bearer notes issued by the SPV, and is subject to foreign legislation. The trustee can enforce the security in the event of default, if

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	<p>(VI) Is it more common to use an offshore SPV or an SPV in the local jurisdiction of the originator, in the context of securitisation transactions? Is it possible to use an SPV in the same company group as the originator? Is the SPV normally owned by such a group or by a trust or a management company?</p> <p>required by law, or if the note holders vote in favour of this course of action. In such a case, a receiver or administrative receiver can be appointed over the issuer, and the trustee can take possession of, sell, or foreclose the security. It is not necessary to acquire a court order to this effect.</p> <p>As regards the use of a company in the same group as the originator as the SPV, domestic SPVs must comply with the provisions of the Securitisation Law and other ancillary regulations.</p> <p>Thus, the SPV must be an FTC or an STC.</p> <p>There are no limitations as regards the company which can own the FTC. However ownership or effective control by the originator (if a credit institution or financial [services] company) may affect the assignment's qualification as a true sale, for prudential purposes.</p> <p>There are also no limitations as to ownership of STCs. However, as stated at question 2(I), the shareholding structure must be approved by the CMVM.</p>
Spain	Securitisation transactions use a securitisation fund which is owned by neither the originator nor the management company.
Sweden	Offshore SPVs are normally used for true sale transaction as foreign SPVs have more easily been considered not to be subject to Swedish supervision by SFA. For secured loan structures (e.g. CMBS/CLO), often group companies have been used (see 2.3 above). Offshore SPVs have most often been owned by a trust, e.g. in Jersey. Swedish orphan SPVs have been owned by a Swedish trust, to our knowledge.

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(VII) Does the law distinguish between SPVs which acquire receivables and SPVs which issue securities?
Austria	No.
Belgium	
Denmark	
England and Wales	No, except for the restriction that only a PLC can, under the Companies Act 1985, issue debt securities.
Finland	The law does not distinguish between these types of SPV.
France	No.
Germany	As no specific regulations exist, the law does not distinguish between SPVs which acquire receivables and SPVs which issue securities.
Greece	No, the SPV acquiring receivables also issues securities (Article 10(2), last sentence, of the Securitisation Law).
Ireland	The law does not distinguish between SPVs which acquire receivables and SPVs which issue securities, save that, as stated at question 2(II), an SPV established as a private limited company is prohibited from issuing securities to the public. Therefore, where it is intended that an SPV will fund itself by issuing securities to the public, it is usual to establish it as a PLC. Where it is intended that an SPV will be funded through a loan or the issue of securities on a strictly private placement basis, it may be possible to establish it as a private limited company.
Italy	No, the purchasing company may be the ultimate issuer of the notes, but this is not mandatory. It is possible to implement a securitisation transaction using two or more different entities (one purchasing the receivables and the other issuing the notes).
Luxembourg	Yes, Article 1(2) of the Securitisation Law defines securitisation undertakings as undertakings which carry out the securitisation transaction, and undertakings which participate in such a transaction by assuming all or part of the securitised risks (the acquisition vehicles), or by issuing of securities to finance the transaction (the issuing vehicles), and whose articles of incorporation, management regulations or issue documents provide that they are subject to the provisions of the Securitisation Law.
The Netherlands	<u>No. Excess cash that remains in the SPV after the ABS are completely redeemed will usually flow back to the originator via a 'profit extraction mechanism'.</u>
Portugal	No, the Securitisation Law does not distinguish between SPVs which acquire receivables and SPVs which issue securities. The SPV which acquires the receivables also issues securities.
Spain	No, the securitisation fund serves both purposes.

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(VII) Does the law distinguish between SPVs which acquire receivables and SPVs which issue securities?
Sweden	Please see exception for Swedish SPV's (1.1 (a) above) which only cover acquisitions of financial assets, not extension of debt to the originator.

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(VIII) Does national legislation allow SPVs to engage in a wide range of financing activities? Can SPVs directly issue debt instruments? If so, what are the types of notes issued by SPVs? Are there any specific restrictions as regards the issuance of securities in the context of securitisation transactions? Please specify.
Austria	§ 2(60) of the BWG (see question 1(I)) states that SPVs may issue debt securities and take on loans.
Belgium	
Denmark	
England and Wales	(i) Yes, provided the SPV is a public limited company (PLC) (see question 2(II)). (ii) Yes, provided the SPV is a PLC it can issue any notes. (iii) No.
Finland	There are no such restrictions.
France	<p>FCCs were originally only authorised to issue one type of instrument: <i>parts de fonds commun de créances</i> ('units'). FCCs may issue senior units, mezzanine or subordinated units or residual units. Article 7 of the Decree [which? 2004/1255?] specifies that the minimum value of a unit is EUR 150.</p> <p>In order to enlarge the investment basis of FCCs, Article L.214-43 of the CMF provides that FCCs may issue debt securities (<i>titres de créances</i>) in addition to units.</p> <p>Such debt securities, referred to in Article L.211-1 of the CMF, principally include bonds or notes and negotiable debt securities (<i>titres de créances négociables</i>) including commercial paper.</p> <p>Decree No 92-137, sets down certain restrictions on the issue of commercial papers. A minimum amount of EUR 150 000, or its equivalent in other currencies, applies and the issuer must establish an information memorandum (<i>dossier de présentation financière</i>) which is reviewed by the Banque de France.</p> <p>As far as the issue of bonds is concerned, neither the Financial Securitisation Law nor Decree No 2004-1255 provide for a minimum nominal amount to be issued by an FCC. Therefore, notes issued by an FCC may have a minimum nominal amount of EUR 1.</p> <p>According to Article 7 of Decree[which? 2004/1255?], FCCs must always issue at least two units. Article 12 of Decree No 2004-1255 provides that holders of debt securities are the FCC's creditors and as such will rank prior to holders of units.</p>
Germany	German legislation permits SPVs to issue all types of debt instruments. SPVs usually issue bonds, commercial paper, credit-linked notes or medium-term notes. No specific restrictions exist regarding the issuance of securities in the context of securitisation transactions. However, the placement of securities may be subject to the relevant regulations on prospectus standards, etc.
Greece	Pursuant to Article 10(7) of the Securitisation Law, an SPV may enter into any type of loan, credit or insurance agreement, including derivatives contracts, not only for securitisation transactions but also for hedging purposes.

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(VIII) Does national legislation allow SPVs to engage in a wide range of financing activities? Can SPVs directly issue debt instruments? If so, what are the types of notes issued by SPVs? Are there any specific restrictions as regards the issuance of securities in the context of securitisation transactions? Please specify.
	The SPV (and only the SPV) can issue debt instruments of any kind, provided that they are privately placed (see the answer to question 1(II), which refers to the wording of Article 10(1) of the Securitisation Law). [What happens in case of public placement?]
Ireland	The range of financing activities in which an Irish SPV may engage is not limited by Irish law. However, where it is intended that an Irish SPV should benefit from the special Irish structured finance tax regime, its activities will be limited as stated at question 7(II).
Italy	<p>Article 5 of the Securitisation Law provides for the discipline [does this mean sets out the regime in relation to?] of the notes issued against the assigned receivables. [Please clarify]</p> <p>No specification is given as to the nature of these ‘notes’ under Italian law (Article 5 refers in generic terms to <i>titoli</i>, i.e. securities). In the absence of any legal specification, commentators tend to define securities issued by SPVs as ‘atypical financial instruments’ (<i>strumenti finanziari non tipizzati</i>) rather than ‘bonds’ under the Civil Code.</p> <p>Pursuant to Article 2(1) of the Securitisation Law, the notes will be deemed ‘financial instruments’ for the purposes of the securities law and, as such, are subject to the provisions of Legislative Decree No 58 of 24 February 1998.</p> <p>In particular, a prospectus must be provided at the time of [is this now correct, should it be changed to “prior to?”] issuance of the notes, containing information about ‘the minimum necessary content of the notes issued’ (Article 2(3)(g)). The Italian securities markets regulator (<i>Commissione Nazionale per le Società e la Borsa</i>) adopted rules on the preparation of these prospectuses on 6 April 2000 (Decision No 14275).</p> <p>The notes are regulated by Article 129 of the Consolidated Banking Law, which sets out the controls carried out by the Banca d’Italia relating to the issuance of securities. Accordingly, both the issuance and offer of notes must be notified to the Banca d’Italia prior to the proposed issue date. Breach of this duty may result in a fine, imposed on the issuer in accordance with Article 143 of the Consolidated Banking Law (providing for pecuniary administrative sanctions in the event of failure to comply with Article 129).</p> <p>Upon receipt of the notification, the Banca d’Italia can prohibit or delay the issuance of the notes in so far as the offering would disrupt Italian financial and monetary markets, and in other limited circumstance set out in the Article 129 implementing provisions.</p> <p>In addition, Article 5(2) exempts the issuance of notes from the application of the discipline [rules?] on corporate bonds in Article 2410 ff. of the Civil Code. In particular, the SPV is not obliged to comply with the ratio laid down in Article 2412 of the Civil Code; the SPV is allowed to issue notes in excess of the quantitative limits applicable to ordinary corporate bonds.</p>
Luxembourg	Yes. The securitisation undertaking (or any compartment thereof) can directly issue debt instruments (Article 9 of the Securitisation Law . The Securitisation Law does not restrict the type of notes which may be issued by a securitisation undertaking. There are no specific restrictions as regards the issuance of securities in securitisation transactions.
The Netherlands	In order to make sure that the SPV is bankruptcy remote, all services to the SPV, including its management, are contracted.
Portugal	The Securitisation Law and relevant regulations do not allow SPVs to engage in a wide range of financing activities. Save for some exceptions provided for by the Securitisation Law, the FTC or STC may only finance its activities with its own funds and by issuing securitisation units or notes, respectively. [does this mean the own funds point covers FTCs only and the issuance point covers STCs only?]

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	<p>(VIII) Does national legislation allow SPVs to engage in a wide range of financing activities? Can SPVs directly issue debt instruments? If so, what are the types of notes issued by SPVs? Are there any specific restrictions as regards the issuance of securities in the context of securitisation transactions? Please specify.</p> <p>Pursuant to Article 12 of the Securitisation Law, the cash reserves of FTCs can be used to acquire securities listed on a stock exchange, and short-term public or private debt. Further, Article 13 of the Securitisation Law provides that in order to obtain the necessary reserves, the SGFTC may enter into loan agreements on behalf of the FTC, if so allowed by the FTC's [management?] regulations.</p> <p>As for STCs, Article 44 of the Securitisation Law provides that in order to secure liquidity for the purposes of reimbursement and remuneration of secured bonds, an STC may use the assets referred to in Article 62 of the Securitisation Law to enter into loans with third parties. The return [on reimbursement? Please clarify] of the secured bonds and respective yields may only be applied to low risk and high liquidity instruments defined by regulation of the CMVM. [does this mean a specific regulation, or general rules?]</p>
Spain	<p>The fund may borrow money through loans granted by credit institutions or securities admitted to trading in secondary markets. However, securities are issued by the fund to professional investors (as defined by Spanish law) only.</p>
Sweden	<p>If it issues public debt a Swedish SPV is more likely to be subject to supervision by the SFA, see above. The SPV can not take deposits from the public without a license. No other specific restrictions apply except prospectus requirements and similar. Swedish transactions are normally funded on the European bond markets.</p>

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(IX) Does the law permit the creation of segregated compartments or cells of assets and liabilities within the SPV which are ring-fenced from other assets or liabilities? Can the compartments/cells of SPVs be replenished? If so, how?
Austria	The law does not provide for the creation of segregated compartments but this could be achieved through appropriate structuring measures. Replenishment is possible, through revolving purchase/sale arrangements (as described in the footnote)
Belgium	
Denmark	
England and Wales	No, other than by way of charging (see question 2(I)).
Finland	The law does not deal with these kinds of questions.
France	<p>Article L 214-43 of the CMF specifies that FCCs can contain one or more compartments. Each compartment effectively functions like a mini-FCC which is able to purchase receivables, issue units or debt securities, benefit from credit enhancement, borrow and liquidate independently from other compartments of the FCC and have its dedicated accounts.</p> <p>The assets of each compartment are segregated from the assets of the other compartments. The holders of the units or other debt securities issued by a compartment will accordingly have recourse only to the assets of that compartment and conversely will only bear the losses of that compartment.</p> <p>FCC compartments are permitted to purchase new receivables after the initial purchase date and are also permitted to issue additional units after the initial issue date. The FCC's [management?] regulations must specify the circumstances and conditions under which the FCC may purchase additional receivables and issue further units and debt securities after the initial issue date. These regulations must specify the level of security offered to the holders of outstanding units and how the level of security will be maintained.</p>
Germany	German law does not permit the creation of segregated compartments or cells of assets and liabilities within an SPV which are ring-fenced from other assets or liabilities. After the purchase of receivables by the SPV, those receivables are part of the SPV assets and cannot be segregated or ring-fenced from its other assets.
Greece	<p>Whereas no specific segregation mechanism is provided by the Securitisation Law for assets within the same SPV, the statutory pledge created on the securitised assets pursuant to Article 10(18) of the Securitisation Law (see also questions 3(V) and 4(I)) [?factually] segregates those assets to a certain extent in the sense that the note holders being serviced out of the proceeds of these assets will be satisfied prior to the creditors with claims enjoying a general privilege in accordance with Article 975 of the Code of Civil Procedure (for further details on the ranking, see questions 3(V) and 4(I)).</p> <p>As for the replenishment of SPVs (generally, i.e. not only of their compartments/cells), such replenishment is usually achieved through the mechanism of the deferred purchase price.</p>
Ireland	<p>It is not possible to create segregated compartments or cells of assets and liabilities within an Irish SPV.</p> <p>Ring-fencing of specific pools of assets and liabilities within an SPV is achieved by a combination of appropriate security interests over the relevant assets to secure the relevant liabilities and contractual limited recourse and non-petition undertakings from the SPV's creditors.</p>

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(IX) Does the law permit the creation of segregated compartments or cells of assets and liabilities within the SPV which are ring-fenced from other assets or liabilities? Can the compartments/cells of SPVs be replenished? If so, how?
	It is possible for an SPV to acquire assets on a rolling basis, which assets will become subject to the security created by the SPV at the inception of the transaction.
Italy	Under Article 3 of the Securitisation Law, the receivables relating to each securitisation transaction will, by operation of law, be segregated for all purposes from the assets of the purchasing company or SPV (whether or not the issuer) and from those of any other transaction. Furthermore, in respect of each group of segregated assets (<i>patrimonio separato</i> , Article 3(2)), no action by creditors (other than the holders of the notes issued in order to finance the purchase of the receivables) is permitted.
Luxembourg	Yes, the Securitisation Law permits the creation of segregated compartments or cells of assets and liabilities within the SPV, which are ring-fenced from other assets or liabilities (Articles 5 and 8 of the Securitisation Law). Yes, the compartments may be replenished. Article 54 of the Securitisation Law provides that securitisation undertakings may acquire and, subject to the conditions set out in Article 61, transfer claims and other assets, existing or future, in one or more transactions or on an ongoing basis. (Article 61 provides for certain limitations, e.g. by setting out that a securitisation undertaking may only assign its assets in accordance with the provisions of its articles of incorporation or its management regulations).
The Netherlands	
Portugal	<p>The Securitisation Law permits the creation of segregated compartments or cells of assets and liabilities within the SPV which are ring-fenced from other assets or liabilities.</p> <p>Thus, the Securitisation Law defines FTCs as funds for the securitisation of debts which are coownership vehicles, governed by the special provisions applicable to coownership property, owned by several individuals or companies, which are not, in any event, liable for: (i) the debts of the fund participants; (ii) the entities which, pursuant to law, are responsible for managing the funds; or (iii) of sellers of the debts acquired by the fund.</p> <p>The sole function of the fund is to purchase certain types of receivables for the purpose of securitisation and since it has a certain number of characteristics the fund is itself construed as representing a form of security for the unit holders. For instance:</p> <ol style="list-style-type: none"> a) Once purchased, the receivables are owned by the fund and there are no circumstances under which the receivables can be used to offset the debts of fund participants or its managing entity, and, provided that a ‘true sale’ has been confirmed for the receivables, of the originator. b) Subsequent to purchase, the fund issues units representing ownership of the fund’s assets, for the ultimate benefit of the note holders. c) A separate fund must be established for each securitisation transaction. <p>As regards STCs, each issuance of securitisation notes is segregated to a ring-fenced pool of assets and the Securitisation Law clearly provides that different</p>

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	<p data-bbox="309 268 2179 336">(IX) Does the law permit the creation of segregated compartments or cells of assets and liabilities within the SPV which are ring-fenced from other assets or liabilities? Can the compartments/cells of SPVs be replenished? If so, how?</p> <p data-bbox="309 347 2179 480">pools of assets purchased by the STC are fully segregated. In the light of the foregoing, there is complete segregation of the STC assets. Furthermore, the note holders benefit from a legal security by way of a priority right over the assets (<i>privilegio creditório especial</i>) which at any moment make up the separate, ring-fenced, assets allocated to the respective issuance. Under the priority right granted to the note holders they are to be reimbursed before the remaining creditors of the STC. This priority right is not subject to registration.</p> <p data-bbox="309 491 1048 518">The compartments/cells of SPV can be replenished, as follows:</p> <p data-bbox="309 539 2179 603">(a) FTCs can acquire new debts if the fund's [management?] regulations so provide, and whenever: (i) there is early payment of debts held by the FTC; or (ii) there are undisclosed defaults with respect to debts held by the FTC (Article 11 of the Securitisation Law).</p> <p data-bbox="309 624 2179 687">(b) STCs can re-assign debts to the originator whenever there are undisclosed defaults and the STC is able to acquire new debts (Articles 44 and 45 of the Securitisation Law).</p>
Spain	No, it is not possible. Each fund is created for one single transaction. The fund can be replenished by acquiring new assets periodically.
Sweden	<p data-bbox="309 799 1843 831">(a) Yes, by creation of security but normally single purpose SPVs are used. We also have regulations for so-called Covered Bonds.</p> <p data-bbox="309 842 2130 874">(b) Yes, but please see 1.1 (a). Assets must be dealt with by a third party, i.e. the SPV should not have access to the assets pledged by it to e.g. noteholders.</p>

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(X) Are there any rules imposed by domestic legislation regarding the management of excess cash belonging to an SPV?
Austria	No.
Belgium	
Denmark	
England and Wales	No.
Finland	No.
France	<p>Pursuant to Article 4 of Decree No 2004-1255, temporary surplus cash may be invested in certain financial instruments. The permitted investments are the following:</p> <ul style="list-style-type: none"> - cash deposits, - French Treasury bonds, - debt securities which represent a monetary claim against the relevant issuer (if such debt securities are negotiated on a regulated market located in a Member state of the European Economic Area, but provided that such debt securities do not give a right of direct or indirect access to the share capital of the company), - negotiable debt securities, - share or units issued by undertakings for collective investment in transferable securities , - units issued by other FCCs or similar foreign entities (with the exception of units issued by the FCC itself).
Germany	Excess cash (i.e. profits) of the SPV are subject to the relevant tax regulation. Normally, offshore SPVs are not taxable in Germany.
Greece	No.
Ireland	No, save that general rules regarding the regulation of persons and entities providing regulated financial services in Ireland apply.
Italy	No, the SPV is authorised to reinvest the funds deriving from management of the assigned receivables that are not immediately used for the satisfaction of the rights incorporated in the notes. The only rule provided by the Securitisation Law (Article 2(3)(e) of the Securitisation Law) is the obligation to disclose in the prospectus the conditions upon which [way in which?] the SPV intends to reinvest the funds.
Luxembourg	No.
The Netherlands	

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(X) Are there any rules imposed by domestic legislation regarding the management of excess cash belonging to an SPV?
Portugal	<p>There are no specific rules in the Securitisation Law regarding the management of excess cash belonging to the SPV. However, the Securitisation Law rules regarding composition of the assets of the FTC or STC provide the following.</p> <p>FTCs</p> <p>(i) The assets of the FTC must be used for the acquisition of debts, either initial or subsequent, which cannot represent less than 75 % of the assets of the FTC, as provided for by the Securitisation Law or in the fund’s management regulations.</p> <p>(ii) The cash reserves of the fund can also be applied towards the acquisition of securities listed in an exchange or of short-term public or private debt, as appropriate, with a view to efficiently managing the fund.</p> <p>The characteristics of any assets acquired and held by the fund in this way must not lead to any modifications in the rating of the securitisation units.</p> <p>STCs</p> <p>(i) The STC may only finance its activities with own funds and by issuing bonds.</p> <p>(ii) To secure liquidity for the purposes of reimbursement and remuneration of secured bonds, securitisation companies may use the assets referred to in Article 62 of the Securitisation Law to enter into loans with third parties.</p> <p>(iii) The return on reimbursement of the secured bonds and respective yields may only be applied in low risk and high liquidity instruments, to be defined by the CMVM by way of regulation. [again, does this mean a specific piece of legislation?]</p>
Spain	
Sweden	Not really. If it is paid back as servicing fees VAT may apply. Issues relating to perfection may apply see 2.9 (b) and section 6. Accounting treatment may also be affected but those principles are internationally applicable.

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs) <i>Management company of the SPV/Trustees</i>
	(XI) What type of entity manages the SPV (if any)?
Austria	Experience is limited to offshore SPVs where, typically, supply directors are provided by corporate service companies.
Belgium	
Denmark	
England and Wales	There is no requirement to establish a management company. In practice, it is not uncommon for a corporate services provider (e.g. SPV Management, Structured Finance Management) to facilitate incorporation of the SPV and to provide directors, a company secretary, a registered office, bookkeeping, etc.
Finland	There is no regulation regarding these questions.
France	See question 2(V). FCCs are jointly created by a management company licensed and supervised by the AMF and an entity responsible for the safe custody of the FCC's assets.
Germany	Usually SPVs are managed by special management companies which provide all services required by the SPV.
Greece	Given that there is no obligation under Greek law for an sSPV to be managed by a specific type of management company (as is the case for mutual funds), the SPV is usually managed by its competent organs [governing bodies?] (i.e. the board of directors of the <i>société anonyme</i> in the case of a Greek SPV). However, there are no provisions prohibiting the outsourcing of an SPV's management.
Ireland	<p>Corporate administration services are usually provided to an Irish SPV by a professional service company – a number of service providers are active in the Irish market.</p> <p>Under Irish law, the responsibility for managing an Irish company is vested in its board of directors. An Irish SPV (in common with all other Irish companies) must have at least two directors (who must be individuals) and a company secretary (which may be a corporation). Directors are usually nominated to the board of the SPV by the corporate administrator and the corporate administrator itself will usually be the company secretary of the SPV. The corporate administrator will also provide the SPV with a registered office in Ireland and provide certain other administrative services (for example, preparation of management accounts).</p> <p>The SPV is, however, a separate legal entity distinct from the corporate administrator.</p>
Italy	<p>Pursuant to the Securitisation Law, collection and other activities related to the management of the assigned receivables (Article 2(3)(b) and (c)) differentiates the 'entities in charge of managing the issuance and placement of the notes' from the 'entities in charge of the collection of the assigned receivables and the cash and payment services' have to be performed by a separate entity (servicing agent) and not by the SPV.</p> <p>For regulatory reasons, collection and cash and payment services must be provided (Article 2(6)) exclusively by banks or financial intermediaries registered in a special register kept by the Banca d'Italia. The Securitisation Law states that the bank or financial institution[?] responsible for servicing and collecting the assigned receivables will be also responsible for ensuring that the transaction complies with the law and the mandatory content requirements of prospectuses. The Banca d'Italia adopted on 23 August 2000 some guidelines on the 'monitoring' functions of the servicing agents. Under these guidelines, each servicing agent must verify that the sums relating to each transaction are held in separate accounts, and that funds from different transactions are not</p>

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs) <i>Management company of the SPV/Trustees</i>
	(XI) What type of entity manages the SPV (if any)?
	commingled. This means that unless the originator is a financial intermediary, it may not act as a servicing agent of the assigned receivables or as a collection agent for the assigned receivables. Conversely, for securitisation transactions where the originator is a financial intermediary, it is common practice in Italy for the originator also to perform the servicing activity.
Luxembourg	Securitisation companies manage themselves.[Please expand]Securitisation funds are managed by management companies.
The Netherlands	
Portugal	STCs do not have management companies and are managed by their board of directors. FTCs are managed by special managing entities, namely SGFTCs.
Spain	A management company (<i>sociedad gestora</i>) manages the fund. The management company needs a special licence from the Ministry of Finance and has to be registered in the Central Mercantile Register and in a specific register held by the Securities Commission.
Sweden	Swedish SPVs have been managed by the originator or a third party trustee or by cash management companies. Originator management is sensitive from a perfection perspective.

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(XII) What are the requirements imposed by law for managing an SPV? Are there any restrictions in terms of establishment? Please specify.
Austria	There are no specific requirements under Austrian law.
Belgium	
Denmark	
England and Wales	No.
Finland	-
France	See question 2(V). Pursuant to Decree No 2004-1255, when the management strategy of an FCC includes active asset management or the entry into credit derivatives transactions as protection seller, the management company must comply with certain additional specific requirements. In particular it must: <ul style="list-style-type: none"> - obtain a new licence from the AMF authorising it to carry out such activities, and - put in place appropriate management and organisational procedures in accordance with the provisions of the AMF Regulations [does this mean AMF Regulation 94-01 and AMF Instruction of 1 July 2004, referred to at question 2(V)?].
Germany	The law does not impose any special requirements for managing an SPV. Management companies established under German law only need a licence from the public trade supervisory office (<i>Gewerbeaufsichtsamt</i>).
Greece	Not applicable.
Ireland	Irish law does not impose any specific regulatory requirements on the providers of corporate administration services to an SPV. However, the nature of the services provided frequently falls within the general financial services regulatory regime and, to that extent, a service provider will require an appropriate authorisation from the financial services regulator, the Irish Financial Services Regulatory Authority under the Investment Intermediaries Act 1995.
Italy	EU and non-EU banks which are authorised to carry on business in Italy, whether through a local branch or ‘passported’ under Second Banking Directive (Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC – is this the correct cite?), are qualified to be ‘managers’ of securitisation companies under the Securitisation Law.
Luxembourg	Specific requirements are imposed on the management company of a securitisation fund. Pursuant to Article 14 of the Securitisation Law, the management company is a commercial company whose object is to manage securitisation funds and, as the case may be, to act as fiduciary of funds consisting of one or more [fiduciary properties?]. The management company must have its registered office in Luxembourg (Article 3 of the Securitisation Law). Management companies of authorised funds must be authorised by the CSSF (Article 20 of the Securitisation Law).
The	

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(XII) What are the requirements imposed by law for managing an SPV? Are there any restrictions in terms of establishment? Please specify.
Netherlands	
Portugal	<p>Under the Securitisation Law, the requirements imposed to manage an FTC are: (i) the SGFTC must be a financial company authorised by the Banco de Portugal and the CMVM; and (ii) the minimum share capital required is EUR 250 000.</p> <p>As regards restrictions in terms of establishment, the SGFTC's head office and effective management must be located in Portugal.</p> <p>SGFTCs act exclusively on behalf of unit holders and must therefore undertake all acts of management and conduct all necessary or [appropriate] transactions for the effective management of the funds, in accordance with high standards of diligence and professional competence. [does this need a reference?]</p>
Spain	<p>A management company has to be a limited liability company, with a minimum share capital of EUR 901 518. The Ministry can impose further capitalisation and solvency conditions. The board [of directors?] must consist of at least five members, and there are special requirements in relation to professional honorability, [capacity?] and experience. The company must have adequate accounting and administration means and internal control procedures.</p>
Sweden	<p>To collect receivables you may need a license. This would not apply to the originator. Data protection issues may apply.</p>

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
	(XIII) Are there any limitations in terms of shareholding in management companies or SPVs?
Austria	No.
Belgium	
Denmark	
England and Wales	<p>There are no restrictions on shareholding in management companies.</p> <p>An SPV incorporated as a PLC (as to why a PLC, see question 2(II)) must have at least two shareholders. A PLC must have a minimum authorised share capital of GBP 50 000, all of which must be issued and paid up to at least 25 % of their nominal value and the whole of any premium.</p> <p>A bank with a primary role in a securitisation (e.g. originator, repackager or sponsor) is prohibited by the FSA Handbook from owning ‘any share capital or other form of proprietary interest in or control over, either directly or indirectly, any company used as a vehicle for the scheme’ (i.e. SPV) (Chapter SE, Section 6, paragraph 6.3, ‘Additional policy relating to asset packages’).</p>
Finland	-
France	<p>Under the AMF Regulations [see comment at question 2(XI)], normally a minimum capital of at least EUR 225 000 or [up?] to 0.5 % of [the value of?] the assets managed by the management company, subject to a maximum of EUR 760 000.</p> <p>The originator (or member of the originator’s group) may not hold more than a third of the management company’s capital, less one share.</p> <p>These capital requirements are currently being revised by the AMF; in particular the one-third rule mentioned above is on the point of being dropped. [Has it already been done? Ref.]</p>
Germany	<p>There are no specific limitations in terms of shareholding in management companies or SPVs under German law. However, most types of securitisation structures are based on a non-recourse sale of receivables. This requires a legal and economic separation (‘true sale’) of the securitised assets by the seller. Therefore, the SPV must not be affiliated with the seller.</p>
Greece	Not applicable.
Ireland	<p>To the extent that a corporate administrator carries on activities that fall within the general Irish financial services regulatory regime, certain obligations will apply with regard to the shareholding in that entity.</p> <p>With regard to an SPV, there are no specific rules regarding shareholdings, although, as stated at question 2(II), if an SPV is incorporated as a PLC, it must have a minimum of seven shareholders. In such cases, the typical shareholding structure is that all but six of the issued shares will be held by a principal shareholder and six nominee shareholders will hold one share each, over which a trust is declared in favour of the principal shareholder. Where the SPV is to be an ‘orphan’ company, the principal shareholder will be a share trustee and will declare a trust for the benefit of charitable purposes over all the shares held directly by it or by nominees on its behalf.</p>

COUNTRY	QUESTION 2: Special Purpose Vehicles (SPVs)
Italy	<p>(XIII) Are there any limitations in terms of shareholding in management companies or SPVs?</p> <p>As stated above (see questions 2(II) and 2(XI)) SPVs and servicing agents must be financial intermediaries enrolled in the general or special register held by the Banca d'Italia. Pursuant to Article 110 of the Consolidated Banking Law and the implementing provisions thereof, any person holding, either directly or indirectly, a shareholding of over five per cent in a financial intermediary must report this to the Foreign Exchange Office (<i>Ufficio Italiano dei Cambi</i>) or the Banca d'Italia, depending on whether it is enrolled in the general (Article 106 of the Consolidated Banking Law) or in the special (Article 107 thereof) register of financial companies referred to above.</p> <p>Apart from this notification obligation and other minor 'integrity' requirements (which, for a corporate shareholder, must be satisfied by its directors and general managers), no special limitation is set in terms of shareholding in management companies or SPVs.</p>
Luxembourg	<p>No, as regards unauthorised securitisation undertakings.</p> <p>As regards authorised securitisation undertakings, the direct or indirect shareholders who are in a position to exercise a significant influence over the conduct of the business of the securitisation company or management company (as well as the members of the administrative, management and supervisory bodies of the securitisation company or management company) must be of sufficiently good repute and have the experience or means required for the performance of their duties. To that end, the names of those persons, and of every person succeeding them in office, must be notified to the CSSF. Any change in control of the securitisation company or the management company is subject to the prior approval of the CSSF (Articles 20 (2) and (3) of the Securitisation Law).</p>
The Netherlands	
Portugal	<p>There are no limitations in terms of shareholding of SGFTCs. However, ownership or effective control of SGFTCs by the originator (if a credit or financial institution) may affect the assignment's qualification as a true sale, for prudential purposes. [is this comment also valid for STCs?]</p> <p>As regards STCs, there are also no limitations in terms of shareholding: a single shareholder may incorporate an STC and there are no ownership limitations for STCs. However, the shareholders must be fit and proper persons and the shareholding structure must be approved by the CMVM.</p>
Spain	<p>In order to have a significant participation, each shareholder must prove their commercial and professional honorability, their economic means to fulfil its commitments, and sufficient transparency in the group's structure. Also, no risk exposure must attach to the management company as a consequence of non-financial activities of its shareholders.</p>
Sweden	<p>No not specifically. If the SPV is owned by an originator bank, capital relief would not be achieved and other indirect effects may be relevant.</p> <p>If owned by the originator perfection may possibly be questioned, see further section 6.</p>