COUNTRY	**QUESTION 3: Other Parties Involved In Securitisation Transactions** *Originators*
	(I) Are there any restrictions imposed in terms of the nature or location of the originator? Please specify.
Austria	No.
Belgium	
Denmark	
England and Wales	No.
Finland	No.
France	No.
Germany	No.
Greece	Pursuant to Article 10(2) of Law 3156/25.6.2003, (hereinafter the 'Securitisation Law'), the originator mustbe a [businessman natural or legal person?] or entity and with a residence or registered offices in Greece; if it is a [foreign natural or legal?] person or entity, it must be established in Greece.
Ireland	Irish law does not impose any specific restrictions on the nature or location of an originator.
Italy	
Luxembourg	No (as stated at question 2(XIII))
The Netherlands	
Portugal	Under Decree-Law 453/99 (hereinafter the 'Securitisation Law') of 26 October [1999?], the originators must fall within one of the following categories: (i) credit institutions; (ii) financial institutions; (iii) insurance companies; (iv) pension funds; (v) fund managers; (vi) the State and other State-owned entities; and (vii) other entities with accounts from the previous three fiscal years which have been legally certified by an auditor registered with the Securities Commission (*Comissão do Mercado de Valores Mobiliários*, CMVM). There are no restrictions imposed in terms of the location of the originator. Article 2(2) of the Securitisation Law establishes that, when the originator is

COUNTRY	QUESTION 3: Other Parties Involved In Securitisation Transactions *Originators*
	(I) Are there any restrictions imposed in terms of the nature or location of the originator? Please specify.
	subject to foreign law, the CMVM may authorise replacement of the auditor's certification to above[in 2(II)?] by a document certifying compliance with standard accountancy rules, issued by a reputable international firm or another entity approved by the CMVM, provided the interests of the investors in the securitisation vehicle and the originator are adequately protected.
Spain	When the assets are mortgage loans the assignor must be a credit entity[institution?] (Law 19/93 [full reference?]); in other cases, there are no specific requirements.
Sweden	No, but banks and credit companies are subject to specific provisions for obtaining capital relief relating to inter alia future involvement with the assets, as indicated above (1.2).

COUNTRY	**QUESTION 3: Other Parties Involved In Securitisation Transactions** *Originators*
	(II) Are market-wide limits imposed on the extent to which assets may be securitised by an individual originator onthe total volume and/or types of assets securitised, in relation to the total asset base of that originator?
Austria	There are no such limits. In the unlikely event that an originator was to securitise virtually all of its assets, this would be likely to amount to a transfer of undertaking potentially resulting in the SPV assuming responsibility for liabilities attaching to the assets under § 1409 of the General Civil Code, and potentially even in the SPV assuming the originator's employment contracts.
Belgium	
Denmark	
England and Wales	• Not generally, but for banks this is decided on a case-by-case basis. The FSA Handbook in Chapter SE, Section 4 'Implications of schemes for a bank's general risks', paragraph 4.6 'Remaining asset base' states: 'The process of securitising a significant portion of a bank's assets may lead to a change in the profile of the assets on its supervisory balance sheet, in terms of both quality and spread. These implications are considered when assessing any securitisation scheme and may need to be discussed with the bank. The FSA may impose limits on the extent to which assets may be securitised in terms of total volume and/or the types of assets securitised in comparison to the total asset base. a) The FSA may regard assets removed from a bank's balance sheet through securitisation, even where the bank complies with the policy in this chapter, as carrying some residual risk to the originator.'[(…)]? In the case of covered bonds, in August 2004 the FSA issued an interim policy statement indicating that an issuance level of around 4 % of total assets is immaterial, but stressed that a bank cannot rely on this percentage being considered immaterial.
Finland	No.
France	No.
Germany	No.
Greece	There are no limits imposed by legislation. Banks as originators have to follow certain rules stipulated by the Bank of Greece, as the supervising authority, in relation to the quality of assets which remain on its balance sheet. In particular, the average quality [is the meaning of 'quality' clear, both there and at the end of the sentence?] of the assets remaining on the bank's balance sheet following a securitisation cannot differ significantly from the average quality existing before the relevant securitisation.
Ireland	No.

COUNTRY	QUESTION 3: Other Parties Involved In Securitisation Transactions *Originators*
	(II) Are market-wide limits imposed on the extent to which assets may be securitised by an individual originator onthe total volume and/or types of assets securitised, in relation to the total asset base of that originator?
Italy	No special provision is envisaged under Italian securitisation law. [I have assumed this refers to securitisation law more generally, rather than Law 130/99.] [couldn't we just say no?]
Luxembourg	No.
The Netherlands	
Portugal	There are no market-wide limits imposed on the extent to which assets may be securitised by an individual originator, whether in terms of total volume or the types of assets securitised, in relation to the total asset base of such originator. [again, just no?]
Spain	Not in the securitisation laws and regulations. In other type of rules, there might be (e.g. rules about credit entities [institutions?], mortgages, accounting etc.).
Sweden	Not to our knowledge. In practice, SFA may object if the portion of the assets of a regulated entity that are securitised, would be very large.

COUNTRY	**QUESTION 3: Other Parties Involved In Securitisation Transactions** *Servicing agents*
	(III) Can an originator or a qualified third party undertake servicing functions in respect of securitised assets?
Austria	Yes, in principle both the originator and a qualified third party may provide the servicing.
Belgium	
Denmark	
England and Wales	Yes, but in the case of banks such an originator must comply with the FSA Handbook's requirements (Chapter SE, Section 3, paragraph 3.3 'Secondary Roles', subparagraph 3.3.2 'Servicing agents').
Finland	Yes.
France	Yes. Article L.214-46 of the Monetary and Financial Code (*Code monétaire et financier*, CMF) provides that the originator will act as servicing agent pursuant to an agreement with the management company, but the servicing agent may be substituted provided the new servicing agent is a credit institution or the *Caisse des Dépôts et Consignation).*
Germany	Typically the originator takes on servicing functions over the transferred receivables. For instance, in typical standard true sale structures the seller is still responsible for collecting the sold receivables.
Greece	Under Article 10(14) of the Securitisation Law, the collecting and servicing securitised assets may be undertaken by means of a service agreement to be concluded in writing by: (i) a credit or financial institution legally providing its services in accordance with its [objects – articles of incorporation?] in the European Economic Area EEA; (ii) the originator; or (iii) a third party, provided the third party is either the guarantor of the securitised assets or was in charge ofservicing or collecting the relevant assets before they were securitised. The servicing agreement and any amendment to it must be registered, under Article 10(16) of the Securitisation Law, in the public register established under Article 3 of Law 2844/2000 [do we need further details of this law, e.g. date?].
Ireland	An originator or qualified third party may provide servicing functions in respect of securitised assets.
Italy	Law No 130 of 30 April 1999 (hereinafter the 'Securitisation Law') provides (Article 2(2)(c) and (6)) that servicing of the receivables (i.e. collection of the assigned receivables, and cash and payment services) must be carried out by banks or financial intermediaries registered in a special register held by the Banca d'Italia, under Article 107 of Legislative Decree No 385 of 1 September 1993 . Consequently, an originator may not act as servicing agent of the assigned receivables, unless it falls into one of these categories.
Luxembourg	Yes, Article 60 of the Law of 22 March 2004 on securitisation (hereinafter the 'Securitisation Law') provides that the securitisation undertaking may entrust the originator (the assignor) or a third party with collecting claims it holds as well as with any other task relating to its management, without such persons having to apply for an authorisation under the legislation on the financial sector (this is without prejudice to other laws, in particular the Law of 5 April 1993 on the financial sector,, which may make certain activities subject to prior approval).

COUNTRY	**QUESTION 3: Other Parties Involved In Securitisation Transactions** *Servicing agents*
	(III) Can an originator or a qualified third party undertake servicing functions in respect of securitised assets?
The Netherlands	Yes. The Originator will usually take care of servicing the assets that have been transferred, based on a administration agreement with the SPV.
Portugal	According to the Securitisation Law, the originator, the SPV or a qualified third party, may take on the servicing functions unless the originator is: (i) a credit institution, financial company, insurance company, pension fund or pension fund management company; or (ii) the State or the social security system. In case (i) the assignment must be executed together with an agreement whereby the originator undertakes, or for pension funds, the relevant management company undertakes, to act as servicing agent and, in the name and on behalf of the SPV, take all steps required to manage the debts and, if applicable, their respective guarantees. The servicing agent is also responsible for managing collection services, administration services with respect to such debts, relationships with the debtors and, where applicable, any [conservatory?] actions, [to extinguish or modify?], that may be required in relation to the guarantee. In [appropriate?] cases, the CMVM may allow a qualified third party to exercise the servicing functions. In case (ii) the State through the Directorate-General for Tax (*Direcção Geral dos Impostos*) undertakes the servicing functions.
Spain	Yes.
Sweden	Yes. An originator would normally be subject to certain limitations relating to inter alia access to cash-flow due to perfection requirements. A third party servicer would be subject to data protection requirements and a license may be required for collection services/enforcement.

COUNTRY	**QUESTION 3: Other Parties Involved In Securitisation Transactions** *Servicing agents*
	(IV) Are there any limitations imposed by the law (for instance, on establishment or regulatory requirements)?
Austria	No.
Belgium	
Denmark	
England and Wales	Yes, in the case of banks, the FSA Handbook in Chapter SE, Section 3, paragraph 3.3 'Secondary Roles', subparagraph 3.3.2 'Servicing agents' states: 'Where a bank acts as servicing agent, it should satisfy itself that it does not have a reputational obligation to support any losses incurred by the scheme. If a bank is unable to do so, it should comply with the policy applying to an originator…. Where a bank acts as servicing agent, the bank should be able to demonstrate to investors that it has no reputational obligations to support losses by a clear and unambiguous statement in the offering circular in respect of any implied support.'
Finland	No.
France	See question 2(V).
Germany	No.
Greece	If the SPV is not registered in Greece and the securitised assets consist of claims against consumers which are payable in Greece, the servicing agent must have an establishment in Greece, in accordance with Article 10(14) of the Securitisation Law.
Ireland	Often, the provision of such services will constitute the provision of services in Ireland which are regulated financial services and will require the service provider to hold an appropriate authorisation from the Irish Financial Services Regulatory Authority under the Investment Intermediaries Act 1995. In the case of credit institution originators, the Irish banking regulator has published conditions which must be adhered to if the securitised assets are to be exempted from the calculation of the credit institution's capital adequacy position. There are specific conditions where the credit institution continues to service the securitised assets on behalf of the SPV.
Italy	See question 2(XII).
Luxembourg	The Securitisation Law does not impose any limitations (please see above [reference?]), except for depository banks (see question 3(V)).
The Netherlands	
Portugal	No, there are no limitations imposed by the Securitisation Law, except for those referred to in question 3(III).

COUNTRY	QUESTION 3: Other Parties Involved In Securitisation Transactions *Servicing agents*
	(IV) Are there any limitations imposed by the law (for instance, on establishment or regulatory requirements)?
Spain	No.
Sweden	See 3.3 above.

COUNTRY	QUESTION 3: Other Parties Involved In Securitisation Transactions *Servicers*
	(V) How is the 'commingling risk'[1] treated in your jurisdiction?
Austria	Commingling risk arises where an originator (servicing agent) holds cash belonging to an SPV on its general accounts where such cash is commingled with other cash belonging to the originator (servicing agent). The risk can be mitigated by establishing short-term payment cycles and/or providing security.
Belgium	
Denmark	
England and Wales	Under the Insolvency Act 1986, when an English originator becomes insolvent all monies of the SPV held in the accounts of the originator fall into the originator's insolvent estate. In respect of such monies the SPV will rank as an unsecured creditor of the originator. Therefore, if there are no structural mitigants, the SPV's monies that are subject to commingling risk are lost from the transaction. In English law there are legal mechanisms that participants can employ in a transaction to attempt to mitigate the effect of commingling risk. For example, a declaration of trust by the originator over its accounts through which SPV monies flow may prevent those monies from falling into the originator's insolvent estate. Similarly, a charge over the originator's accounts may offer comparable protection. These mechanisms, which may eliminate the risk of loss of commingled funds, may still leave open, however, the question of timing risk (i.e., the length of time required for the SPV to obtain court or regulatory approval to access the relevant funds from an account of an insolvent entity), but this timing risk can generally be addressed by introducing a liquidity facility to cover the expected delay in recovering the SPV's monies.
Finland	- [Shall we replace with 'Not applicable'?]
France	Article L 214-46 of the CMF created a special collection account, to mitigate the commingling risk if the originator becomes subject to insolvency proceedings. Pursuant to Article L 214-46 'the management company and the entity responsible for servicing the receivables may agree to creditcollected sums to a specially dedicated account of the common pool of debts (*fonds commun de* créance, FCC) or the compartment, as the case may be, from which the creditors of the entity responsible for servicing the receivables will not be entitled to claim payment over such collected sums, including if such an entity becomes the subject of insolvency proceedings ...'. Article 19 of Decree No 2004-1255 sets out the operation rules of this special account. The main features of this special account are the following: - The account is opened in the name of the originator but the FCC is the sole beneficiary of the amounts credited to the account. - The management company is authorised to manage and dispose of the sums in this account, subject to and in accordance with the terms of the bank account agreement.

[1] I.e., 'the risk that cash belonging to an issuing SPV is mixed with cash belonging to a third party (for example, the originator or servic) or goes into the account in the name of a third party in such a way that, in the insolvency/bankruptcy of the third party, it cannot be separately identified or is frozen in the accounts of the third party', Glossary of securitisation terms, Structured Finance, Standard & Poor's, 2003. [unable to check this reference]

COUNTRY	QUESTION 3: Other Parties Involved In Securitisation Transactions *Servicers*
	(V) How is the 'commingling risk'[1] treated in your jurisdiction?
	- When sums other than the sums generated by the transferred receivables are credited to this account, the entity responsible for servicing the receivables must prove that such other sums are not due and owing to the FCC. - The account holder is responsible for informing any third parties (i.e. claimant creditors) that the account is for the sole benefit of the FCC and that the credited sums are beyond the reach of creditors.
Germany	Commingling risks are standard credit risks. These risks can be mitigated by separating the cash flows of the sold receivables from the seller (e. g. with 'lock-box accounts' or pledge of collection accounts [is 'pledge of collection accounts' a term of art?]).
Greece	Undert Article 10(15) of the Securitisation Law, the servicing agent has to deposit, immediately upon collection, the proceeds of the securitised assets to a separate interest bearing account which is either kept by the servicing agent itself (if it is a credit institution, as stated at question 3(III)) or with a credit institution of the EEA. The deposit must refer to the fact that it constitutes an asset which is segregated from the assets of the servicing agent and the account bank. Any (*in rem*) security granted in favour of the note holders, the funds collected by the servicing agent on their behalf or any securities deposited with the latter are not subject to any attachment, set-off or any other charge imposed by the servicing agents or its creditors and are not included in the servicing agent's bankruptcy estate. Furthermore, pursuant to Article 10(18) of the Securitisation Law, a statutory pledge is created on the securitised assets and the deposits referred to above, in favour of the note holders (and, after them, the further beneficiaries referred to in Article 10(18) of the Securitisation Law), upon registration of the securitisation agreement in the public register established under Article 3 of Law 2844/2000. Claims [enjoying?] the above statutory pledge rank before any claims [enjoying? benefiting from?] a general privilege under Article 975 of the Code of Civil Procedure (see also question 4(I)). Usually in securitisations originated by banks the roles of originator, servicing agent and account bank are concentrated in one person, i.e. the originating bank. Although these cases do not strictly reflect a commingling risk, they are an important risk from the investor's (note holder's) point of view, since there are no provisions for risk diversification. Naturally, the larger the size of the securitisation, the more significant the commingling risk (in the sense referred to above) and the conflict of interest of the bank. This risk has to be addressed through appropriate contractual clauses (and will be reflected in the rating); however, this aspect cannot be supervised due to the lack of prudential rules thereon.
Ireland	Commingling risk is generally dealt with by appropriate contractual undertakings from the SPV and any relevant service providers (such as a cash manager or custodian) to identify and keep separate the SPV's assets (this may include an obligation to keep the SPV's assets in separate bank and custodial accounts). The SPV will usually grant security interests over its assets in favour of a security trustee for the benefit of the transaction secured creditors (including note holders).
Italy	To strengthen the ring-fencing of the securitised assets (see question 2(IX)), the Governor of the Banca d'Italia issued guidelines on 23 August 2000 requiring that securitisation companies take steps to ensure that assets of different transactions are not commingled and to account for each transaction separately.
Luxembourg	Article 61(2) of the Securitisation Law provides that in the event that the originator or the third party to which the collection of claims has been entrusted becomes subject to insolvency proceedings (such as bankruptcy, controlled management, judicial liquidation or any other proceedings affecting the rights of creditors generally), the securitisation undertaking is entitled to claim any sums collected on its behalf prior to the opening of such proceedings, without the other creditors having any rights to such amounts, and notwithstanding any claims made by the bankruptcy receiver, the controlled management commissioner or the liquidator.

COUNTRY	QUESTION 3: Other Parties Involved In Securitisation Transactions *Servicers*
	(V) How is the 'commingling risk'[1] treated in your jurisdiction?
	Further, the cash belonging to an authorised securitisation vehicle must be deposited with a depository bank (Article 22 of the Securitisation Law).
The Netherlands	According to Dutch Law, the commingling risk is considered a problem under the rules of evidence. The trustee in bankruptcy is in a favourable position if cash belonging to the SPV is mixed with cash belonging to a third party that has gone into bankruptcy. Article 3:107 (1) of the Dutch Civil Code states that possession is the fact of detaining property for oneself. A person is presumed to detain property for himself (article 3:109) and the possessor of property is presumed to be title-holder (article 3:119 (1).
Portugal	There is no commingling risk regarding the servicing agent. Under Article 5(7) of the Securitisation Law, in the event of bankruptcy of the servicing agent, any amounts in its possession that constitute payment relating to the assigned debts for the purposes of securitisation shall not be deemed part of the servicing agent's bankruptcy estate. In relation to the originator, Article 8(1)(b) states that the assignment of receivables for securitisation purposes cannot be resolved for the benefit of the bankruptcy estate, except if evidence is adduced that the parties acted in bad faith. Furthermore, Article 8(2) states that any amounts paid to settle receivables which have been assigned before the insolvency of the originator, but which mature only after insolvency is declared, shall not be included in the insolvency estate. The insolvency official may only rescind transactions assigning receivables to the purchaser for the benefit of the originator's insolvency estate if the purchaser and the originator acted in bad faith when assigning the receivables.
Spain	There is no specific treatment. Each risk is dealt with separately.
Sweden	Cash flow would typically be paid to segregated accounts either of the SPV or to an originator account pledged to the SPV. Commingling with originator funds may result in non-perfection of the true sale and/or loss of such funds which are with the originator at the point of bankruptcy. If the funds are held by a third party on a segregated account they would be protected in the insolvency of that third party. If funds are segregated on receipt the same protection would apply. If the asset interest is perfected, cash flow received by an insolvency receiver should be released to the SPV.

COUNTRY	**QUESTION 3: Other Parties Involved In Securitisation Transactions** *Custodians or bank depositories*
	(VI) What is the role of bank depositories or custodians in relation to securitisation transactions?
Austria	There is no specific role for these parties, other than the usual depository/custodian role in capital markets transactions.
Belgium	
Denmark	
England and Wales	No formal role.
Finland	The custodian is the party responsible on behalf of the SPV for the receipt of partial payments and payments of interest by the creditor and it collects delayed payments. The custodian, which is usually a bank, also relays payments to the SPV because the SPV cannot do so itself. The SPV and the custodian thus conclude an agreement.
France	The custodian plays a role as: (i) [founder?] of the FCC (together with the management company); and (ii) custodian of the FCC's assets and supervisor of the management company (the custodian's role as [founder] of the FCC consists in setting up the FCC, and as such the custodians signs the FCC's [management] regulations. Article L 214-48 of the CMF also states that the custodian acts as the depository (*dépositaire*) of the receivables acquired by the FCC, as well as its other liquid assets. The custodian is also the depository of the [treasury assets?] of the FCC. As supervisor of the management company, the custodian has the task of overseeing management company decisions, with a view to protecting the unit holders' interests.
Germany	Collection accounts and cash deposits owned by the originator/seller are generally pledged to the purchaser/SPV, with restricted access to such accounts or deposits for the seller of the transferred receivables.
Greece	The role of the custodian has not been provided for by the Securitisation Law. The role of bank depositories (account banks) is described at question 3(V), i.e. the use of a segregated account (on which there is a statutory pledge in favour of the note holders) held with the account bank only occurs in cases where there is a servicing agent (Article 10(15) and (18) of the Securitisation Law). As stated above [where?], the account bank must be a credit institution legally operating in the European Economic Area (EEA). If the servicing agent is itself a credit institution (operating in the EEA) it can simultaneously act as an account bank (that is, the servicing agent is not obliged to use an independent account bank, nor does it have to examine whether the account fulfils any relevant standards).
Ireland	Usually, where the securitised assets comprise a portfolio of securities (as is common in the case of collateralised debt obligation transactions), the portfolio will be held by a custodian on behalf of the SPV, with the SPV's interest being recorded in a custody account maintained in the books of the custodian. The SPV will usually have its own bank accounts to which cash held by it (temporarily or otherwise) is credited.
Italy	In securitisation transactions regulated by Securitisation Law one or more banks are usually appointed as 'account bank(s)' under an agency and accounts

COUNTRY	**QUESTION 3: Other Parties Involved In Securitisation Transactions** *Custodians or bank depositories*
	(VI) What is the role of bank depositories or custodians in relation to securitisation transactions?
	agreement, i.e. they are the banks where the accounts of the SPV are kept (such as, for instance, the collection account, the transaction account or the securities account). Pursuant to a cash management agreement, the cash manager will be appointed as the party responsible for operating such accounts, pursuant to the instructions of the issuer and to the transaction documents. According to the terms of the agency and accounts agreements, the duties of the account bank include: (i) providing, *inter alia*, the issuer, the servicing agent, the computation agent and the representative of the note holders with the statements of the accounts setting out the relevant balance; (ii) operating (by debiting and crediting) the amounts [standing to the credit of] [held on?] the relevant accounts (on behalf of the issuer, and in accordance with the instructions of the issuer, the representative of the note holders, the cash manager and the calculation agent); and (iii) [[?ensuring] that (as long as the relevant accounts are held with it) it will keep such accounts in safe custody and will not part][keeping such accounts in safe custody, including not parting?] with possession, custody or control such accounts, without the prior written consent of the representative of the note holders and the issuer.
Luxembourg	Authorised securitisation undertakings must entrust a credit institution established or having its registered office in Luxembourg with custody of their liquid assets and securities (Article 22 of the Securitisation Law).
The Netherlands	
Portugal	The Securitisation Law requires that the credit securitisation fund's (*fundos de titularização de créditos*, FTCs) receivables portfolio are held by a custodian bank. Under the Securitisation Law only certain credit institutions, authorised by the Banco de Portugal, can act in this role. The contract between custodian and fund manager must be in writing, and it must receive approval from the CMVM. The custodian must be either headquartered in Portugal or maintain a branch in Portugal (provided that its head office is located in another EU Member State). Finally, it must have own funds at its disposal of at least EUR 7 500 000. The custodian is responsible for: (i) holding the interest and principal payments received from the servicing agent; (ii) investing the fund assets; (iii) holding any securities acquired on behalf of the fund; (iv) holding any loans obtained for the fund by the fund manager; and, where applicable, (v) entering into swap agreements on behalf of the fund. Upon instruction from the fund manager, the custodian will direct the fund assets, including making unit distributions to the fund participants from the collections [on the receivables pool?]. The custodian must ensure that instructions received from the fund manager are in compliance with relevant legislation and the fund regulation. Subject to ongoing approval, the custodian may perform its functions for several securitisation transactions simultaneously.
Spain	Normally their role is to keep custody of the assets (if they are securities or cash). The role can be extended to [?paid] agency activities in relation to the income of these assets.
Sweden	They may hold security for the issuer or investors.

COUNTRY	**QUESTION 3: Other Parties Involved In Securitisation Transactions** *Custodians or bank depositories*
	(VII) What are the obligations imposed in terms of custody of assets?
Austria	Not applicable.
Belgium	
Denmark	
England and Wales	Not applicable.
Finland	Normal custodian rules are applicable.
France	The role of the custodian is provided for by Article L 214-48 of the CMF. This contains the obligation of safekeeping the receivables acquired by the FCC (as well as its other liquid assets). However, Article L.214-48 of the CMF states that the custodian may delegate custody of the receivables documents to the servicing agent under certain conditions, the main one being that the custodian must remain directly and fully responsible for custody of the deeds of transfer of the receivables. The servicing agent or the originator, as the case may be, must remain responsible for the custody of the agreements relating to the receivables.
Germany	Not applicable (the receivables are not held in custodian accounts).
Greece	See question 3(VI).
Ireland	Irish law does not impose any specific requirements with regard to the custody of assets which are the subject of a securitisation transaction, save that where a custodian provides custody services in Ireland, it will be subject to the general Irish financial regulatory regime.
Italy	See above. [do we need a more specific reference – is it question 3(VI)?]
Luxembourg	See question 3(VI).
The Netherlands	
Portugal	Under the Securitisation Law, the obligations imposed in terms of custody of assets are as follows: (i) to receive and deposit the assets of the FTC and keep all documents and other evidence regarding the debts comprised in the FTC which have not been kept by their assignor; (ii) to hold the deposits or register the securities included in the FTC, pursuant to the Securitisation Law;

COUNTRY	**QUESTION 3: Other Parties Involved In Securitisation Transactions** *Custodians or bank depositories*
	(VII) What are the obligations imposed in terms of custody of assets?
	(iii) to invest the assets of the FTC as requested and in accordance with the instructions of the special management companies (*sociedades gestoras de fundos de titularização de créditos*, SGFTCs); (iv) as provided in the FTC's [?management] regulations, to receive and collect on the FTC's behalf (in accordance with the instructions of the SGFTC) any interest and capital of the debts included in the FTC, as well as to take all necessary steps to ensure good management of the debts; (v) to pay interest and reimburse the unit holders, in accordance with the SGFTC's instructions; (vi) to follow all other instructions from the SGFTC; (vii) to submit to the CMVM a proposal for the replacement of the SGFTC should any situation referred to in Article 22(2) of the Securitisation Law arise (revocation of the licence of the SGFTC by the Banco de Portugal or the winding-up of the SGFTC); (viii) to ensure that any payments due under any transactions involving the assets of the FTC are made within the deadlines established by the market [what does this mean]; (ix) to ensure that the yields of the FTC are invested in accordance with applicable law and the fund regulation; (x) to monitor and guarantee compliance with the FTC's [management] regulations [with regard to?] the unit holders.
Spain	To keep the assets, act with diligence in relation to them, and return them at the end of the deposit relationship. There is nothing in the securitisation [laws and?- as in Q 3(II)?]]regulations regarding this activity. The relevant rules are to be found in the Civil and Commercial Codes, the securities market regulations and the relevant custody agreement provisions.
Sweden	Normally governed by contract. General law will otherwise provide a fiduciary duty to the secured party and the other similar counterparties of the custodian.

COUNTRY	**QUESTION 3: Other Parties Involved In Securitisation Transactions** *Custodians or bank depositories*
	(VIII) Are there any specific restrictions as regards the place of establishment of the custodian?
Austria	No.
Belgium	
Denmark	
England and Wales	Not applicable.
Finland	There are no specific restrictions.
France	See question 2(V).
Germany	Not applicable (custodians do not exist).
Greece	See question 3(VI).
Ireland	No.
Italy	As stated at question 3(VI), the Securitisation Law does not contain specific provisions concerning the custody of assets nor the role and duties of the custodian. As far as account banks are concerned, there are no specific restrictions as regards to the place of establishment thereof.
Luxembourg	See question 3(VI).
The Netherlands	
Portugal	Yes, tThe fund assets must be held by a custodian, which has to be a credit institution having its head office in Portugal or, if the head office is in another EU Member State, it must be established in Portugal through a branch. Thus, according to the Securitisation Law, the receivables may be deposited at the banks referred to in Article 3(a)-(f) of the Banking Law [year?] (*Regime Geral das Instituições de Crédito e Sociedades Financeiras*), provided that such a credit institution has a minimum share capital of EUR 7 500 000.
Spain	No.
Sweden	Not specifically.

	QUESTION 3: Other Parties Involved In Securitisation Transactions *Rating Agencies*
	(IX) Does the law expressly refer to the role of rating agencies in respect of securitisation transactions?
Austria	No.
Belgium	
Denmark	
England and Wales	No. However, if a transaction structure relies on a protection given by the 'capital market exception' under the Enterprise Act 2002 (see question 1(II)), the relevant 'capital market investment' must be rated. Other than that, there is no mandatory requirement for a securitisation transaction to be rated, although it is common practice to seek ratings for every transaction. The Insolvency Act 1986 (as amended by the Enterprise Act 2002) in its Schedule 2A sets out the following provisions: '2 'Capital Market Investment' (1) For the purposes of Section 72B an investment is a capital market investment if it … (b) is rated … or designed to be rated…. (2) In sub-paragraph (1) -'rated' means rated for the purposes of investment by an internationally recognised rating agency…'
Finland	No, it does not.
France	Article L 214-44 of the CMF provides that 'a document containing an appraisal of the characteristics of the units to be issued by the FCC and of the debts which it proposes to acquire and an assessment of the risks inherent in these debts, shall be prepared by an institution on an approved list drawn up by the Minister for Economic Affairs, Finance and Industry, after consultation with the Financial Markets Authority. The document must be annexed to the information memorandum and sent to the unit holders'.In the case of units which are privately placed and where no *note d'information* is accordingly required, a rating is not required but may however be necessary in order to make the placing of the note or debt securities commercially easier.
Germany	The law does not yet expressly refer to the role of rating agencies in respect of securitisation transactions, but the provisions of Basel II will do so.
Greece	Yes, in Article 10(1) of the Securitisation Law (where it states that '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 recognizsed risk rating agency').
Ireland	No.
Italy	Under the Securitisation Law, in the event that the notes issued are offered to non-professional investors, the transaction must be submitted to third party operators for the evaluation of the credit rating. The Italian securities market regulator (*Commissione Nazionale per le Società e la Borsa*, CONSOB) established, by means of Regulation No 12175 of 2 November 1999, the professional requirements and criteria to ensure the independence of the operators which carry out the credit rating evaluation.

	However, in the event that the notes are offered to professional investors, the Securitisation Law only requires the publication of a prospectus – whose minimum content is set out in Article 2(3) of the Securitisation Law – and no rating agency evaluation is compulsory in such cases.
Luxembourg	No.
The Netherlands	
Portugal	The Securitisation Law does not expressly refer to the role of rating agencies in respect of securitisation transactions. However, Article 27 of the Securitisation Law, covering incorporation of FTCs, states that, whenever the issue of securitisation units is made through a public offer, the application for incorporation of the FTC which must be submitted to the CMVM must be accompanied by a rating report prepared by a rating agency registered with the CMVM, with the following content: (i) an analysis of the quality of the FTC's debt and, if applicable, an analysis of the category of each debt category; (ii) confirmation of the assumptions and consistency of the final estimates on which financial planning of the transaction was based; (iii) confirmation of the adequacy of the structure of the transactions, including the necessary means for management of the debt; (iv) details of the nature and adequacy of any guarantees granted in favour of the unit holders; and (v) analysis of the insolvency risk of each securitisation unit. Furthermore, the Securitisation Law establishes in Article 60(4) that whenever the issue of securitisation bonds is made by an STC through a public offer, the application for the registration of the offer with the CMVM must contain a report prepared by a rating agency which should respect the same requirements as for FTCs.
Spain	Yes, Article 2(3)(b) of Decree 926/98 [details – name and date?] requires a rating for each specific transaction.
Sweden	No. We have not regarded Basle II rules.