COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(I) Does the law permit the ring-fencing of assets that are the subject of a securitisation by removing them from the legal reach of the originator, its creditors and its insolvency or administration officers, thus making such assets available for the sole benefit of the parties to the securitisation?
Austria	Yes, in several ways (see question 4(II)).
Belgium	
Denmark	
England and Wales	Yes.
Finland	A condition for successful securitisation is that the assets can in every respect be regarded as transferred from the bank to the SPV. This means that the receivables have actually been sold (i.e. there has been a true sale) and the debtor has been informed about the endorsement of the receivables.
France	The method of transfer of receivables created by the Financial Securitisation Law of 1 August 2003 (*Loi de Sécurité Financière*) known as a *bordereau FCC transfer* [do we need to translate 'bordereau'?] [the characteristics of which are defined by Decree] achieves a true sale of the receivables from the originator to the common pool of debts (*fonds commun de créances*, FCCs), such receivables being taken out of the estate of the originator. However certain provisions of French bankruptcy law may affect the validity of such a 'true sale' in the event of insolvency of the originator. Article L.621-107 of the Commercial Code (*Code de commerce*) provides for the automatic setting aside of any contract in which the insolvent party's obligations are manifestly greater than those of the other party to the contract. Article L.621-108 of the Commercial Code gives a court the option of setting aside any transaction entered for consideration if at the time of entering into the transaction one of the parties knew of the other party's insolvency. The provisions of these two articles apply to transactions entered into during the suspect period ("periode suspecte"), which is fixed by the court at a maximum of 18 months prior to the judgment which marks the start of the insolvency proceedings. The effect of these provisions is that the assignment of the receivables could in theory be annulled in the event of insolvency of the originator if the assignment occurs within a period of up to 18 months prior to the start of the insolvency proceedings.
Germany	There are currently two ways to ring-fence assets that are the subject of a securitisation. There will also be a third approach following the successful implementation into German law of the securitisation law proposed by the Federal Ministry of Justice (*Bundesministerium der Justiz*, BMJ) as part of its recent initiative in this regard. The two current approaches are as follows: (a) Transferring the assets to an SPV, under which the SPV acquires title to the assets (hereinafter the 'true sale approach'). The assets no longer form part of the originator's estate and, hence, are no longer subject to any insolvency proceeding or compulsory enforcement instituted or initiated against the originator by its creditors. The originator also loses its right of disposal, so that the risk of misappropriation or embezzlement of assets by the originator is precluded. However, the true sale approach is less appropriate for assets that are secured by security interest in real property due to the registration requirement. [does the latter need explanation?] (b) Establishing a fiduciary relationship[1] between the originator and the SPV, under which the originator holds title to the assets for the benefit of the SPV and the secured investors (hereinafter the 'fiduciary approach'). The fiduciary relationship is recognised under German law and provides for a certain degree of

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	segregation if it complies with the following requirements. The originator acting as fiduciary: (i) acquires the assets directly from the beneficiary through the transfer of assets; and (ii) maintains such acquired assets segregated from its own estate. If the requirements are met the assets held by the originator under the fiduciary relationship are accordingly deemed to be assets of the beneficiary and are no longer subject to any insolvency proceeding or compulsory enforcement instituted or initiated against the originator by its creditors. If a creditor initiates insolvency proceedings, the SPV has the right to claim separation and recovery of those assets as if they do not belong to the bankrupt estate. The SPV has similar remedies in the case of a compulsory enforcement. As the originator holds title to the assets, there is still the risk of misappropriation or embezzlement. The fiduciary approach is cumbersome as the requirement of direct acquisition results in the transfer of assets back and forth between the originator and the SPV. There is discussion in legal literature whether the requirement of directness should be adhered to. However, the Federal Court (*Bundesgerichthof*) confirmed its view in 2003 (BGHZ 155, 277 – is it possible to put the names of parties as in other countries?) and this decision was one of the reasons for the recent BMJ's initiative. Parties to a securitisation have made use of the Fiduciary Approach for the securitisation of assets collateralised by a security interest in real property or where other obstacles (e.g. banking secrecy issues) prevent the parties from transferring the assets. To the extent legally possible, parties agree that the fiduciary relationship will be terminated and the originator obliged to transfer the assets upon a material adverse change to its creditworthiness, or if an insolvency proceeding is initiated against it. Once the new securitisation law proposed by the BMJ is successfully implemented there will be a third approach (hereinafter the 'new approach'), namely entering the SPV's right of delivery of the assets in a refinancing register maintained by the originator itself (if it is a credit institution) or, in all other cases, by a bank. [I have moved the hereinafter so it is clear that the term new approach applies both to credit institutions and other cases.] The New Approach establishes a statutory fiduciary relationship which provides for the segregation of assets (as described under (b) above) without direct acquisition. The assets entered in the refinancing register are deemed to be SPV assets and, in the event of insolvency of the originator, the SPV has the right to claim separation and recovery of those assets. However, as the originator holds title to the assets, there is still the risk of misappropriation or embezzlement. [1] We avoid the term 'trust' in order to not confuse it with the English or US term, as the concept of 'trust' is not known under German law
Greece	Provided that the securitisation agreement is registered in the public register established under Article 3 of Law 2844/2000 [further details required, e.g. date? See note in question 3(III).], a statutory pledge is created in favour of the note holders over the securitised assets and the deposits held with and/or by the servicing agent (if any), the validity of the sale of assets not being affected by any collective measures imposed on, or applied against, the originator, which result in the prohibition of the disposal of assets by the originator, the SPV, the guarantor and/or the beneficiary of any collateral assets or the servicing agent. The same also applies to future claims which are created after the imposition or the application of these collective measures (Article 10(18) and (19) of Law 3156/25.6.2003, hereinafter the 'Securitisation Law'). However, the ring-fencing cannot be considered completely 'watertight', since the securitised assets are not removed from the legal reach of the originator's creditors, who maintain pledges in their favour on the securitised assets (i.e. special privileges pursuant to Article 976 of the Code of Civil Procedure) which were created before the securitisation, since the note holders and other beneficiaries referred to in Article 10(17) of the Securitisation Law only rank prior to the holders of general privileges [is 'privilege the right word – occurs throughout this paragraph] pursuant to Article 975 of the Code of Civil Procedure (the beneficiaries referred to in Article 10(17) of the Securitisation Law are the ones entitled to receive payment from the collection of the proceeds of the securitised assets, and payment has to be made in the following order: service of bonds/notes, i.e. payment of principal, interest, expenses, taxes and any costs,

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	administrative costs of the SPV and discharge of its obligations). In the event of enforcement, the special privileges which take the form of pledges are entitled to two-thirds of the proceeds of the securitised assets (Articles 976 and 977 of the Code of Civil Procedure).
Ireland	Irish law does not provide specifically for any mechanism to ring-fence assets that are the subject of a securitisation. Such ring-fencing of assets and their isolation from the originator's creditors and insolvency officers is achieved through a combination of: (i) the establishment of an SPV as a bankruptcy-remote entity; (ii) the 'true sale' by the originator of the relevant assets to the SPV (see further below); (iii) the creation by the SPV of valid security interests over the relevant assets to secure the SPV's obligations to its transaction creditors; and (iv) the undertaking by transaction creditors of valid contractual limited recourse and non-petition covenants in favour of the SPV. **True sale**: It is important, therefore, that where an assignment of assets from the originator to an SPV is relied upon as part of the ring-fencing mechanism, the assignment is a 'true sale', i.e., is not vulnerable to being set aside on the insolvency of the originator. In an Irish context, the principal risk is that a transaction which is described as a sale or assignment may in fact be characterised as the grant only of a security interest over the assets in question to support a loan to the originator. It should be noted that if an Irish court was to characterise the purported sale by an originator of assets as a charge or other security interest, as opposed to an absolute sale, then a registration requirement could apply under Section 99 of the Companies Act 1963. Non-compliance with such a registration requirement (if it applied) would have serious consequences for the validity of the security interest. The intended ring-fencing of the assets could thus be undermined. The 'true sale' analysis is thus crucial to the integrity of a traditional securitisation structure. With regard to re-characterisation risk, there is one decision of the courts which supports the proposition that a transaction which is described as a sale can be re-characterised as a secured loan transaction (*United Paper Company Limited* v *Sunday Tribune (in liquidation)***,** High Court, unreported, 1982). However, that decision does not include any statement of general principles which apply to that area of law or how those principles may be applied to the specific circumstances of a transaction. In the absence of any Irish case-law in which the issue of re-characterisation has been considered in any detail, the courts, if faced with the issue, are likely to have regard to relevant precedents in other jurisdictions. Given the connections between the English and Irish legal systems in the areas of contract and company and commercial law, the practice of the Irish courts in those areas is usually to have regard to relevant English case-law, although it should be noted that English case-law is of persuasive authority only in Irish courts and is not binding. We understand that the leading decision of the English courts in the area of re-characterisation of financial transactions is the decision of the Court of Appeal in *Welsh Development Agency* v *Export Finance Company Limited* [1992] BCLC 270 (hereinafter '*Exfinco*'). However, as noted above, decisions of the English courts are of persuasive authority only in the Irish courts and it would be open to an Irish court to take an approach on the re-characterisation issue which is at variance with that taken in *Exfinco*, including that taken in *Re George Inglefield* [1933] Ch 1 (hereinafter *Inglefield*), without reference to *Exfinco*. *Inglefield* has been cited and approved in Ireland in at least two reported cases; however, it should be noted that these cases dealt with the [re-?]characterisation of retention of title clauses. In *Inglefield* (which was considered in *Exfinco*), Romer LJ, in the course of discussing the differences between a transaction of sale and a transaction of mortgage or charge, set out three basic indicia of a security interest. (a) Under a contract of sale, a seller is not entitled to recover the property sold by returning the purchase money to the purchaser. However, a security interest entitles the grantor of the interest to recover the [subject?] property, before the security is enforced, by returning the money initially paid to it by the holder of the security interest. This right is the 'equity of redemption'.

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	(b) If a purchaser under a contract of sale resells the property purchased at a profit, it may keep such a profit. If on the sale of the property the subject of a security interest by the holder of such interest, the proceeds are more than is required to discharge the relevant secured obligations, the surplus (being the equity of redemption) must be returned to the grantor of the security interest. (c) Conversely, if property the subject of a security interest realises on sale less than is required to discharge the relevant secured obligations, the grantor of the security interest generally remains liable for the shortfall. The purchaser of property must in the normal course bear any loss on resale and cannot look to the seller to make good the loss. We understand that in *Exfinco* the English Court of Appeal appeared to place considerable importance on the intention of the parties to the transaction and applied what in effect is an 'inconsistency' test to the effect that labels or language in contracts will be respected by the English courts unless the terms of those documents are clearly inconsistent with them or represent a sham or fraud on the true intention of the parties. While *Exfinco* has not yet been the subject of judicial consideration in Ireland, we believe that there is a good prospect that the reasoning and analysis of the judges in that case would be followed.
Italy	Yes: see questions 1(III), 2(IX) and 3(V). Moreover, note holders are protected by the 'principle of destination' (Article 1(1)(b) of Law No 130 of 30 April 1999, hereinafter the 'Securitisation Law'), pursuant to which the sums paid by the underlying debtors, whose receivables have been assigned to the SPV, must be used by the assignee exclusively to satisfy both the obligations under the notes issued to finance the acquisition of those specific receivables and the costs of the specific securitisation transaction: the SPV is not allowed to use the collections for speculative transactions {is it expressly provided for in the law? Meaning of "speculative" in this context?]
Luxembourg	Yes.
The Netherlands	
Portugal	Decree-Law 453/99 of 26 October [1999] (hereinafter the 'Securitisation Law') permits the ring-fencing of assets that are subject to securitisation, by removing them from the legal reach of the originator, its creditors and its insolvency or administration officers, thus making such assets available for the sole benefit of the parties to the securitisation. This is achieved if the assignment of receivables is characterised as a 'true sale' for securitisation purposes. Such assignment must be made in full and may not be subject to any condition. Furthermore, the originator may not grant any security interest or undertake any obligations in respect of the assigned receivables, without prejudice to the applicability of Article 587(1) of the Civil Code as regards existing receivables, which states that the originator, when assigning the receivables, guarantees that the receivables exist and are due. As regards credit institutions and financial companies, the applicable prudential rules enacted by the Banco de Portugal state that, for capital relief purposes, all the risks inherent to the receivables (credit risk and interest rate risk) must be definitively transferred to the SPV, not only concerning the seller but also in relation to any companies which the seller dominates or that are in a group relationship with it. The existence of a true sale for solvency ratio purposes must also be confirmed by a legal opinion of an independent expert. Taking into account the above, the seller (whether it is a credit institution, financial company or other entity) cannot retain a credit or interest risk [on?] the

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	receivables assigned for securitisation purposes in order to meet the true sale criteria set under the legal framework.
Spain	Yes, through the full assignment [of assets?] to the securitisation fund.
Sweden	Yes, either by transfer or pledge subject to perfection requirements see above (e.g. 2.1 and 3.5).

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(II) What are the available methods of sale and transfer of assets to SPVs (assignment of receivables, etc.)? Can an assignment for security purposes in your jurisdiction be considered as ring-fencing the assets? Are they peculiar to the legislation on securitisation? Please specify.
Austria	There are no transfer methods specific to securitisation. The transfer can occur in any of the following ways: (1) sale and transfer of the asset (in the case of receivables, sale and assignment); (2) in the case of receivables, through a redemption (*Einlösung*), under § 1422 of the General Civil Code, whereby the purchaser redeems the receivable to the creditor and requests the creditor to transfer its rights to the purchaser; (3) transfer (assignment) for security purposes (alternatively: the granting of a pledge over the assets/receivables), in order to secure a loan granted by the SPV; or (4) establishment of a trusteeship (*Treuhandschaft*) over the assets (receivables) (see question 2(I)).
Belgium	
Denmark	
England and Wales	A legal or equitable assignment achieves the effective transfer of a seller's rights – but not its obligations A legal assignment must satisfy Section 136 of the Law of Property Act 1925. It must be: (i) absolute (i.e., unconditional and of the whole asset) and not by way of charge; (ii) in writing and signed by the assignor (originator); and (iii) notified in writing to the debtors. A transfer through an assignment duly notified to the debtor is regarded as a clean transfer, provided that the buyer has taken reasonable precautions to ensure that its rights under the transfer are not impaired by an intervening right; for example, a right of set-off between seller and debtor. However, a silent (or equitable) assignment (i.e. where the debtor is not notified of the assignment) is also regarded as effective to transfer assets and this is the most common method of transferring assets in UK securitisations, especially where consumer receivables are involved. For details on 'perfection of security' in the case of equitable assignment, see question 4(III). A declaration of trust can also be used to achieve a clean transfer of assets. The Financial Service Authority (FSA) Handbook Volume 2, Chapter SE, Section 5 'Basis of the Policy: Methods of Transfer' contains the FSA policy on methods of transfer of assets in the context of a securitisation by a bank. In addition to assignment and declaration of trust, where an asset is funded in whole or in part via a sub-participation, the FSA recognises the transfer of credit risk by excluding it (or the relevant part) from the original lender's capital ratio, and including it in the sub-participant's as a claim on the underlying debtor. Finally, a transfer of assets by novation can also be regarded as a clean transfer, although this method of transfer is not commonly used in UK securitisations (save for commercial mortgage-backed securities transactions).
Finland	An assignment for security purposes cannot be considered as ring-fencing the assets. There is no legislation concerning this matter.

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	(II) What are the available methods of sale and transfer of assets to SPVs (assignment of receivables, etc.)? Can an assignment for security purposes in your jurisdiction be considered as ring-fencing the assets? Are they peculiar to the legislation on securitisation? Please specify.
France	There are several ways to assign receivables to a purchaser under French law (assignment pursuant to Articles 1689 et seq. of the Civil Code: delegation (*délégation*), pursuant to Articles 1275 et seq. of the Civil Code; subrogation (*subrogation*), pursuant to Articles 1249 et seq. of the Civil Code; and assignment pursuant to Articles L 313-23 to L 313-34 of the Monetary and Financial Code (*Code monétaire et financier*, CMF). In addition, the Financial Securitisation Law provides for a method of assignment of the receivables to FCCs which is peculiar to securitisation transactions using FCCs. The assignment of receivables takes place by means of a *bordereau* delivered by the originator to the management company. This method of assignment was inspired by a 1981 law (Loi "Dailly"), the purpose of which was to facilitate the refinancing of commercial receivables by banks. It is a much simpler mechanism than the ordinary methods of assignment required by French law, both in term of efficiency and cost. The *bordereau* must comply with a certain number of formalities. [more detail needed?] This method of assignment cannot in itself be considered as achieving a ring-fencing of the assets of the FCC as bankruptcy law may theoretically jeopardise the transfer of the receivables and cancel the assignment transfer. See above question 4(1). A *bordereau* FCC cannot be used for assignment for security purposes. [Not sure what this means. Also, there is a need to harmonise the references to *bordereau* – two here and one at question 4(I)
Germany	As stated at question 1(I), there is no specific legislation on securitisation in Germany. The usual method is to sell and transfer the assets via assignment or transfer of title to the SPV. Securities (i.e., shares, certificates representing shares, debt securities, participation securities, warrants and other securities comparable to shares and debt securities that can be traded in the market) which are represented by a physical certificate, including a global certificate, ('i.e. bearer securities') are delivered by transferring the ownership or coownership in the related certificate in accordance with the provisions applicable to the transfer of movable goods (see §§ 929 et seq. of the Civil Code, *Bürgerliches Gesetzbuch*). The same applies to bonds issued by the Federal Government of Germany (*Bunds*) and entered in the Federal Debt Register (*Bundesschuldbuch*) which, pursuant to § 8(2) of the Government Debt Securities Act [year?] (*Bundeswertpapierverwaltungsgesetz*), are deemed to be bearer securities. Receivables and securities which are not represented by a certificate, and other rights, must be transferred by assignment in accordance with §§ 398 et seq. of the Civil Code. Receivables secured by real property where the security interest is formed as an accessory mortgage (*Hypothek*) must be transferred by written assignment of the receivables and transfer of the mortgage certificate (*Hypothekenbrief*) or, if the issue of a certificate is not permitted, by entry in the land register (§§ 1153, 1154 and 873 of the Civil Code). If so transferred, both the receivable and the mortgage are transferred simultaneously. If the security interest is formed as an abstract land charge (*Grundschuld*), the security interest must be transferred separately by transferring the land charge certificate (*Grundschuldbrief*) or, if the issue of a certificate is excluded, by an entry in the land register. Instead of selling the assets, the originator and the SPV may also agree to enter into a full title transfer collateral arrangement and transfer the asset under this arrangement. This arrangement would be recognised in insolvency proceedings in relation to the originator. However, to the extent that the transfer does not qualify as financial collateral within the meaning of §1(17) of the Banking Act [year] (*Kreditwesengesetz*), the receiver will be entitled to realise the receivables and claim a certain fee, usually 9 % of the realised amount (§§ 166(2) and 171 of the Insolvency Act [year?], *Insolvenzordnung*).

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
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	Furthermore, a collateral arrangement would imply that the originator would receive the required liquidity as borrower under a loan agreement and that the assets would be retransferred once the collateralised obligation was discharged. Hence, the originator would be regarded as the beneficial owner of the assets and they would not in practice leave its balance sheet. Furthermore, the originator would have to book its obligation under the loan on the debit side of its balance sheet. Therefore, in order to achieve the envisaged purpose of the securitisation, the transfer is always based on purchase contracts. Instead of assignment of the receivables under the loan agreement, the transfer of assets can also be achieved by either a tripartite agreement that results in a replacement of the creditor (*Vertragsübernahme*), with the SPV thereby assuming all rights and obligations of the originator under the loan agreement. Alternatively, a transfer can also be achieved by novation. However, both alternatives have the disadvantage that they require the consent of the debtors.
Greece	The sale and transfer of assets takes place through assignment of the receivables by the originator to the SPV and the registration of the sale and transfer agreement with the public registry established under Article 3 of Law 2844/2000 (Article 10(1) and (8) of the Securitisation Law). An assignment for security purposes may not take place and any clause to that effect is considered null and void (Article 10(11) of the Securitisation Law).
Ireland	Debts and receivables are generally classified under Irish law as 'choses in action'. Choses in action may be either legal or equitable. A discussion of the distinction between a legal and equitable chose is outside the scope of this paper. A chose in action may be the subject of either an equitable or legal assignment. An assignment (whether equitable or otherwise) of an equitable chose in action must be in writing signed by the assignor under the Statute of Frauds 1695. The general method of legal assignment of a chose in action such as a debt is provided for in Section 28(6) of the Supreme Court of Judicature (Ireland) Act 1877. Section 28(6) provides that any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, shall be effective. Until the notice is actually received by the obligor/debtor, the assignment is only effective in equity. In the case of an equitable assignment (i.e. where notice is not given to the debtor), the debtor continues to treat the transferor as the person entitled to the benefit of the relevant receivable. Payment to the transferor will continue to discharge the debtor's obligations, unless notice is given to the debtor of the transfer, in which case payment to the transferee only will suffice. Where no notice is given to the debtor, equities (such as set-off) between the transferor and the debtor which arise after the date of the equitable assignment may affect the transferee's interests in the subject of the transfer. As in the case of a legal assignment, an equitable assignment cannot effect a transfer of obligations under a contract. An equitable assignment should have the effect of removing the transferred property from the estate of the transferor in any bankruptcy or other insolvency of the transferor subject, where relevant, to the relevant property being traceable where commingled or mixed with the transferor's property. The transferor continues to hold the legal title to the relevant transferred assets as trustee for the transferee and the transferee is subject to the risk of fraud or error in that the transferor may continue to deal with the assets as if it was the absolute owner of them. In the case of an equitable assignment, the transferee cannot directly enforce the debt against the debtor without joining the transferor in the legal proceedings. In the context of securitisation transactions, it is common for assets to be the subject of an equitable assignment by the originator in favour of the SPV. An assignment by way of security only is not generally considered sufficient to ring-fence the assets in question from the bankruptcy estate of the originator as the risks inherent in the creation of security interests are considered too material.

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	(II) What are the available methods of sale and transfer of assets to SPVs (assignment of receivables, etc.)? Can an assignment for security purposes in your jurisdiction be considered as ring-fencing the assets? Are they peculiar to the legislation on securitisation? Please specify.
Italy	Pursuant to Article 1(1) of the Securitisation Law transfers of assets to SPVs are carried out 'by way of non-gratuitous assignment of receivables' against payment of a purchase price.
Luxembourg	The Law of 22 March 2004 (hereinafter the 'Securitisation Law') uses the term 'transfer of risks', which aims to be much broader than 'transfer of assets'. The securitisation undertaking may assume those risks by acquiring the related assets, guaranteeing the obligations or by committing itself in any other way (Article 53(2) of the Securitisation Law). The Securitisation Law does not limit the legal means to transfer assets. Such transfer may be achieved e.g. by way of assignment, fiduciary transfer, subrogation, novation, assignment of contract. In the same manner, risks may be transferred to the securitisation undertaking by all available legal means. A transfer of ownership by way of security can be considered as ring-fencing the assets. The methods of sale and transfer are not peculiar to the legislation on securitisation but some features are specific (e.g. transfer of security rights attached to a claim without any formality).
The Netherlands	The available method of sale and transfer of assets to the SPV is the assignment of receivables. An assignment just for security purposes is invalid under Dutch Law, because it lacks a valid title. Section 3:84 (3) of the Netherlands Civil Code provides that a juridical act which is intended to transfer property for purposes of security or which does not have the purpose of bringing the property into the patrimony of the acquirer, after transfer, does not constitute a valid title for transfer of that property. The fact that it has been agreed between the seller and the purchaser that the seller retains the whole credit risk related to the assigned receivables, or that the purchaser is entitled to re-transfer all defaulted or uncollectible receivables to the seller, may involve the risk that the sale agreement is not considered to constitute a valid title. However, the risk is considered to be remote since case law, in particular the judgement of the Netherlands Supreme Court dated 19 May 1995 (HR 19 May 1995, NJ 1996, 119, Keereweer q.q./Sogelease) has limited the effects of the restrictions resulting from section 3:84 (3) of het Netherlands Civil Code considerably. According to this judgement, only the transfer of ownership for the sole purpose of protecting the interests of the transferee as a creditor of the transferor, constitutes an invalid tittle (*fiducia cumcreditore*).
Portugal	Under the Securitisation Law the available method of sale and transfer of assets to the credit securitisation fund (*fundo de titularização de créditos*, FTC) or to the credit securitisation company (*Sociedades de Ttitularização de crédito*s, STC) is the assignment of debts for securitisation purposes. An assignment for security purposes will not be considered ring-fenced in the light of the Securitisation Law (see question 4(I)). The assignment agreement must reflect the parties' intention to fully and definitively transfer ownership of the receivables to the purchaser.
Spain	This is done through the full assignment of the assets to the fund, which becomes a totally separate entity (*patrimonio separado*) without legal personality, managed by a management company. All this is peculiar to the legislation on securitisation. This will not be the case for synthetic securitisations.
Sweden	General law apply. - Pledge - Security assignment /transfer - True sale These are all methods effective to ring fence the assets subject to certain limitations, in particular relating to a pledge of mortgages (real property). The

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	secured creditor may not itself effect the sale of real property.

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(III) Is the transfer of assets by the originator effected without (i) the consent of debtors; or (ii) notifying the debtors or relevant third parties? When is the sale considered effective vis-à-vis third parties?
Austria	For an assignment of receivables the debtor's consent is not required. For a true-sale assignment of receivables to be effective the debtor need not be notified (although until notification the debtor may discharge the receivable with the assignor). For a security assignment or pledge of receivables to be effective ('perfected'), either the debtor needs to be notified or (for receivables recorded in the debtor's financial books and accounts) an appropriate bookmark must be posted in the assignor's books.
Belgium	
Denmark	
England and Wales	An un-notified (or equitable) assignment can be (and usually is) employed to transfer assets without notifying debtors or third parties. However, in the context of securitisation there is particular concern that until notice of the assignment is given: (i) the underlying debtors can discharge their obligations by paying the originator (i.e., the assignor); and (ii) the debtors may be able to set off against the originator to reduce the assigned debt. Notice to debtors is not therefore required to achieve a 'true sale' between the originator and the SPV, but for the sale to be enforceable as against third parties, notice to the debtors is required.
Finland	The transfer of assets by the originator does not require the consent of debtors, but they must be notified.
France	Article L.214-43 of the CMF provides that the assignment of receivables to FCCs takes effect and become enforceable against third parties as of the date of the *bordereau*. It also states that the transfer of the *bordereau* automatically transfers any security relating to the receivables and that this transfer is enforceable as against third parties without further formalities. No notice needs to be given of the assignment of receivables to FCCs. There are no other formalities to be complied with (such as registering the assignment or obtaining the approval of the debtors or any third party).
Germany	The assignment of receivables is effected without the consent of the debtors by simple oral or written agreement between the originator and the SPV to transfer the receivables (§ 398 of the Civil Code). Upon entering into the agreement, ownership of the receivables is transferred from the originator to the SPV. However, provided the debtor does not know that the receivable has been assigned, it may still perform its obligation vis-à-vis the former creditor (§ 407 of the Civil Code). The transfer of bearer securities and *Bunds* is also effected without the consent of the relevant debtor (i.e. the issuer) simply by: (i) oral or written agreement between the originator and the SPV to transfer the securities; and (ii) the transfer of direct or indirect possession of the relevant certificates (§§ 929 et seq. of the Civil Code). Indirect possession includes possession by a custodian or central securities depository on behalf of the SPV. The transfer is perfected and effective vis-à-vis third parties once both requirements are met. Both a transfer via tripartite agreement that results in a replacement of the creditor (*Vertragsübernahme*) and a transfer via novation require the consent of the

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(III) Is the transfer of assets by the originator effected without (i) the consent of debtors; or (ii) notifying the debtors or relevant third parties? When is the sale considered effective vis-à-vis third parties?
	debtors.
Greece	The consent of the debtors is not required and any agreements to the contrary cease to be valid upon registration of the sale and transfer agreement [with in?] the public register established under Article 3 of Law 2844/2000 (Article 10(8) of the Securitisation Law). Notification must be made in writing, pursuant to Article 10(9) of the Securitisation Law in order for the sale and transfer to become binding vis-à-vis third parties; however, registration of the sale and transfer agreement is deemed to constitute notification (Article 10(10) of the Securitisation Law). The debtors, on the other hand, are released from their obligations under the claims, if they discharge their obligations vis-à-vis the SPV, even before notification. The sale and transfer is considered as effected upon registration of the sale and transfer agreement in the abovementioned public register, unless there is a provision to the contrary in the sale and transfer agreement (Article 10(9) of the Securitisation Law).
Ireland	See question 4(II).
Italy	The assignment of receivables under the Securitisation Law is governed by Article 58 of Legislative Decree No 385 of 1 September 1993 (hereinafter the 'Consolidated Banking Act'), which covers the assignment to banks of 'businesses, parts of businesses, goods and legal relationships identifiable en bloc' (Article 58(1)). This provision removes the need for notification of each assigned debtor, as otherwise provided by the general rule applicable to credit assignments under the Italian Civil Code (Articles 1264-1265). Article 58 of the Consolidated Banking Act provides that the assignee bank must give notice of the effected assignment by way of publication in the Official Gazette of the Republic of Italy and registration of a notice in the relevant companies register [is this a specific concept or a general one?]. On publication of the notice or registration in the companies register, whichever is the later, the assignment becomes enforceable against: - the other assignees of the receivables who have failed to make their purchase enforceable against third parties on a prior date, - the assigned debtors and any creditors of the originator who have not commenced enforcement proceedings (literally: 'who have not obtained an 'attachment' (*pignoramento*) of the receivables) in respect of the receivables before the publication of the notice, - a liquidator or other bankruptcy official of an assigned debtor (so that any payments made by an assigned debtor to the purchasing company cannot be subject to a clawback action). As a general rule (Article 1260 of the Civil Code), assignments of receivables do not require the consent of the assigned debtor to be effective. An exception to this rule is provided by Italian law for assignments of receivables where Italian central or local public administrations are the debtor; such assignments must be notified to and, under certain circumstances, formally accepted by, the relevant public administration. These provisions apply to securitisation of receivables towards public entities under the Securitisation Law.
Luxembourg	The answers to these questions depend on the law applicable to the transfer. Article 58 of the Securitisation Law provides that the law governing the assigned claim determines the assignability of such a claim, the relationship between the assignee and the debtor, the conditions under which the assignment is effective against the debtor and whether the debtor's obligations have been validly discharged. The law of the State in which the assignor is located governs the conditions under which the assignment is effective against third parties. If Luxembourg law is the law which applies to a transfer, Article 55(1) of the Securitisation Law provides that the assignment of an existing claim to or by a securitisation undertaking becomes effective between the parties and against third parties as from the moment the assignment is agreed on, unless the contrary

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
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	is provided for in the agreement (i.e. without the debtor's consent or any notification to him, as usually required by Article 1690 of the Civil Code). The debtor is, however, protected by Article 56(3), which provides that the assigned debtor is validly discharged from its payment obligations by payment to the assignor provided it does not have knowledge of the assignment. Article 56(2) further provides that the assignment to or by a securitisation undertaking entails, except if otherwise agreed, the transfer of the guarantees and security interests securing such a claim, and its enforceability by operation of law against third parties, without any further formalities.
The Netherlands	Under Dutch law the debtor's consent as to an assignment of a receivable is not required if the receivable contract does not prohibit such assignment without the debtor' s consent nor contains other restriction clauses on the assignment of the receivable. Has consent of the debtor never been necessary under Dutch law, notifying has. Since 1 October 2004 however, it is also possible to assign a receivable without notifying the debtor (section 3:94 (3) Netherlands Civil Code). In that case the sale is considered effective against third parties after the private/non-notarial deed of assignment has been registered with the appropriate unit of the Dutch tax Revenue Service, or a deed of assignment in the form of a notarial deed has been executed before a Dutch civil notary. However, in order for a sale and assignment to be effective against the debtors of the receivables (in the way referred to above) the seller or the purchaser needs to notify such debtors of such assignment. It is of note that even if a debtor has been notified of the assignment, such debtor may still have a right of set-off vis-à-vis the purchaser if the counterclaim of the debtor results from the same legal relationship as the relevant receivable or if the counterclaim of the debtor originated and has become due and payable prior to the assignment of the receivable and notification thereof to the debtor.
Portugal	Under the Securitisation Law, the transfer of assets by the originator is effected as follows. (i) If the seller is a bank, a financial company, an insurance company, a pension fund or a pension fund management company, no authorisation is required and the assignment of receivables is effective against the relevant debtors at the date it becomes effective between the seller and the buyer, and no acknowledgement of, acceptance of or notification to such debtors is required. (ii) In all other cases, irrespective of the fact that the [receivable contract?] does not prohibit the assignment, the enforceability of an assignment of receivables against the debtor is subject not to authorisation but to notification of the debtor; such notification (to be made by means of registered letter) is deemed to have occurred on the third business day following [?registration] of the letter by the post office.
Spain	Transfers can be made without the consent of debtors but will only become effective vis-à-vis the debtor when the latter receives appropriate notice.
Sweden	No consent is required unless the agreement governing the asset provides for such consent. For negotiable instruments (promissory notes) and tangible assets perfection is achieved on and by delivery of the asset. For security in normal debt, notice to the obligor is the prescribed method to achieve perfection. The transferor/pledgor should not have further access to the asset.

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(IV) Are originators permitted to retain the economic benefits of the transferred assets?
Austria	There are no specific limitations in this respect.
Belgium	
Denmark	
England and Wales	No.
Finland	-
France	Once the assignment of the receivables to an FCC is carried out, the originators are no longer owners of the receivables and consequently cannot retain the economic benefits of the transferred assets. However Article L.214-46 of the CMF provides that the originator will act as the servicing agent of the receivables it has assigned to the FCC. As such it will be entitled to receive a servicing fee paid to it by the management company. Pursuant to Article 10 of Decree [number ?] of 24 November 2004 (hereinafter the 'Decree') – assuming this is what you refer to later in this question), the originator is also entitled to grant subordinated loans to the FCC (for credit enhancement or liquidity purposes). Those mechanisms do not prejudice the 'true sale' of the receivables from the originators to the FCC.
Germany	Retaining the economic benefit could be achieved in several different ways, as follows. (a) Establishing a usufruct (*Nießbrauch*) in respect of the SPV's assets, by which the originator acquires the right to draw the fruits, e.g. the interest or dividends paid by the debtors or issuers (§§ 1039 et seq. and 1068 et seq. of the Civil Code). The usufruct requires an agreement between the originator and the SPV in the same form as that required for the title transfer itself. As far as bearer securities and Bunds are concerned, direct or indirect possession would be required. (b) Acquiring a [participation shareholding?] in the SPV, which would ensure that the originator would receive all or parts of the net assets remaining after redemption of the asset-backed securities (ABSs) and liquidation of the SPV. (c) Acquiring ABSs issued by the SPV. The usufruct is of theoretical value only, as we are not aware that this approach has ever been used. Acquiring a [participation shareholding?] in the SPV could result in a requirement to fully or partial consolidate the SPV for accounting or capital adequacy purposes. German generally accepted accounting principles (GAAP) and the Banking Act (*Kreditwesengesetz*) require consolidation if the originator holds the majority of voting rights of the shareholders of the SPV, or if it is able to 'control' the SPV as further described in § 290 of the Commercial Code (*Handelsgesetzbuch*). If consolidation is required, the benefits of securitisation are endangered. US GAAP (Financial Accounting Standard 140) or international financial reporting standards (IFRS) (International Accounting Standard 27 and [SIC?] 12) might have similar requirements. Acquiring ABSs could also result in a requirement to consolidate the SPV for accounting purposes. This is not the case under German GAAP, but it might be the case under US GAAP or IFRS.

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(IV) Are originators permitted to retain the economic benefits of the transferred assets?
Greece	No.
Ireland	It is possible for an originator to retain exposure to the economic benefit of the transferred assets through a variety of mechanisms such as payment of servicing fees or the acquisition of subordinated securities issued by the transferee SPV.
Italy	Active cash flows deriving from the management of the group of segregated assets (*patrimonio separato*) servicing each single securitisation transaction are tied to the payment of interest on the issued notes. Any active cash flows not used to pay such interest are [?definitely] acquired by the SPV and contribute to the formation of the company's net assets and of the profits payable to shareholders.
Luxembourg	In general no because the assets will be the only source of return for the investors who have subscribed to the notes issued by the securitisation undertaking to finance the acquisition of the assets.
The Netherlands	Please read the answer on question 4.2.
Portugal	Except as regards the usual mechanisms of acquiring part of the bonds/units (including residual certificates and most subordinated classes of notes/units) and receiving economic benefits through the excess spread mechanisms [is it clear what this is?], the originators cannot retain the economic benefits of the transferred assets. As stated at question 4(I), for the assignment for securitisation purposes be considered a 'true sale', such assignment must be made in full and may not be subject to any condition.
Spain	
Sweden	Yes, provided that a transfer may possibly be qualified as an assignment for security purposes.

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(V) Is segregation of assets legally possible on the basis of the provision of general characteristics or general information, without the need for detailed individual identification of assets on each occasion?
Austria	For the transfer (assignment) to be effective, it must at least be possible to identify each individual asset (receivable) by virtue of the agreed criteria.
Belgium	
Denmark	
England and Wales	For the purposes of assignment, declaration of trust or creating a charge, the relevant property must be adequately identified.
Finland	Yes.
France	No. Pursuant to Article L.214-43 of the CMF and Article 18 of the Decree the *bordereau* must contain specific terms and information in order to ensure that the receivables will be transferred and assigned. Article 18-4° of the Decree provides that the *bordereau* must contain a description and breakdown of the receivables assigned and the elements based on which the description and breakdown can be made, in particular identification of the obligors, the place of payment, the amount of the receivables and (if appropriate) their maturity date. When the transfer of the assigned receivables is effected by way of a computerised process which enables identification of such receivables, the deed of transfer can be limited to stating, in addition to the information listed above, the means by which the receivables are identified and broken down, their number and their total amount.
Germany	Any transfer requires that the assets involved can be determined with sufficient certainty. It is not necessary to disclose the names of the creditors, if determination of the receivables transferred is ensured by other means. It is, e.g., possible to assign all receivables owed by debtors whose surnames start with a certain letter (e.g., A to K), or who are resident in a certain city or county (e.g., zip code 50000 to 60000). It is also usual to encrypt names and addresses of debtors and to deposit the code used for deciphering the data with a neutral person (e.g., a notary or another credit institution).
Greece	Whereas the sale and transfer agreement has to specify the transferred claims, registration in accordance with Article 10(8) of the Securitisation Law is effected through the submission of a summary of the sale and transfer agreement, which has to include only the essential parts of the agreement.
Ireland	In order to effect an assignment of assets or a security interest over assets, it must be possible to ascertain with certainty the identity of the relevant assets. Therefore, although the language in which the assignment or security interest is expressed may describe the assets which are the subject of the assignment or security interest in general terms, it must be possible at any time to determine with certainty whether or not a particular asset is the subject of the assignment or security interest.
Italy	As stated at questions 1(III) and 4(IV), a securitisation transaction under Italian law is usually carried out by way of the assignment of receivables by the originator to an SPV, and by operation of law the receivables assigned to the SPV are considered a group of segregated assets (*patrimonio separato*). No detailed individual identification of the assigned receivables is required under the Securitisation Law: the only requirement provided thereunder (Article

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(V) Is segregation of assets legally possible on the basis of the provision of general characteristics or general information, without the need for detailed individual identification of assets on each occasion?
	1(1)) is that the receivables must be 'identifiable as a pool' (*individuabili in blocco*). No definition of 'pool' (*blocco*) is contained in the Securitisation Law. A similar requirement is, however, imposed by Article 58 of the Consolidated Banking Act, governing 'assignments to banks of legal relationships *identifiable en bloc*' (emphasis added) and applicable to securitisation transactions, pursuant to Article 4 of the Securitisation Law. This provision has been implemented by the Banca d'Italia in its Supervision Instructions [is this a specific document – if not the capitals should be dropped – also add date] addressed to banks, which emphasised that, in order to be a 'pool', the receivables should be capable of being 'distinguished by a common feature' such as, for instance, the type of financing, the kind of counterparty, the economic sector, the territorial area involved, etc.
Luxembourg	This aspect is not specifically addressed by the Securitisation Law. In the case of assets, segregation is achieved by the transfer of the assets to the securitisation undertaking (or one of its compartments), as described above [where?].
The Netherlands	
Portugal	Segregation of assets is legally possible on the basis of detailed individual identification of assets on each occasion.
Spain	
Sweden	Yes. The asset is generally viewed as possible to identify by reference to the contract under which a receivable is generated or by reference to "all" amounts owed by an obligor to the pledgor/transferor. Perfection of receivables will be obtained when notice (or delivery for promissory notes) is made and the receivable has been generated (e.g. by delivery of goods).

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(VI) Are there any formalities imposed on transfers of assets? Is there a requirement to use a notary or produce similar evidence of the transfer of assets or otherwise?
Austria	There are no such specific formalities. The transfer of a share quota in an Austrian limited liability company must be documented by a notarial deed.
Belgium	
Denmark	
England and Wales	To perfect an assignment, the notice must be in writing, but there are no requirements as to other formalities. There is no requirement to use a notary.
Finland	There are no formalities imposed on transfer of assets. Formalities are as a rule only imposed on real estate businesses.
France	No. Apart from the need to respect the provisions of the Financial Securitisation Law requiring compulsory mention of the *bordereau,* no other requirement is necessary under the FSL or the Decree to complete the sale of assets from the originator to the FCC.
Germany	There are no such formal requirements under German law. Assignments and transfers of ownership can both be achieved by oral agreement and, as far as bearer securities and *Bunds* are concerned, by the transfer of direct or indirect possession. The only exception is receivables secured by real property. *Hypotheken* are transferred by written assignment of the secured receivable and either the transfer of the *Hypothekenbrief* or, if the issue of a *Hypothekenbrief* is excluded, by an entry in the land register. *Grundschulden* are transferred separately from the receivable by the transfer of the *Grundschuldbrief* or an entry in the land register. [please provide English translations – as in other sections]
Greece	The sale and transfer agreement must be made in writing and must be registered in the public register established under Article 3 of Law 2844/2000 (Article 10(1) and (8) of the Securitisation Law).
Ireland	See question4(II) for a discussion on the distinction between legal and equitable assignment, the requirement that an assignment of an equitable chose in action be evidenced in writing, and the requirement to give notice to obligors/debtors in order to effect a legal assignment. Generally speaking, there are no other formalities required in order to effect an absolute assignment or transfer of a debt (although specific registrations may be required in the case of a transfer of legal title to loans secured on real property, and registered instruments, such as shares or registered bonds). Registration requirements may also apply in the case of the creation of security interests (as opposed to absolute assignments of assets)
Italy	Pursuant to Article 69 of Royal Decree No 2440 of 18 November 1923, any agreement stipulated for the transfer of the claims towards a public body must be executed by? a public notary. Furthermore, the assignment of the claims must be formally accepted by the public body (Article 9, Annex E, and Articles 351-355, Annex F, of Law No 2248 of 20 March 1865). Apart from these two provisions concerning the assignment of a special kind of credit, no formalities are imposed by Italian law as to the assignment of receivables, even in cases where the assignment agreement constitutes part of a securitisation transaction.
Luxembourg	No, the general rules relating to the [Please provide more details] transfer of assets (subject to the answers already given [specific reference required]) are

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(VI) Are there any formalities imposed on transfers of assets? Is there a requirement to use a notary or produce similar evidence of the transfer of assets or otherwise?
	applicable.
The Netherlands	If a receivable has to be transferred without notifying the debtor, there are two possibilities: 1) a private/non-notarial deed of assignment registered with the appropriate unit of the Dutch tax Revenue Service, or 2) a deed of assignment in the form of a notarial deed executed before a Dutch civil notary.
Portugal	The Securitisation Law requires only one formality for the transfer of assets for securitisation purposes: the assignment must always be executed in writing. In the case of assignment of mortgage-backed debts, there is also no requirement to execute a notarial deed or to produce similar evidence.
Spain	This has to be done in writing; furthermore, it is normally made [in the form of a] public document (executed ? before a notary), as the notary may then confirm the capacity of the parties for the transaction and the date when it is formalised. The incorporation of the fund acquiring the assets must also be by way of public document and be registered with the Securities Commission (*Comision Nacional del Mercado de Valores*).
Sweden	No except for transfer of real property.

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(VII) In order to effect the transfer of ancillary rights attached to the assets (e.g., security interests, pledges, guarantees, credit insurance) does the law require compliance with any further formalities or registration?
Austria	Generally, ancillary rights connected with the receivables pass to the assignee together with the transferred receivables. In the case of securities, the transfer must be adequately perfected. In the case of mortgages, assignment of the mortgaged receivable must be recorded in the land register (this triggers a 1.2 % court fee; an exception applies if the receivables are not transferred by way of an assignment but through redemption (*Einlösung*) under § 1422 of the General Civil Code. In this case, the receivable and the mortgage are transferred even in the absence of registration).
Belgium	
Denmark	
England and Wales	If security is taken by way of charge or legal mortgage, registration formalities must be satisfied (see question 2(I)).
Finland	A guarantor or a party providing security must provide an acknowledgement.
France	Pursuant to Article L.214-43 of the CMF, all related security provided in connection with the receivables is automatically transferred without any further formalities, registrations or costs, including guarantees and mortgage securities. Moreover, the assignee can enforce these guarantees, security and ancillary rights by obtaining possession or ownership of the related assets.
Germany	As far as receivables are concerned, upon the assignment of the relevant receivables, all accessory rights, including mortgages (*Hypotheken*), suretyships (*Bürgschaften*) and pledges (*Pfandrechte*), are automatically transferred to the new creditor (§ 401 of the Civil Code). Non-accessory rights such as land charges (*Grundschulden*), guarantees (*Garantien*) and outright transfer or assignments for security purposes (*Sicherungsübereignung oder –abtretung*) are legally independent and require transfer by separate agreement. As stated at question 4(VI), *Hypotheken* are transferred by written assignment of the secured receivable and either the transfer of the *Hypothekenbrief* or an entry in the land register. Land charges are transferred by the transfer of the *Grundschuldbrief* or an entry in the land register. In the case of real property as surety, the most common type is registered land charges, the transfer of which must be entered in the land register. However, the administrative costs are considerable and can be prohibitive. The fact that amendment of the land register can take several weeks should also be noted.
Greece	If the ancillary rights are subject to public registration (e.g. mortgage, pre-notice of mortgage, etc.), a notice must be registered in the relevant registers (in practice, however, such notice is only registered in cases where an enforcement in favour of the SPV and its note holders is about to take place).
Ireland	No – the same considerations apply as to an assignment of the assets.
Italy	Pursuant to Article 58(3) of the Consolidated Banking Act, (see question 4(III)), charges and guarantees of whatever kind, by whomsoever granted and however existing, in favour of the assignor maintain their validity and their priority, without the need for any formality or registration in favour of the assignee.

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(VII) In order to effect the transfer of ancillary rights attached to the assets (e.g., security interests, pledges, guarantees, credit insurance) does the law require compliance with any further formalities or registration?
Luxembourg	No. In relation to the assignment of claims, Article 56 (2) of the Securitisation Law provides that the assignment to or by a securitisation undertaking entails, except where otherwise agreed, the transfer of the guarantees and security interests securing such a claim, and its enforceability by operation of law against third parties, without any further formalities. Of course, specific formalities may be required under other legislation, as applicable.
The Netherlands	No. Article 3:82 of the Netherlands Civil Code states that ancillary rights follow the right to which they are connected. However, mortgages in the Netherlands are usually so-called 'bank mortgages'. This means that the house serves as collateral for any and all obligations that the borrower may have with respect to the lender. It is not certain what happens if such an open-ended claim is transferred to the SPV. It has never been tested in court. Just in case, the bank usually partially renounce its claims to the collateral with respect to anything other than the loan for the house itself, before transferring the claim. In this way, the 'bank mortgage' becomes a 'fixed mortgage'.
Portugal	The transfer of ancillary rights attached to the assigned debts occurs upon assignment for securitisation purposes. Further, under the Securitisation Law the assignment of mortgage debts or of any other guarantees which may be subject to registration need not be made by means of a notarial deed; a private document duly signed by the parties (with the signatures certified by a notary or by the company secretary, if applicable) is sufficient for the assignment to be valid and enforceable, after registration of the guarantees' transfer in the relevant land registry.
Spain	There is a specific procedure to be followed in the case of securitisation of mortgage loans from credit institutions. In all other cases, if the ancillary right is a right *in rem* (*derecho real*) some further formalities have to be met. These differ according to whether the security is created over shares or bonds, or property.
Sweden	With respect to contractual rights, a notice to the obligors would be prudent and in many case required. With respect to security in mortgages, possession of the mortgage certificates should be taken. No particular formalities.

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(VIII) Can segregation be achieved notwithstanding the fact that the underlying documentation creating the respective assets contains contractual restrictions?
Austria	As of 1 June 2005, no (see question 1(V)).
Belgium	
Denmark	
England and Wales	This depends on the nature of such contractual restrictions. [If the receivables contract does prohibit assignment, it is first necessary to determine whether a purported transfer is in breach of this prohibition?]. What is referred to as a 'transfer' of a receivable may in fact be a novation, assignment, sub-participation or declaration of trust. The exact wording of the prohibition will determine whether a particular transfer contravenes it and it is in each case a matter of construction of the particular anti-assignment clause. For instance, a transfer by means of a declaration of trust or a sub-participation may not breach a prohibition on 'assignment', although it is likely to breach a prohibition on 'transfer'. If the purported transfer does breach a prohibition on assignment, the transfer will be ineffective against the debtor. However, the assignment agreement will be valid as between the assignor and the assignee and the ineffectiveness of the transfer will generally place the assignor in breach thereof. Whether the assignor will be in breach of the underlying agreement depends on the wording of the prohibition on assignment, but, in any event, if the assignment is ineffective, the debtor is unlikely to be adversely affected.
Finland	If the underlying documentation creating the respective assets contains contractual restrictions, this may prevent segregation.
France	Contractual prohibitions on assignment are regulated under French law by Article L.442-6-II of the Commercial Code, which states that such clauses are prohibited in certain circumstances. Contracts *intuitu personae* (i.e. involving personal considerations of one party), contracts governed by non-French law and contracts with confidentiality clauses may raise specific difficulties. [are further details of these difficulties required?]
Germany	As far as receivables are concerned, assignment is prohibited if: (i) performance by the debtor vis-à-vis third parties [was is?] not possible without changing the content of the obligation; or (ii) the debtor and the [old original?] creditor have contractually agreed that any assignment of the obligation is prohibited (§ 399 of the Civil Code). There are exemptions for payment obligations incurred under a contract that qualifies as a trading transaction for both parties (i.e. both parties are merchants), or where the debtor is a legal entity or segregated estate (*Sondervermögen*) governed by public law. Those payment obligations are eligible to be assigned irrespective of whether the parties to the contract have agreed otherwise (§ 354a of the Commercial Code). Without assignment, segregation could only be achieved by the new approach described at question 4(I).
Greece	Yes, concerning non-assignability, since (as already stated where?) any non-assignability clauses are null and void (Article 10(8) of the Securitisation Law.). Concerning other types of debtors' rights [(such as the right of set-off and any other rights and objections, which can also be claimed against the assignee in accordance with Article 463 of the Civil Code. Something appears to be missing here?]
Ireland	There are no cases reported in Ireland that address in detail the issue of whether prohibitions on assignment of contractual rights would be recognised and

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(VIII) Can segregation be achieved notwithstanding the fact that the underlying documentation creating the respective assets contains contractual restrictions?
	upheld. However, it is likely that the arguments in favour of the recognition of such provisions cited in English decisions (such as *Linden Gardens Trust Ltd* v *Lenesta Sludge Disposals Ltd* [1993] 3 All ER 417) would have persuasive value in an Irish court. An underlying debtor may have good reasons for restricting its contractual exposure to its original creditor including to better preserve set-off rights and to maintain commercial influence on credit terms. Assuming that this is correct, it is doubtful whether it is possible for an originator to assign a debt which contains an express prohibition on assignment. It may, however, be possible for an originator to declare a trust over the proceeds of such a debt once collected.
Italy	[In] securitisation transactions effected under Italian law by way of assignment of receivables, credits must be assignable. [Have we understood correctly?] The provision of a non-assignability clause in the contract originating a credit may therefore be a hindrance to the achievement of the typical effects of a securitisation transaction (i.e. segregation) involving the credit itself. [This section is difficult to follow.]
Luxembourg	A transfer of claims can be achieved (notwithstanding the fact that the underlying documentation contains contractual restrictions) under the following circumstances. Article 57 of the Securitisation Law provides that an assignment prohibited by the agreement out of which the assigned claim arises which for other reasons does not comply with the provisions of such an agreement, is not effective against the assigned debtor unless: - the assigned debtor has agreed thereto, - the assignee legitimately ignored such non-compliance, and - the assignment relates to a monetary claim.
The Netherlands	No. Through a no-assignment clause, for example, a claim becomes non-transferable by its content. Any attempt to transfer such a claim is doomed to fail, because it bears the feature that it is non-transferable. A non-assignment clause therefor also affects third parties.
Portugal	No, segregation is not achieved if the underlying documentation contains contractual restrictions. Under the Securitisation Law, only receivables that do not prohibit assignment can be assigned for securitisation purposes. If, notwithstanding this prohibition, the assignment is made, the sale of the receivables will be null and void and the debtor (as well as the buyer, if acting in good faith) will have the right to sue the originator. The contracts may envisage the possibility of the FTC or STC acquiring new receivables to substitute the ones wrongly sold.
Spain	Yes, because the assignment of assets is effective as between assignor and assignee, but will not be enforceable against the assigned debtor.
Sweden	May be feasible but there are uncertainties, and potential liabilities.

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(IX) Does the law effectively provide for the segregation of a multi-seller SPV buyer's assets, thus ensuring sole benefit for the parties to the sale transactions pursuant to which such assets were acquired?
Austria	No, although this can be achieved through appropriate structuring.
Belgium	
Denmark	
England and Wales	No.
Finland	No.
France	Article L.214-43 of the CMF states that FCCs can contain one or several compartments. 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 bear only the losses of that compartment and no other.
Germany	[?The statements above would not change] if the SPV acquired assets from more than one originator.
Greece	See question 2(IX).
Ireland	Irish law does not contain any provision dealing expressly with the segregation of the assets and liabilities of multi-seller SPVs. However, ring-fencing of specific assets and liabilities may be achieved through a combination of appropriate security interests and effective limited recourse and non-petition covenants from the transaction parties.
Italy	In general, Italian law places no limitation on the number of transactions that may be implemented by each SPV (which therefore may be a single-portfolio SPV or a multi-portfolio SPV). Under the abovementioned (see question 4(I)) principle of segregation, the receivables relating to each transaction constitute, for all purposes, assets segregated from those of the company and from those of any other transaction. Furthermore, under the principle of destination (see, in this respect, the definition of securitisation transactions at question 1(II)), the sums paid by the underlying debtors, whose receivables have been assigned to the SPV, must be used by the assignee exclusively to satisfy both the obligations under the notes issued to finance the acquisition of those specific receivables and the costs of the specific securitisation transaction.
Luxembourg	Yes.
The Netherlands	
Portugal	a) Once purchased, the receivables are owned by the FTC and there are no circumstances under which the receivables can be used to offset the debts of a

COUNTRY	QUESTION 4: Transfer And Ring-Fencing Of Assets
	(IX) Does the law effectively provide for the segregation of a multi-seller SPV buyer's assets, thus ensuring sole benefit for the parties to the sale transactions pursuant to which such assets were acquired?
	fund participant or its managing entity, or, 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) As stated above, a separate fund must be established for each securitisation transaction. As regards STCs, the following regime applies. a) Although the same STC may be used concurrently for an unlimited number of separate transactions, each issuance of securitisation notes is segregated to a ring-fenced pool of assets and the Securitisation Law clearly provides that different pools of assets purchased by the STC are fully segregated. In the light of this, there is complete segregation of assets, and cross-collateralisation across separate issuances is not possible. b) Furthermore, the note holders benefit from a legal security by way of a priority right over the assets (*privilégio creditório especial*), which at any moment make up the separate, ring-fenced, assets allocated to the respective issuance. Under the priority right granted to note holders they are reimbursed before the remaining creditors of the STC. The priority right referred to above is not subject to registration.
Spain	No.
Sweden	We have no experience of such SPV's incorporated in Sweden. It should be feasible by separate security interests being created and non-recourse provisions in relevant agreements.