COUNTRY	QUESTION 7: Tax Treatment
	(I) Are there specific tax provisions in relation to securitisation in your jurisdiction?[1]
Austria	No, except for the exemption from stamp duty on assignments from receivables made to securitisation companies described in the answer to question 1(I)..
Belgium	
Denmark	
England and Wales	Yes, in the Finance Acts [give years] and Financial Reporting Standards (FRS 5 and 26). UK accounting standard FRS 5 (Substance of Transactions) contains requirements and guidance in respect of derecognition. However, if the issuer and originator are using International Accounting Standard IAS 39 in their individual entity accounts, the IAS 39 derecognition rules will apply in respect of 'financial instruments' (which include most receivables). It appears that, under those rules, it will be rare for securitised assets to be derecognised (or, at least, wholly derecognised) in the originator. If the issuer and originator do not adopt IAS 39, but are subject to UK accounting standard FRS 26 in respect of financial instruments, they will not currently be subject to the IAS 39 derecognition rules (as FRS 26 does not (as yet) contain those rules). However, the derecognition rules of IAS 39 are expected to be incorporated in FRS 26 in due course.
Finland	Issues related to SPV income tax and value added tax (VAT) [are essential for the taxation.?] The uncertainty concerning taxation has partly led to the situation that Finnish securitisation transactions have almost without exception been carried out as foreign arrangements (e.g. in Ireland). Taxation of an SPV would probably occur in Finland under existing legislation under the Business Taxation Act and not the Income Tax Act.[please add years] In this way most problems relating to SPV income taxation can be avoided. Regarding VAT, costs can follow from the fact that a liability to pay VAT is not related to the operation of an SPV, it follows that, e.g. VAT paid on the expert fees is not deductible. Likewise an open question to some extent is how receivables which are sold by an originator who pays VAT would be taxed, in the case of credit loss. Administrative fees, which are paid to the originator, are not covered by the VAT regulations.
France	Yes. Law No 88-1201 (hereinafter the 'Securitisation Law') which created *fonds commun de créances* (FCCs) created a specific tax regime applicable to FCCs. This regime is very favourable. FCCs are exempt from corporation tax in France on the basis of Article 208-3° octies of the General Tax Code (*Code Général des Impôts*) and the transfer of receivables to FCCs is exempt from any transfer tax, stamp duty or value added tax (VAT).
Germany	The Trade Tax Act [year] (*Gewerbesteuergesetz*) provides that the assessment basis for the trade tax is the income as calculated for the purposes of the Income Tax Act [year] plus 50 % of the financing cost, i.e. the interest rate paid by the SPV under the asset-backed security (ABS) (§ 8(1) of the Business Tax Act [year]). [Pursuant to § 19 of the Executive Regulation [issued under? to] the Trade Tax Act (*Durchführungsverordnung*). Should this follow directly on from previous sentence?]This add-back of 50 % of the refinancing costs is not applicable to banks or – since 2003 – to SPVs that collateralise bank loans. In cases where the originator is not a credit institution, the add-back applies and could, depending on the multiplier defined by the municipality, result in considerable taxable amounts.

[1] For the purpose of this section, please consider the term 'tax' as including any kind of tax, stamp or other duties, charges, levies, contributions and notarial and other fees.

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	(I) Are there specific tax provisions in relation to securitisation in your jurisdiction?[1]
	The Value Added Tax Act [year] (*Umsatzsteuergesetz*) provides for a secondary liability for unpaid [(VAT)why brackets?] for entities that acquire taxable receivables (§ 13 (c) Value Added Tax Act). The risk assumed by an SPV under this Law is, however, slight. Article 13(b) of the Sixth VAT Directive (Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes, (as implemented in German law by § 4(8)(c) of the Value Added Tax Act) provides for the exemption of transactions in receivables, but excludes the collection of debts. The Court of Justice of the European Communities decided in its ruling in Case C-305/1 *Finanzamt Groß-Gerau* v *MKG-Kraftfahrzeuge-Factoring GmbH* of 26 June 2003 that factoring is to be treated in the same way as debt collection and that it should be subject to VAT. In its decision of 4 September 2003 [(V R 34/99)is this a case number – please rather give name and date as for the ECJ case] the Federal Finance Court (*Bundesfinanzhof*) further clarified that, in the case of true factoring, where the factor purchases the receivables without recourse vis-à-vis the seller, a taxable service is to be assumed between the factor and such a seller. The two decisions, which have been commented on by the Ministry of Finance in its Circular of 3 June 2004 (IV B 7 - S 7104 - 18/04), have been widely discussed in the market. The prevailing opinion is that the purchase of the receivables by an SPV is not subject to VAT as long as the originator remains responsible for servicing. If the SPV or a third party assumes responsibility for?the collection of the assets, this service is – depending on the individual structure – probably taxable.
Greece	Law No 3156/25.6.2003 (hereinafter the 'Securitisation Law') contains specific tax provisions in Article 14.
Ireland	A specific corporate tax regime exists for SPVs used in securitisation transactions – see question 7(II).
Italy	Yes. They are provided by Article 6 of Law 130/99 (hereinafter the 'Securitisation Law'). A regulation (*Circular No 8/E of 6 February 2003 is the regulation contained in this? Please clarify*), concerning the tax regime for SPVs has recently been adopted by the Ministry of Economy
Luxembourg	Yes. The Law of 22 March 2004 relating to securitisation (hereinafter the 'Securitisation Law') has introduced a specific legal framework for securitisation transactions and amended the following specific tax provisions: • Articles 22bis, 25, 46, 97, 164bis and 166 of the Income Tax Law of 4 December 1967, • paragraph 3 of the Net Worth Tax Law of 16 October 1934, • Article 44(1)(d) of the Value Aadded Tax Law of 12 February 1979, and • the Capital Duty Law of 29 December 1971. [which articles? Or say 'various provisions of…]
The Netherlands	
Portugal	Yes, under the Securitisation Tax Law (Decree Law 219/2001, as amended by Law 109-B/2001 and Decree Law 303/2003).
Spain	
Sweden	No

COUNTRY	QUESTION 7: Tax Treatment (II) Do SPVs have a different tax treatment/status compared with other companies/legal entities of the same type?
Austria	No.
Belgium	
Denmark	
England and Wales	In summary, an SPV's tax treatment is dependent on the establishment of its residence in the UK for tax purposes, the nature of the receivables and whether it is considered to be a company that trades or invests in the receivables. **Tax residence**: Where an SPV is incorporated in the UK, it will generally be UK tax-resident and, therefore, subject to UK corporation tax on its worldwide profits. SPVs incorporated outside the UK may in some circumstances be seen as UK tax-resident. The residence test has not been prescribed by statute, but has emerged from case-law. The classic expression is that of Lord Loreburn in *De Beers Consolidated Mines Limited* v *Howe* of 30 July 1906: ‘a company resides for purposes of … tax where its real business is carried on ... and the business is carried on where the central management and control actually abides’. In addition, the Inland Revenue has published a Statement of Practice on company residence. It is possible to discern both from case-law and the Statement of Practice that the key test of where a company is centrally controlled and managed is where ‘strategic’ as opposed to purely ‘operational’ decisions relating to it are taken. If all ‘strategic’ decisions relating to the activities of the SPV are taken outside the UK (whether in the jurisdiction of incorporation of the SPV or anywhere else), then it is unlikely that the SPV will be regarded as centrally managed and controlled in the UK. The question of whether an SPV is centrally managed and controlled in the UK is ultimately a question of fact. **Trading SPV vs investing SPV**: An SPV's UK direct tax position will depend upon whether it is trading (i.e. acquiring and holding them as trading stock) or investing (i.e. acquiring and holding them as an investment) in the receivables. For *trading* companies, a wider range of deductible expenses is available. However, the operation of the loan relationship rules contained in the Finance Act 1996 (giving relief for expenses directly related to the raising and maintenance of debt funding) mean that the advantages of trading treatment are marginal. There is no comprehensive statutory definition of ‘trade’ and therefore the meaning of this term must be sought from the case-law in this area. The final report of the Royal Commission on the Taxation of Profits and Income (1955: Cmd 9474) concludes that there is no single test for determining what constitutes a trading transaction, but suggested certain objective factors (the ‘badges of trade’) which may indicate that this exists. To qualify as a ‘company with *investment* business’ within Section 130 of the Income Tax Act [year], a company must carry on a business which consists

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	(II) Do SPVs have a different tax treatment/status compared with other companies/legal entities of the same type?
	'wholly or partly' in the making of investments. Under Inland Revenue practice ([indicated by the meaning given to?] given in the context of the meaning of] 'investment company' in Section 130 before amendment of the Finance Act 2004) as set out in the Revenue Banking Manual, an SPV will be treated as an investment company if it is capable of making a surplus, year on year. If an SPV is not trading in the receivables and does not qualify as a 'company with investment business' (a so-called 'nothing' company), it may be unable to claim relief in relation to certain expenses which would otherwise be deductible (as trading expenses if the SPV was a trading company, or management expenses if the SPV was a company with an investment business). Under the 'loan relationship rules' contained in the Finance Act 1996, even if an SPV is a 'nothing' company it may still be able to claim relief for: (a) funding costs; and (b) incidental costs of raising funding and acquiring loan assets. However, the loan relationships rules disallow tax deductions for, *inter alia*, costs where they relate to a transaction entered into by a company other than 'for the business or other commercial purposes of the company'. Therefore, it is preferable to leave sufficient taxable profit in an SPV to demonstrate that it has a commercial purpose (i.e. making a profit). An SPV's UK direct tax position will also depend on the nature of the receivables. The following receivables will generally be within the Finance Act 1996 loan relationships rules : (i) receivables in residential and commercial mortgage securitisations; (ii) receivables in corporate loan securitisations; and (iii) receivables in credit card securitisations. The following will not generally arise out of loan relationships and, therefore, receipts arising from them will normally fall outside the application of the loan relationship regime: (i) most trade receivables; (ii) lease and hire purchase receivables; and (iii) receivables arising from real estate. Broadly, the loan relationship regime aims to tax a company in respect of its corporate debt (both assets and liabilities) in accordance with the way those assets and liabilities are treated in the relevant company's accounts. Where the receivables arise from loan relationships, an SPV's receipts in respect of those receivables will fall within the loan relationship regime. An SPV's main expenses (e.g. the purchase price paid for the receivables (including deferred consideration), servicing fee and the interest payments under the notes) will also fall within the loan relationship regime. This means that the expenses will be relieved on the same basis as that on which receipts generated by the receivables will be taxed. Consequently, subject to the accounting treatment of such receipts and expenses, and any special rules which may apply in the particular circumstances, there is less likely to be any mismatch in the tax treatment of an SPV's receipts and payments. Where the receivables do not arise from loan relationships, receipts will not be taxable under the loan relationship regime. In such cases, whether an SPV is trading or investing in the receivables will be of far more significance. If an SPV is trading in this way, then (subject to its accounting treatment) all of its receipts and expenses should be taken into account in computing its trading profit. The payment of the purchase price for the receivables should in principle be a deductible trading expense. The receipts generated from the receivables should generally be trading receipts, and the fees and expenses incurred by the SPV should be either deductible loan relationship trading debits (for example,

COUNTRY	QUESTION 7: Tax Treatment (II) Do SPVs have a different tax treatment/status compared with other companies/legal entities of the same type?
	in relation to payments due under the notes) or trading expenses. Assuming there is no loss of relief due to timing mismatches the SPV should, over the life of the transaction, be taxed only on its overall net profit from the transaction. The position is more problematic if an SPV is not trading. In this case the generally accepted analysis is that the purchase of the receivables (normally at a discount to face value to reflect the fact that they will not mature for some time) is a 'discounting' transaction. No deduction will be available for the purchase price, and tax will be payable on the profit on each receivable (i.e. the difference between what the SPV paid for the receivable and what the SPV receives when it matures).
Finland	No.
France	FCCs benefit from a tax treatment which is peculiar to them as they are specifically designed to be tax neutral.
Germany	The tax treatment of SPVs does not differ from that of other entities active in the same business. [can we just say 'No'?]
Greece	Yes, concerning the issues relating to securitisation.
Ireland	**Corporation tax**: Section 110 of the Taxes Consolidation Act 1997 (hereinafter the 'TCA 1997') provides for a special tax regime in relation to 'qualifying companies'. A 'qualifying company' is a company: (a) which is resident in Ireland; (b) which either acquires qualifying assets from a person, holds or manages qualifying assets as a result of an arrangement with another person or has entered into a legally enforceable arrangement with another person which itself constitutes a qualifying asset; (c) which carries on in Ireland a business of holding qualifying assets or the managing qualifying assets, or both; (d) which, apart from activities ancillary to that business, carries on no other activities; and (e) the market value of qualifying assets held or managed by the company or the market value of qualifying assets in respect of which the company has entered into legally enforceable arrangements is not less than EUR 10 000 000 on the day on which the qualifying assets are first acquired, first held, or a legally enforceable arrangement in respect of the qualifying assets is entered into (which is itself a qualifying asset); but a company is not a qualifying company if any transaction is carried out by it otherwise than by way of a bargain made at arm's length, apart from where that transaction is the payment of consideration for the use of principal (other than where that consideration is paid to certain Irish tax resident companies or Irish branches of companies not so resident as part of a scheme of tax avoidance). A 'qualifying asset', in relation to a qualifying company, means an asset which consists of, or of an interest in, a financial asset. If a company is a qualifying company for the purpose of Section 110 of the TCA 1997, then profits arising from its activities are treated as annual profits and gains within Schedule D and corporation tax under Case III is chargeable at a rate of 25 % as passive income. However, for that purpose, the profits are computed in accordance with provisions applicable to trading profits under Case I of Schedule D. The activities of an Irish SPV used in a securitisation transaction are generally structured in a manner that ensures that the SPV is a qualifying company for the purposes of Section 110 of the TCA 1997. Where this is the case, all expenses that are wholly and exclusively related to the securitisation transaction

COUNTRY	QUESTION 7: Tax Treatment (II) Do SPVs have a different tax treatment/status compared with other companies/legal entities of the same type?
	should be deductible in calculating the SPV's taxable profits. Provided (i) that interest is not paid to a company within the charge to Irish corporation tax as part of a tax avoidance scheme; (ii) that the SPV is an orphan vehicle; and (iii) that the securities issued by it are not convertible into shares or connected with shares in that company, interest on such notes should be deductible for tax purposes. **Withholding tax**: in general, withholding tax at the rate of 20 % must be deducted from payments of yearly interest (payments of interest in respect of an instrument where the maturity of the instrument is not less than one year) made by an Irish company. However, Section 246 of the TCA 1997 provides certain [exemptions] from this general obligation to withhold tax. It provides an [exemptionnot clear whether there is one or more exemptions – if more than one say 'For example' at the beginning of this sentence] in respect of interest payments made by a qualifying company within the meaning of Section 110 of the TCA 1997 to a person resident in a 'relevant territory' except where such a person is a company and the interest is paid to the company in connection with a trade or business carried on in Ireland by that company through a branch or agency. A 'relevant territory' for this purpose is an EU Member State, other than Ireland, or, not being such a Member State, a territory with which Ireland has entered into a double tax treaty. **Stamp duty**: stamp duty is not payable on either the issue or transfer of any notes issued by a qualifying company within the meaning of Section 110 of the TCA 1997, provided that the money raised by the issue of such notes is used in the course of the SPV's business
Italy	As a general rule, no special tax regime is provided for SPVs. However, as far as corporation tax and regional tax are concerned, active cash flows deriving from the management of the group of segregated assets (*patrimonio separato*) servicing each single securitisation transaction are considered subject to tax only for the part not bound to the payment of interest on the issued notes. The active cash flows not bound to the payment of interest is [definitely?] acquired by the SPV and contributes to the formation of the company's net assets and of the profits payable to shareholders (and therefore is taxable).
Luxembourg	Yes. **Securitisation companies** – For income tax purposes: ▪ Securitisation companiesSPVs? If so, please use this term throughout are fully liable to pay corporate income tax and municipal business tax at an aggregate tax rate of maximum 30.38 %. They may however deduct from their taxable profit any commitments to [remuneratepay?] the investors and other creditors. The Securitisation Law expressly states that, for tax purposes, commitments made by the companies to investors (and creditors) are always considered as? interest. Thus, the companies are able to deduct all forms of payments made to investors even if paid as return on equity. Consequently, the taxable basis should normally be neutral with regard to income generated by the underlying assets. ▪ Capital gains realised on the sale of qualifying participations (shareholdings of at least 10 % or acquisition price of at least EUR 6 000 000) in securitisation companies do not benefit from the participation exemption. ▪ Securitisation companies are not allowed to be part of a Luxembourg tax consolidated group. – For wealth tax purposes, securitisation companies are exempt entities. **Securitisation funds** – Securitisation funds are assimilated to investment funds and consequently are not subject to corporation tax (income tax and wealth tax).

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	– However, the annual subscription tax due from investment funds at a rate of 0.05 % on their net assets is not due from securitisation funds. The tax treatment of the management company is similar to the tax treatment of?a management company under [UCITSplease write out] law, and is subject to a maximum capital duty of EUR 1 250.
The Netherlands	
Portugal	No, the Securitisation Tax Law lays down that both vehicles – credit securitisation funds (*fundos de titularização*, FTC) and credit securitisation companies (*sociedades de titularização*, STC) – are subject to corporate income tax under the same terms and conditions as those applicable to companies developing a commercial, industrial or agricultural activity in Portugal. The present tax rate is 25 %, with a possible municipal surcharge, which varies from municipality to municipality (*derrama*), [correspondent to?] a maximum of 10 % of the tax debt. This means an effective maximum tax rate of 27.5 %.
Spain	
Sweden	No

COUNTRY	QUESTION 7: Tax Treatment (III) What taxes, if any, are imposed on, or have been explicitly declared as non-applicable to, the following transactions: (i) conclusion of contracts entered into for the implementation of securitisation (e.g. contract(s) for sale and transfer of securitised assets and related security rights; service, management and custody agreements; loans; other financial contracts and security agreements, etc.); (ii) cash flows both into and out of the SPV; (iii) registration of the abovementioned contracts; and/or (iv) issuance, distribution/placement, registration and transfer of securities?
Austria	**Stamp duty**: assignments of receivables are subject to a 0.8 % stamp duty. The Stamp Duty Act 1957 contains an exemption for assignments made to securitisation companies (see question 1(I)). There is still the risk, however, that the funding provided by an SPV could be characterized (for stamp duty purposes) as a factoring loan, in which case a stamp duty of 0.8 % (or in certain cases 1.5 %) would apply despite the exemption. Note that transactions may in individual cases also trigger other stamp duties. **Court fees**: in particular, registration of a mortgage triggers a 1.2 % court fee (see question 4(VII)). **Value added tax** (VAT): although as a rule securitisation transactions are regarded as VAT-neutral, the treatment of securitisation transactions for VAT purposes remains uncertain. **Withholding tax**: there is currently no withholding tax on interest payments per se other than when made with respect to assets (receivables) secured by real estate or equivalent rights.
Belgium	
Denmark	
England and Wales	The sale of the receivables by the originator to the SPV may result in stamp duty, stamp duty reserve tax (SDRT) or stamp duty land tax (SDLT) being payable. **Stamp duty: s**ubject to special arrangements relating to a partnership interests and assets, stamp duty is chargeable on a document effecting a conveyance or transfer on sale that is executed in the UK or requires something to be done in the UK only where the subject matter is 'stocks or marketable securities'. Stamp duty is not chargeable on a sale of receivables where the obligors are individuals. Unless an exemption applies, it may be relevant on [be chargeable on?] a sale of receivables that falls within the definition of 'stock or marketable securities' (e.g., an unsecured loan [receivable of?] a company) where the obligors are companies. The key exemption is 'loan capital' which comprises all loan capital of a company unless it is convertible or has other characteristics of equity (such as a results-dependent or non-commercial interest rate). There are various other reliefs and exemptions available, including for transfers within a group of companies, [e.g.?] i.e., where the originator and the SPV are associated, relief may be available under Section 42 of the Finance Act 1930 in respect of any transfer or agreement to transfer the receivables to the SPV. **SDRT**: SDRT is payable on an agreement for the sale of 'chargeable securities'. These include, *inter alia*, loan capital issued by a UK company or held on a UK register or paired with securities that are so issued or registered. However, loan capital that is exempt from stamp duty is also exempt from SDRT. **SDLT**: If the receivables consists of an interest in or right over UK real estate, SDLT will generally be chargeable on completion of the sale of the

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	receivables. The SPV will be liable to account for and pay such SDLT. If an agreement for sale is 'substantially performed' before completion, the agreement is treated as if it were itself the sale provided for in it. Subsequent completion of the agreement is treated as a separate transaction for SDLT purposes. In such cases, SDLT is only chargeable on completion to the extent (if any) that it exceeds the amount of SDLT chargeable on substantial performance of the agreement. On the assignment of a lease, there are a number of circumstances in which the assignee must, broadly, reconsider the SDLT treatment of the lease and, if necessary, submit a return together with any SDLT due to the Inland Revenue in relation to the lease. It will be necessary to identify whether the SPV may have a potential liability under any of these provisions. Relief from SDLT on the sale of real estate in 'disadvantaged area' areas? is available, as well as 'group relief' where the seller and purchaser are companies in the same SDLT group at the effective date of the transaction. **Value added tax (VAT):** VAT is chargeable on supplies of goods and services provided in the UK by a 'taxable person' in the course or furtherance of a business unless the supplies are exempt. The issue, transfer or receipt of, or any dealing with, money, any security for money or any note or order for the payment of money is an exempt financial service. Accordingly, the transfer of receivables (whether loans, rent, trade or equipment lease receivables) from a person that 'belongs' in the UK for VAT purposes is exempt from VAT. However, it should be noted that where the financial services are supplied by a person who does not 'belong' in the UK for VAT purposes to a person who does so belong and receives the supply in the course of their business, the recipient will usually be treated as if they supplied the service themselves under 'reverse charge' provisions. Collection agent services are not exempt and attract VAT at 17.5 % if supplied in the UK. However, such services will typically be outside the scope of VAT if the recipient of the services 'belongs' outside the UK for VAT purposes. In summary, in many securitisation transactions the only supply which the SPV makes is the issue of the notes, which is exempt – generally without a right to recover related-input VAT. Also, in relation to loan securitisations, where the SPV makes supplies under the loans, such supplies will also be exempt. Therefore, the SPV is frequently unable to recover much, if any, VAT it incurs. **Interest/discount on the notes: t**he issue of the notes to investors should bring loan relationships into existence for the purposes of the loan relationship regime (see question 7(II)). Consequently, under the loan relationship rules, tax relief for interest paid by an SPV on the notes will generally be available in accordance with the SPV's accounts.The loan relationship rules will generally also enable a tax deduction to be obtained for any discount on the notes, following the treatment in the SPV's accounts, except in certain circumstances. **Fees and expenses in relation to issue of the notes**: where the notes are loan relationships of an SPV, the deductibility of fees and expenses incurred in connection with the issue of the notes will also principally be determined in accordance with the loan relationship regime.

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	Fees paid to the originator to service the receivables: where the receivables arise from loan relationships, these should be deductible under the loan relationship regime. **Expenses in relation to credit enhancement**: guarantee fees should be deductible under the loan relationship regime. Where a credit facility is in place, a commitment fee may be payable by the SPV to the facility provider. Such fees should be deductible by the SPV. **Other fees**: costs relating to legal and accounting advice in relation to the on-going operation of an SPV will not be deductible under the loan relationship rules. Fees payable to any cash manager or to any account bank pursuant to a cash management and/or account bank agreement may be deductible. However, fees and expenses which are not deductible under the loan relationship rules may (in certain cases) be deductible as trading expenses (e.g. where the SPV is a trading company). **Tax deductibility concerns**: an SPV will not be able to obtain a tax deduction for interest paid on the notes to the extent that it constitutes a 'distribution' for tax purposes, e.g. (because the rate of interest exceeds a reasonable commercial return or because interest is 'results dependent'). **Anti-avoidance**: the loan relationship regime contains anti-avoidance provisions which disallow or defer a tax deduction for loan relationship debits in certain circumstances. Section 787 of the Income Tax Act is an anti-avoidance provision designed to counter schemes to reduce a person's tax liability by means of obtaining tax relief for interest. It applies if a scheme has been effected, or arrangements have been made, such that the sole or main benefit that might be expected to accrue to the SPV from the transaction is the obtaining of a reduction in its tax liability by means of obtaining tax relief for the interest. If Section 787 applies, tax relief will not be available in respect of any payment of interest made by the SPV. **Swaps**: if the SPV makes payments under interest rate and/or currency swap contracts, then, to the extent that such payments fall within the derivative contracts regime (contained in Schedule 26 to the Finance Act 2002) they should generally be deductible in accordance with their treatment in the SPV's accounts. In certain circumstances, however, anti-avoidance provisions may restrict the SPV's entitlement to obtain tax relief. **Withholding tax**: interest paid by the SPV may prima facie attract 20 % withholding tax unless an exemption from such tax is available. UK securitisations are usually structured such that interest payments on the notes qualify for the 'quoted Eurobond' exemption from withholding tax. There is no withholding tax on payments on trade receivables or equipment lease receivables except to the extent that they include interest for late payment. Payments of interest on any subordinated loans or liquidity credit facility may be subject to withholding tax. If the interest is 'short', i.e. ,broadly, the term of the borrowing is less than a year, there will be no withholding tax. If the interest is 'annual', there will be withholding tax unless an exemption applies. An exemption is available if the interest is payable on an advance from a bank, and, at the time the interest is paid, the beneficial owner of the interest (i.e. the lending bank, or a person to whom the bank has assigned its rights to the interest) is within the charge to

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	corporation tax as respects the interest. There is no withholding tax on payments of interest by a company if, at the time the payment is made, the company reasonably believes that the person beneficially entitled to the income in respect of which the payment is made is either (a) a UK tax resident company or a partnership each member of which is a company resident in the UK; or (b) a non-UK tax resident company which carries on a trade in the UK through a permanent establishment in the UK and which brings the payment into account in computing the company's chargeable profits for UK tax purposes. There will be no UK withholding tax on payments made pursuant to swaps within the derivative contracts regime (paragraph 51, Schedule 26 Finance Act 2002). **Registration of security**: no tax is payable on registration, except a small fee that may be charged upon registration of security interest with Companies House, HM Land Registry, etc.
Finland	No.
France	**1. Assignment of contracts** No registration tax is payable on the transfer of receivables and any associated security such as a mortgage to an FCC by means of a *bordereau*. However, if the assignment agreement is notarised or voluntarily registered, a fixed tax will be payable. Any profits generated by the assignment of receivables to an FCC as well as the servicing agent's fees are exempt from VAT. The management company's fees are also in principle exempt from VAT. The loss or gain realized by the originator on the assignment of the receivables must be reported in its tax return for the financial year of the sale. 2. **Cash flows out of the FCC** The transfer of units is not subject to any registration formalities. Accordingly, registration tax does not apply to such transfers. However, if the sale agreement is registered voluntarily or if the agreement is notarised a fixed registration fee will be due. According to a Statement of Practice (instruction) by the tax authorities of October 1989, interest paid by an FCC to any holder who is not resident in France for tax purposes is exempt from the 16 % withholding tax provided for under Article 125(A)(III) of the General Tax Code provided that (i) such an investor is the person beneficially entitled (*bénéficiaire effectif*) to the interest payment; and (ii) such a holder provides evidence to the payor of interest that it is not resident in France for tax purposes. [is the 'investor' and the 'holder' the same person? If so, better to use one term. 3. **The tax regime applicable to unitholders** Income on units or debt securities held by French tax resident individuals is subject to income tax at a progressive rate.
Germany	As already provided in Article 13(b) of the Sixth VAT Directive, the sale of debts or securities, including shares, bonds and other negotiable debt instruments, is not subject to VAT (§ 4(8)(c), (e) and (f) of the Value Added Tax Act). The refinancing cost (i.e., the cash flows paid by an SPV to the investors as interest under the ABS) are exempted from the 50 % add-back charge under the

COUNTRY	QUESTION 7: Tax Treatment (III) What taxes, if any, are imposed on, or have been explicitly declared as non-applicable to, the following transactions: (i) conclusion of contracts entered into for the implementation of securitisation (e.g. contract(s) for sale and transfer of securitised assets and related security rights; service, management and custody agreements; loans; other financial contracts and security agreements, etc.); (ii) cash flows both into and out of the SPV; (iii) registration of the abovementioned contracts; and/or (iv) issuance, distribution/placement, registration and transfer of securities?
	Business Tax Act, if the assets consist of bank loans (see question 7(I)). Registration of contracts is not required in Germany and hence is not subject to stamp duty or similar tax. The issuance and distribution of ABSs is exempt from VAT (§ 4 (8)(e) of the Value Added Tax Act).
Greece	(i) None. (ii) None (except as regards the income tax on the note holders' revenues, which depends on the [place?] or residence/registered seat of the note holders and the relevant double taxation treaties). (iii) None (except for capped fees for entry in registriesregisters?, notaries, etc.) (iv) None.
Ireland	Subject to what is described at question 7(II), the general tax regime applies to securitisation transactions and to Irish SPVs.
Italy	No tax is applicable to the contract of assignment of the receivables and the related security rights, under the condition that the originator is a bank and the assigned receivables are medium/long-term credits. This exemption is justified on the ground that the bank has already paid the substitute tax (*imposta sostitutiva*) on financing, due under Article 15 of Presidential Decree No 601/1973 (Discipline of tax privileges). Servicing contracts are subject to VAT. Should such services qualify as 'financial services', however, they will be characterized as 'VAT-exempt services'. Interest on credits held by SPVs are not subject to withholding tax, subject to the condition that the SPV is an Italian company. Withholding tax, currently imposed at the rate of 12.5 %, is due on the interest paid on the notes having a maturity date of at least 18 months. Issuance is not subject to tax. Transfer of securities is subject to the special tax which ordinarily applies to stock exchange contracts (the *fissato bollato*).
Luxembourg	(i) When the assets sold or contributed to SPVs consist of real estate located in Luxembourg, transfer tax of 10 % is due (the rate is 7 % for real estate located outside the city of Luxembourg). SPVs approved and controlled by the [CSSFwite out] (when the vehicles intend to offer securities to the public continuously) are subject to an annual tax of EUR 2 650. This tax amounts to EUR 5 000 in the case of SPVs with several compartments. (ii) Dividends received by securitisation companiesSPVs? benefit from the double taxation treaties and the Parent-Subsidiary Directive (Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States). The foreign withholding tax could be reduced or not applicable. Interest received by securitisation companiesSPVs? benefits from the double taxation treaties. The foreign withholding tax could be reduced or not applicable.

COUNTRY	QUESTION 7: Tax Treatment (III) What taxes, if any, are imposed on, or have been explicitly declared as non-applicable to, the following transactions: (i) conclusion of contracts entered into for the implementation of securitisation (e.g. contract(s) for sale and transfer of securitised assets and related security rights; service, management and custody agreements; loans; other financial contracts and security agreements, etc.); (ii) cash flows both into and out of the SPV; (iii) registration of the abovementioned contracts; and/or (iv) issuance, distribution/placement, registration and transfer of securities?
	Dividends paid out of securities issued by securitisation companiesSPVs? are considered as interest and consequently are not subject to withholding tax. Interest paid by securitisation companiesSPVs? is not subject to withholding tax. Liquidation proceeds paid out by securitisation companiesSPVs? are not subject to withholding tax. The management services of SPVs are exempt from VAT. (iii) Registration of contracts entered into for the implementation of securitisation is not compulsory unless they relate to real estate situated in Luxembourg, or aircraft or vessels recorded in a Luxembourg public register. If however they are voluntarily registered, a fixed registration duty of EUR 12 applies. (iv) The 1 % capital duty due on ordinary companies is not levied on the incorporation and capital increases of the securitisation companies. Capital duty is limited to a flat fee of EUR 1 250 for each specified notary deed. The securities issued by securitisation companiesSPVs? do not benefit from the tax neutral exchange of shares in the case of merger, division, contribution or transformation. In such restructuring operations involving securities of securitisation companiesSPVs?, the exchange triggers the realisation of any latent capital gain and its subsequent taxation (unless participation exemption is available).
The Netherlands	
Portugal	Please see attached. The table applies to both the FTC and STC structures.
Spain	
Sweden	(i) VAT may apply to administrative services. No specific regulations. Income tax for seller. Stamp duty for issuance of mortgage certificates. (ii) Income tax on Swedish SPVs, and on offshore SPVs if deemed to have a permanent establishment in Sweden. The acquisition of Swedish lease asset may possibly result in such establishment. VAT for administrative services provided in Sweden. No Swedish withholding tax on interest, generally. (iii) and (v) no specific taxes except for transfer of real property and issuance of mortgage certificates (real property and floating charge).

COUNTRY	QUESTION 7: Tax Treatment (IV) Does the transfer of assets (and related security rights, if applicable) have an impact on the assets' (and related security rights', if applicable) tax treatment (e.g. if the originator enjoys a privileged tax regime in relation to the assets (and related security rights, if applicable), is such a privilege also transferred?)
Austria	Where the originator enjoys a privilege with respect to the asset, then we would not expect the privilege to be transferred with the asset. This should however be examined in each individual case. For instance, with respect to certain types of investment allowances, the originator may be subject to tax if it disposes of the asset prematurely. This would not normally affect the position of the SPV.
Belgium	
Denmark	
England and Wales	Typically yes, unless the country where the seller resides has a specific securitisation law which preserves tax neutrality, such aprivilege will not follow the assets upon sale. This answer seems contradictory [we will revert]
Finland	No.
France	No.
Germany	No.
Greece	No. The tax regime applicable to the originator in relation to the securitised assets continues to be applicable to the assets when transferred to the SPV in accordance with Article 10(13) of the Securitisation Law.
Ireland	The general tax regime will apply to securitisation transactions and to SPVs. Therefore, if an originator enjoys a privileged tax regime in relation to assets (and related security rights), which privileged regime is specific to the originator, rather than the assets, it is unlikely that such a privilege would transfer to a transferee of those assets.
Italy	As far as the originator is concerned, the assignment of receivables can entail deductible costs/profits which are subject to [tax an amountsomething missing?] equal to the difference between the assignment price and the value of the credit as evidenced in the balance sheet. [As a result of the assignment,After?] any subsequent event concerning the assigned receivables is of no more interest to the originator. In the event that the originator held notes issued by the SPV, [something missing]are subject to [fiscal chargetax?] [also missing here?]the profits/costs deriving from their sale or reimbursement are deductible. As far as SPVs are concerned, costs and profits deriving from securitised assets are not relevant for tax purposes, provided that the profits are distributed among the bearers of the notes. A regulation has recently been adopted by the Government (Law No 80 of 14 May 2005) which introduces a new Article (7bis) to the Securitisation Law concerning the issuance of asset-backed securities (ABSs or 'covered bonds'). According to this new provision, when funds to purchase credit are provided/guaranteed to the SPV by the originator by means of a loan and the SPV, in its turn, guarantees the notes issued by the originator, from a fiscal point of view the assigned receivables are considered as still held by the originator itself and the transaction is not considered as involving an assignment of credit.

COUNTRY	QUESTION 7: Tax Treatment (IV) Does the transfer of assets (and related security rights, if applicable) have an impact on the assets' (and related security rights', if applicable) tax treatment (e.g. if the originator enjoys a privileged tax regime in relation to the assets (and related security rights, if applicable), is such a privilege also transferred?)
Luxembourg	No.
The Netherlands	
Portugal	No.
Spain	
Sweden	Not relevant in Sweden what we know.

COUNTRY	QUESTION 7: Tax Treatment (V) In multi-jurisdictional transactions, do the pertinent tax provisions introduce any difference in the tax treatment depending on the country of the registered seatoffice?/nationality of: (i) the originator; (ii) the SPV; (iii) the manager; (iv) the custodian; and/or (v) any other relevant party to the securitisation transaction.
Austria	There are no securitisation-specific rules. Generally, the position must be assessed on a case-by-case basis based on the applicable double taxation agreement.
Belgium	
Denmark	
England and Wales	Each country has its own system of tax legislation and bilateral treaty arrangements which will impact items (i) - (v). This is a complex area. It is therefore impossible to summarise unless a specific jurisdiction is analysed.
Finland	
France	See question 7(I).
Germany	If an SPV is incorporated or [organised?] in a jurisdiction other than Germany, the tax issues described under question 7(I) do not apply.
Greece	The Securitisation Law does not introduce any such distinctions. However, depending on the applicable tax provisions of foreign jurisdictions and the relevant double taxation treaties, differences may exist.
Ireland	See question 7(II) regarding exemptions from Irish withholding tax on payments of interest by an SPV where the recipient is resident in a relevant territory.
Italy	No special provision is contained in the Securitisation Law governing the case of subjects participating in a securitisation transaction that are not resident/registered in Italy. In principle, as far as the Italian originator is concerned, there is no change in the applicable tax regime if the SPV is not an Italian company. However, if the SPV is a foreign company, a withholding tax at the rate of 12.5 % or 27 % is applied to the interest paid on the assigned receivables . On the other hand, if the originator is a foreign company and the SPV an Italian one, the tax regime applicable to the latter does not change, provided that the transaction carried out can be effectively qualified as a ‘securitisation transaction’ under Italian law. If the manager is a foreign company, the tax regime applicable to payments made by the Italian SPV, both for direct and indirect taxation purposes, varies according to the State of incorporation of the manager.
Luxembourg	No.
The Netherlands	
Portugal	No, with the following exception: - gains obtained by the originator from the transfer of the receivables are exempt from corporate income tax if the originator qualifies as a non-resident

COUNTRY	QUESTION 7: Tax Treatment (V) In multi-jurisdictional transactions, do the pertinent tax provisions introduce any difference in the tax treatment depending on the country of the registered seatoffice?/nationality of: (i) the originator; (ii) the SPV; (iii) the manager; (iv) the custodian; and/or (v) any other relevant party to the securitisation transaction.
	entity which is not located in a tax haven included in the list approved by the Minister of Finance or is not held, directly or indirectly, in at least 25 % of their share capital, by resident entities, - income derived from the [SBsplease write out] is exempt from income tax if its holders qualify as non-resident entities except if located in tax havens included in the list approved by the Minister of Finance or held, directly or indirectly, in at least 25 % of their share capital by resident entities.
Spain	
Sweden	Yes, generally Swedish taxes will apply to Swedish companies, and any foreign company to the extent the income is allocable to a permanent establishment in Sweden of such company. If an offshore SPV acquire Swedish lease assets or maintain a permanent agent which enters into transactions with a power of attorney, the SPV is likely to be considered to have such an establishment.

COUNTRY	QUESTION 8: Rights Of Investors (I) Are investors required to be represented in an on-going securitisation transaction by a professional trustee or trust company or similar participant which is independent of the originator and which has control of the assets? Please describe these mechanisms and specify whether they are provided for in the law.
Austria	There is no such particular requirement as described above. Only for securities which were issued by an Austrian entity (or in Austria, or if they are [payable?] in Austria) the law provides that in certain situations a common representative (*Kurator*) must be appointed by the court, who represents the investors.
Belgium	
Denmark	
England and Wales	There is no specific requirement for a professional trustee to represent the investors. In practice, an SPV would normally grant charges over the pool of assets securitised in favour of a security trustee acting on behalf of the investors.
Finland	No.
France	No. Unlike the bonds or notes issued by French commercial companies, neither the Financial Securitisation Law of 1 August 2003 nor the [Decree number/year](hereinafter the 'Decree') provide for any specific legal regime for the representation of the holders of debts securities issued by FCCs. French company law provides that holders of notes or bonds are necessarily grouped for the purpose of the exercise of common rights in a *masse* (which is a body with separate legal personality). The grouping of note holders in a *masse* and their representation by a representative is optional in the case of FCCs and needs to be addressed in the terms and conditions of the notes. The investors who have acquired units or debt securities issued by FCCs are represented by the management company and the custodian who created the FCC and must at all time act to protect the interests of the investors. The unitholders are recognized however a right granted to them by Article L.214-48 of the Monetary and Financial Code (*Code Monétaire et Financière*, CMF) which is granted by Articles L.225-30 and L 225-31 of the Commercial Code to shareholders and which consists in a right given to shareholders holding at least 5 % of the capital of the company to raise question in writing to the company on management decisions. Something wrong with this sentence – should it be '…however. A right is granted to them by… pursuant to Aricles…'
Germany	Investors are not required to be represented by a professional fiduciary [trustee?][1]. However, in practice it is very common to have such a person. This person acts for the benefit of and with particular regard to the interests of the investors. Typically the rights and obligations of the fiduciary are set out in an agreement between it, the SPV and the originator. The agreement is typically set up as a contract for the benefit of a third party (*echter Vertrag zugunsten Dritter*) pursuant to § 328 of the German Civil Code (*Bürgerliches Gesetzbuch*), so that the investors have the right to demand that the trustee performs its duties under the agreement. [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.

COUNTRY	QUESTION 8: Rights Of Investors (I) Are investors required to be represented in an on-going securitisation transaction by a professional trustee or trust company or similar participant which is independent of the originator and which has control of the assets? Please describe these mechanisms and specify whether they are provided for in the law.
Greece	Investors are not required to be represented, but the Securitisation Law, on the other hand, does not prevent investors from appointing such trustees (always in accordance of the applicable provisions of foreign jurisdictions, as the concept of 'trustee' is not known in Greek law.
Ireland	There is no requirement under Irish law for investors to be represented by a trustee. However, it is common for a trustee to [hold the benefit?] of the issuer's covenant to pay interest and principal on the notes in trust for the note holders and for a security trustee to hold the benefit of the transaction security package on trust for the benefit of the [transaction secured?] creditors (including the note holders).
Italy	The concept of trust is not recognised under Italian law. In securitisations regulated by the Securitisation Law, investors are represented by a 'representative of the noteholders'. The representative of the noteholders is normally appointed in the intercreditor agreement that sets forth its duties and powers, which include the protection, exercise and enforcement of the note holders' rights against the issuer. In the light of the functions and powers attributed to the representative of the noteholders, the ability of individual note holders to commence proceedings or take individual measures against the issuer would normally be subject to limitations, unless such actions have been approved by the meeting of the note holders in accordance with the [rules of the organisation of the note holders.?]
Luxembourg	It is not a requirement but investors may be represented. Article 67 of the Securitisation Law thus provides that the investors and creditors of a securitisation undertaking may entrust the management of their interests to one or more 'fiduciary-representatives'. More generally, Article 66 of the Securitisation Law provides that the holders of debt instruments issued by a securitisation undertaking benefit from the company law provisions organizing the representation of bondholders (i.e. Articles 86 to 97 of the Law on commercial companies of 10 August 1915), even if the securitisation undertaking is a fund. Such provisions enable either the securitisation undertaking or the holders of the debt instruments to appoint a representative of the holders of the debt instruments. The issuance agreements of such debt instruments may however deviate from the abovementioned Articles 86 to 97, especially if a fiduciary-representative is entrusted with the functions of a representative of the bondholders (Article 70 of the Securitisation?Law), in order not to limit the powers of such a fiduciary-representative, which are broader than those of a representative of bondholders under company law. The fiduciary-representative under the Securitisation Law is a 'security trustee' who will be able, *inter alia*, to take and hold security interest and guarantees, and receive payments for the account of the investors and creditors of the securitisation undertaking on a fiduciary basis, so that such rights and assets form a fiduciary property separate from the fiduciary-representative's own assets (Article 71 of the Securitisation Law). In view of these prerogatives, fiduciary-representatives must be authorised by the Minister of Finance. They must be set up in the form of stock companies having a share capital and own funds at least equal to EUR 400 000. They may not exercise any activities other than their principal activity, except on an ancillary basis (Article 79 et seq. of the Securitisation Law).
The Netherlands	
Portugal	The concept of trustee as it exists in common law jurisdictions is not recognised in Portugal. As mentioned above[which question?], however, the majority of the securitisation transactions carried out in Portugal are two-step transactions which usually involve FTC's and an offshore SPV which buys the units, issues bonds and places them in the international market (note that the same structure can be used with an STC, which has been the case in a couple of situations).

<table>
<tr><td rowspan="2">COUNTRY</td><td>QUESTION 8: Rights Of Investors</td></tr>
<tr><td>(I) Are investors required to be represented in an on-going securitisation transaction by a professional trustee or trust company or similar participant which is independent of the originator and which has control of the assets? Please describe these mechanisms and specify whether they are provided for in the law.</td></tr>
<tr><td></td><td>This international structure usually involves a trustee at the second tier or international level.

The roles of the trustee in this context typically include the following.
▪ replacement of the servicing agent,
▪ monitoring of the issuer’s activities,
▪ overseeing note holder meetings,
▪ enforcement of security.

The trustee is granted a beneficial ownership in the units held by the SPV on behalf of the note holders. Since the SPV is the sole unit holder of the securitisation units issued by the fund, it is possible for the trustee to have unanimous discretion to [vote the units?] on behalf of a class of note holders in accordance with the trustee documentation.

In a national FTC structure, investors (unitholders) are represented by the FTC’s managing entity. The latter acts exclusively on behalf of the holders of the securitisation units of the fund. unitholders?

In a national STC structure a ‘note holder’s representative’ (NR) (representante comum dos obrigacionistas) can be incorporated into the structure to look after the rights of investors, and to enforce individual note holders’ rights on a collective basis. The NR may be a law firm, a registered accountant, an individual with full legal capacity (which means a person who is neither underage, nor considered judicially disqualified or disabled), a credit institution or another entity which is authorised to render representation services in any EU Member State (and which is not in a group relationship with the STC). The role of the NR is defined in the terms and conditions relating to the notes and can include the following powers:
▪ the exercise, on behalf of the note holders, of the rights of the note holders granted by law or by the terms and conditions of the notes,
▪ involvement in legal, [execution] and insolvency proceedings, on behalf on the note holders,
▪ collection and examination of relevant documentation provided by the shareholders,
▪ provision of relevant information to the note holders.
▪ notification to the Portuguese Securities Commission of any serious irregularities in the management, supervision or accounting procedures of the STC, which in turn may decide to revoke the STC’s legal right to continue business.

It is also possible for the STC to purchase the pool of assets, and issue SBs related to that specific asset pool to an offshore SPV. If this occurs the transaction would have a trustee whose role would be the same as described above.</td></tr>
</table>

COUNTRY	QUESTION 8: Rights Of Investors (I) Are investors required to be represented in an on-going securitisation transaction by a professional trustee or trust company or similar participant which is independent of the originator and which has control of the assets? Please describe these mechanisms and specify whether they are provided for in the law.
Spain	No, but the management company [of the funds?] must act diligently and protect the investors' rights and keep them informed.
Sweden	Yes to achieve perfection. Normally we would have a security/note trustee/agent or a conduit administrator or similar based on security and contract law. The structures vary.

COUNTRY	**QUESTION 8: Rights Of Investors**
	(II) Does the law and [structural characteristics of what?] encourage and support the development of a secondary market in securitisation instruments?
Austria	No (although we are also not aware of any discouraging elements in this respect).
Belgium	
Denmark	
England and Wales	Yes – securitisation instruments are generally structured to be freely transferable (subject to applicable selling or regulatory restrictions). The legal structure of transactions in the major securitisation asset classes tends to conform to established models, which aids review by secondary market investors and their counsel.
Finland	There are no specific restrictions which would prevent such development.
France	The development of a secondary market is subject to the following restrictions: As a general principle and pursuant to Article L.214-44 of the CMF units and debts issued by FCCs may not be sold by way of unsolicited approaches (*démarchage*). In addition, Article 5 of the Decree provides that units or debt securities issued by an FCC and bearing the risk which were acquired by the FCC in accordance with its management strategy may only be subscribed for or held by certain categories of investors: - qualified investors, - non-French resident investors, - the assignor of the securitised receivables or a company which is controlled by such assignors, - the swap counterparty which has entered into the swap agreement. According to Article 24 of the Decree, *fonds commun de placement* which are connected to a bank having assigned its receivables to an FCC may not hold more than 5 % of the units issued by the relevant FCC.
Germany	A liquid secondary market is of key importance to the long-term success of the securitisation market. In Germany over the past years, liquidity in the secondary market has significantly increased, in particular due to the rise of synthetic securitisations. The securities held by investors can be freely traded in the over-the-counter market and an overall increase in market volume will further facilitate secondary market trading. Another factor which will encourage/encourages secondary market trading is the standardisation of the securitisation products.
Greece	Given that the distribution can only be effected through private placement (restricted to 150 persons), the development of a secondary market is not supported.
Ireland	Given the increasing use of Irish SPVs for cross-border securitisation transactions, we believe that the answer is yes.
Italy	As specified under question 2(VIII), the notes issued under a securitisation transaction regulated by the Securitisation Law are financial instruments for the purposes of Italian securities laws and, as such, fall within the relevant provisions of the Consolidated Finance Law. [year or number] Pursuant to the Securitisation Law, notes issued under a securitisation transaction may be either offered to the public or privately placed with professional

COUNTRY	QUESTION 8: Rights Of Investors (II) Does the law and [structural characteristics of what?] encourage and support the development of a secondary market in securitisation instruments?
	investors. In both cases, according to Article 2 of the Securitisation Law, the SPV or the company issuing the notes (if different from the SPV), must prepare a prospectus. If the notes subject to the securitisation transactions are offered to the public, the rules on ‘Solicitation of Public Savings’ provided in the Consolidated Finance Law would apply (Article 94 *et seq.*). In particular, Article 94(2) lists the information which must be included in the prospectus. In this case, the securitisation transaction is also subject to credit rating by qualified third parties, i.e. rating agencies. If the notes are listed on a stock exchange, the relevant stock exchange rules would also apply. Conversely, if the notes are privately placed with professional investors, the information that must be included in the offering memorandumprospectus? is significantly limited, as indicated in Article 2 of the Securitisation Law (e.g. indication of the assignor and the assignee company, description of the transaction, both with reference to claims and notes, indication of the persons responsible for managing the issue and the placement of the notes, the minimum essential content of the notes issued, costs of the transaction and any shareholding relationship between the assignor and the assignee).
Luxembourg	There is nothing in the law that would hinder such development.
The Netherlands	
Portugal	Securitisation notes and units can be listed in a secondary market, either in Portugal or abroad.
Spain	
Sweden	No specific legal restrictions. Please note general prospectus requirements (and consumer protection provisions). Typically, we believe that the secondary market is not very active.

COUNTRY	QUESTION 8: Rights Of Investors (III) Are investors or potential investors entitled to continue to receive or obtain relevant information following their investment on a regular basis without legal or regulatory impediment in a form which enables comparisons to be made with other securitisation transactions of a similar type?
Austria	No specific rules exist in this respect. The SPV would have to comply with statutory requirements to publish financial statements. If the securities are publicly offered (or listed on a regulated market) the SPV would have to comply with the Prospectus Directive [2][No]
Belgium	
Denmark	
England and Wales	The rules relating to the minimum required information to be disclosed to investors in the UK are undergoing major reform following a number of EC laws forming part of the Financial Services Action Plan. The [International Financial Reporting Standards/International Accounting Standards Regulation,years?] the Prospectus Directive and the Transparency Directive [3]are the prime examples of the EC legislation affecting and regulating the disclosure of information to potential investors.
Finland	Yes, they are entitled to such information.
France	FCCs' units or debt securities can be either publicly or privately placed. All public offerings require the preparation of an write out AMF-approved *note d'information* (information memorandum or prospectus). The unitholders have the right to obtain information at regular intervals concerning the FCC's assets. The relevant rules are contained in AMF Regulation 94-01 and apply to FCCs whose units or debts securities are offered to the public. Within four months of the end of the FCC's financial year, the management company must publish the FCC's account and a report on its activities and assets. Within three months of the end of the first six months of an FCC's financial year, the management company must also publish a more limited report. [What about the implement of the Prospectus Directive in France?]
Germany	There are no legal requirements obliging the originator to inform the investors. However, such information rights are often contractually agreed to.
Greece	Yes.
Ireland	The flow of information to investors is generally provided for in the securitisation documents, rather than being a separate requirement of Irish law. Where bonds are listed on the Irish Stock Exchange, its rules regarding equal treatment of investors and the dissemination of information to the market will be relevant. Irish insider dealing rules may also be applicable.

[2] (Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (Text with EEA relevance)).

[3] (Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC)

COUNTRY	**QUESTION 8: Rights Of Investors** (III) Are investors or potential investors entitled to continue to receive or obtain relevant information following their investment on a regular basis without legal or regulatory impediment in a form which enables comparisons to be made with other securitisation transactions of a similar type?
Italy	At present there is no obligation to update the prospectus provided to note holders from time to time. Pursuant to the transaction documents, the parties to the transaction (such as the paying agent and the servicing agent) have the duty to inform the representative of the note holders of any information that may be relevant for investors and potential investors. In addition, the representative of the note holders may request from relevant parties any specific additional information that may be of interest to investors and potential investors. Please note that different rules concerning the information to be provided pursuant to a prospectus issued to the public (possibly including an obligation to update such a prospectus) could be enacted following the implementation of the Prospectus Directive in Italy (due on 1 July 2005).
Luxembourg	Investors are entitled to receive information annually via the corporate accounts. Pursuant to Article 47 of the Securitisation Law, securitisation companies must comply with the Law on commercial companies [on corporate accounts.as regards corporate accounts?] It is expressly provided that their management reports must contain all material information relating to their financial situation which could affect the rights of investors. Securitisation funds are subject to the accounting provisions applicable to undertakings for collective investment (Article 50 of the Securitisation Law)
The Netherlands	
Portugal	If the units/notes are offered to the public, the general rules on public offers (including previous registration and disclosure of a prospectus) will apply (Articles 34 and 60 of the Securitisation Law). Information on the investment made must be provided on a regular basis and there are no legal or regulatory impediments to the disclosure of such information.
Spain	The management company must file annually with the Securities Commission the annual accounts of the fund and the auditors' report together with any other information that it may require [to keep the information updated.?] This information is available to the public.
Sweden	Yes, this is market practice for term transactions. Reporting is provided for by the prospectus and by transaction contracts.

COUNTRY	QUESTION 9: Legal Obstacles To Cross-Border Securitisations And Applicable Law (I) Please identify any important legal obstacles/legal uncertainties concerning cross-border securitisation in your jurisdiction?
Austria	In the absence of specific legislation and case-law, legal uncertainties exist in the areas of: treatment for stamp duty and VAT purposes, the risk of re-characterization as a secured transaction, and data protection requirements.
Belgium	
Denmark	
England and Wales	Certain concerns and legislative pressures are caused by various EC and domestic legislation, including: • The EC Company Law Action Plan: 'public interest entities' and 'listed companies' as defined could potentially include SPVs, which would trigger compliance with the requirements concerning audit committees, external audit, governance reports, non-executive directors, etc. • The EC Insolvency Regulation (Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings): uncertainty as to the interpretation of 'centre of main interests' could have an impact on the assumptions in the legal opinion. • The EC Prospectus Directive: application of disclosure requirements to securities issued by trustees and synthetic asset-backed securities is unclear; concern as to the lack of clear definitions (e.g., 'domicile' of the issuer). • The EC Consumer Credit Directive[4]: implementation could hinder the flexibility of the consumer credit market in the UK. The Pensions Act 2004: This Act causes various concerns for securitisation transactions where an originator's group includes a 'defined benefit pension scheme' (DBPS). It provides for an increase in funding requirement to cover?for shortfalls in DBPSs giving a new power to the regulatorwho is this? to pursue 'connected' persons. For example, [if an off-balance sheet SPV has a common director with the 'employer',not clear, what employer?] the SPV is 'connected' and caught by the Act. A security trustee will also be 'connected' under the Act, if it has a share charge with more than one-third of the voting rights in an employer company.
Finland	There are no legal obstacles but the taxation obstacles can have an effect.
France	As already mentioned at question 2(IV), despite the fact that FCCs are not considered as credit institutions, Article L.511-6 of the CMF provides that they may purchase non-matured receivables. However in the case of pan-European securitisation, an SPV incorporated outside France cannot be used because they do not benefit from the exemption of Article L.511-5 of the CMF. Consequently the "banking monopoly" principle is a legal obstacle to cross-border securitisation. Please note that discussions are ongoing between the French Banking Federation (*Fédération Française des Banques*) and the Treasury in order to have this obstacle removed and Article L.511-5 modified.

[4] Not yet adopted – See the proposal for a directive of the European Parliament and of the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers, COM/2002/0443 final.

COUNTRY	QUESTION 9: Legal Obstacles To Cross-Border Securitisations And Applicable Law
	(I) Please identify any important legal obstacles/legal uncertainties concerning cross-border securitisation in your jurisdiction?
Germany	The main areas that cause legal obstacles are (i) taxation (see question 7); and (ii) banking secrecy and data protection (see question 5). The substantive law governing assignments of receivables does not raise any particular issues. However, as participants in a cross-border securitisation frequently come across the applicable law of a foreign jurisdiction requiring the perfection of assignment during their due diligence, [this is now grammatically correct but I am not sure if it is clear?] a specific form (writing or registration) orof? Not clear notification of the debtor could be regarded as obstacles.
Greece	a) Securitisation can only take place through private placement (Article 10(1) of the Securitisation Law); this restriction has been considered necessary because, as stated in the explanatory memorandum to the draft Securitisation Law, the concept of securitisation is new in Greek law and practice. b) There are no provisions in the Securitisation Law dealing with the risk of 'dilution' of the securitised assets, i.e. if and to which extent such assets are vulnerable with regard to objections, counterclaims, rights of set-off, etc. of the debtors.
Ireland	The Irish law relating to securitisation transactions could be improved in the following areas: (a) clarification of the nature of a 'true sale' and a corresponding reduction in re-characterisation risk; (b) modernisation of securities laws and public offer rules (this is due to happen shortly in connection with the implementation of the Prospectus Directive); (c) some further tax modifications, including for example the extension of the Irish withholding tax 'quoted eurobond' exemption to registered instruments.
Italy	There are no major legal obstacles to cross-border securitisation under Italian law. There will be several issues to take into account in a cross-border securitisation, including bankrupcty issues, formalities concerning perfection of the assignment of receivables, and regulatory issues relating to issuance of the notes in Italy. Please consider furthermore the limited scope of the Securitisation Law (i.e. it applies only to SPVs incorporated under Italian law).
Luxembourg	No. The Securitisation Law creates a flexible and reliable environment for securitisation transactions, including cross-border transactions, which constitute the bulk of securitisation transactions in Luxembourg. Of course, obstacles may arise if a foreign law governing one or several parties to the transaction (originator, servicing agents,…) foresees different solutions to the various issues raised.
The Netherlands	The fact that under Dutch jurisdiction an assignment of a future receivable will not be effective to the extent the receivable comes into existence after or on the date on which the seller has been declared bankrupt or has had a suspension of payments granted to it, stands in the way of the securitisation of operational lease contracts or assignment of future rent.
Portugal	The Securitisation Law was conceived to deal with transactions originated in Portugal. We have not yet tested its compatibility [and conciliation?] with other legal regimes, but it is possible that some inefficiencies might de detected.
Spain	Different types of securitisation vehicles. Different treatment of legal aspects (true sale, security interest…) Tax treatment. Not clear
Sweden	Perfection: the extent to which the originator can be allowed to have access to the assets.

COUNTRY	QUESTION 9: Legal Obstacles To Cross-Border Securitisations And Applicable Law
	(II) Does the law recognize the parties' choice of the law of a single jurisdiction/or laws reasonably connected to the transaction to govern the documentation dealing with the isolation of the assets irrespective of the law governing the underlying assets?
Austria	A choice of law may be made but the effectiveness of the transfer of assets will in all cases be governed by the law of the location of the asset (or the law otherwise governing the asset).
Belgium	
Denmark	
England and Wales	Yes, under the Contracts (Applicable Law) Act 1990, which incorporated the Convention on the Law Applicable to Contractual Obligations of 19 June 1980 (hereinafter the 'Rome Convention') the parties to a contract are generally free to decide which country's law shall govern their contract. Therefore, the parties to a contract for the sale of receivables are free to choose which country's law shall govern their contract, irrespective of the law governing the receivables themselves. This applies whether or not the parties choose the law of a jurisdiction in which one of them is located.
Finland	Yes.
France	Article L 214-43 of ??mentions that the assignment of receivables is valid and effective between the parties and against third parties from the date of execution of the assignment and no further formality is required. With a view to improving the existing regime regarding international securitisation, the Financial Securitisation Law dealt with the effectiveness of the assignment vis-à-vis foreign assigned debtors.
Germany	Pursuant to Article 3, 8 and 10 of the Convention on the Law Applicable to Contractual Obligations of 19 June 1980, which have been implemented by Articles 27, 31 and 32 of the Introductory Act to the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch*, hereinafter the 'Introductory Act'), the principle of free choice of law applies to contractual agreements creating obligations (*Vertragliche Schuldverhältnisse*) such as fiduciary agreements. The choice of law must be made expressly or must arise implicitly with sufficient certainty from the terms and conditions of the contract. As the conflict of law rules refer directly to the substantive law, any *renvoi* is excluded (Article 35(1) of the Introductory Act). However, a German court would not uphold the parties' choice of law to the extent that the chosen law would violate German public policy. The choice of law is also limited if the circumstances of the contractual relationship are connected to only one State. In this case any deviation from any rules which, pursuant to the laws of such a State apply irrespective of what the parties have agreed (compulsory law), is not relevant (Article 27(2) of the Introductory Act).this sentence is confusing As far as the isolation of assets through the transfer of assets to the SPV is concerned, the principle of free choice of law does not apply to contractual agreements on assignments or title transfer. They are governed by separate conflict of law rules, which do not permit any deviation by agreement (Article 33 of the Introductory Act: assignments of receivables, Article 43 et seq. of the Introductory Act and § 17(a) of the Custody Act [year](*Depotgesetz*). The same applies to insolvency law (§§ 343 et seq. of the Insolvency Act [year]).
Greece	Yes, provided that the Securitisation Law is complied with.
Ireland	**Contractual aspects**: The Convention on the Law Applicable to Contractual Obligations of 19 June 1980 (hereinafter the 'Rome Convention'), other than Article 7(1) thereof, has force of law in Ireland by virtue of the Contractual Obligations (Applicable Law) Act 1991.

COUNTRY	QUESTION 9: Legal Obstacles To Cross-Border Securitisations And Applicable Law (II) Does the law recognize the parties' choice of the law of a single jurisdiction/or laws reasonably connected to the transaction to govern the documentation dealing with the isolation of the assets irrespective of the law governing the underlying assets?
	Subject to and in accordance with the provisions of the Rome Convention, the choice of a law recognised by the Rome Convention will be applied by the courts if the relevant document or any claim thereunder comes under this jurisdiction. The Rome Convention allows for a chosen governing law to be displaced in certain circumstances, for example, where applying a particular foreign law (as applicable) would be manifestly incompatible with public policy or would be incompatible with an applicable mandatory rule of Irish law (one that under Irish law cannot be displaced by contract). **Proprietary aspects**: Pursuant to the general conflict of laws rules, the relevant law governing the proprietary aspects of a proprietary (including security) interest in collateral is the law of the location (*lex situs*) of the collateral and, if the law under which the collateral is created is different to the law of the location of the collateral, the law governing the creation of the collateral will also be considered. In the case of perfection, it is the law of the *lex situs* that is relevant.
Italy	As mentioned above,please state which question the segregation of the SPV's assets pertaining to a securitisation under the Securitisation Law is made by operation of law and therefore only Italian law applies as far as the segregation of assets is concerned.
Luxembourg	The parties may choose a law reasonably connected to the transaction to govern the documentation dealing with the isolation of the assets but, depending on the type of assets, they will have to take the law governing the assets into consideration to verify the effectiveness and enforceability of the transfer. Indeed, Article 58 of the Securitisation Law provides that the law governing the assigned claims determines the assignability of such claims, 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 (this reflects the rules laid out in the United Nations Convention on the Assignment of Receivables in International Trade of 2001, which was signed by Luxembourg on 12 June 2002)
The Netherlands	Yes. In accordance with Dutch case law (HR May 16 1997, NJ 1998, 585, Brandsma q.q./Hansa Chemie AG) the assignor (i.e. the seller) and the assignee (i.e. the purchaser) of receivables can freely choose the law to govern the sale and assignment and this choice of law is valid and binding as between the assignor and assignee and as against third parties, other than the debtor. It remains unclear under Dutch law whether such choice of law is valid and binding as against the debtor. As against the debtor the validity of the assignment is arguably governed by the law governing the receivable. Most authors believe, however, that in the event the assignor and the assignee have made a valid choice of law which is different from the law governing the receivables, that choice of law is also valid against the debtor. The debtor may, however, rely on the law governing the receivables in respect of the topics set for in article 12(2) of the Rome Convention,. This means that, in the event the chosen law is different from the law governing the receivables, the law governing the receivables will solely determine: (i) the assignability of the receivable; (ii) the relationship between the assignee and the debtor: (iii) the conditions under which the assignment can be invoked against the debtor; (iv) any question whether the debtor' s obligations have been (fully) discharged.
Portugal	Under Articles 3 and 12 of the Convention on the Law Applicable to Contractual Obligations of 19 June 1980, the parties can freely choose the law that will govern their mutual obligations as seller and purchaser of the receivables. However, the law governing the receivables to which the assignment relates will determine: a) its assignability;

COUNTRY	QUESTION 9: Legal Obstacles To Cross-Border Securitisations And Applicable Law (II) Does the law recognize the parties' choice of the law of a single jurisdiction/or laws reasonably connected to the transaction to govern the documentation dealing with the isolation of the assets irrespective of the law governing the underlying assets?
	b) the relationship between the assignee (purchaser) and the debtor; c) the conditions under which the assignment can be invoked against the debtor; and d) any question on whether the debtor's obligations have been discharged.
Spain	Generally speaking, yes, but there will always be some aspects that must be governed by Spanish law, i.e. creation of security interest, assignability of the receivables, formalization of the transfer, effectiveness against the debtor and third parties, and whether there is a? 'true sale'.
Sweden	Yes, as between the parties. However, perfection in relation to a Swedish pledgor/transferor will be governed by the applicable laws, typically the laws where the asset is maintained and with respect to receivables where the debtor is located.

COUNTRY	QUESTION 9: Legal Obstacles To Cross-Border Securitisations And Applicable Law (III) In multi-jurisdictional transactions, does the law recognize the parties' choice of a particular jurisdiction reasonably connected to the transaction to govern the documentation dealing with the isolation of the assets irrespective of: (a) the laws of the jurisdiction of the parties; (b) the jurisdiction where the matter may be adjudicated; (c) the laws of the jurisdiction where the assets or debtors are located?
Austria	See question 9(II).
Belgium	
Denmark	
England and Wales	(a) Yes, even if both parties are located in England or Walesand fulfilment of all obligations under the contract will take place in England, the choice of foreign law governing the contract will be recognised, but English courts will continue to apply mandatory rules of English law to it. There are various exceptions to these rules. Certain classes of contract, including insurance contracts covering risks situated in the EU, are excluded from the Rome Convention, and this extends to receivables arising from such contracts. These contracts will be governed by the pre-existing common law, which will generally allow the parties' express choice of law to prevail. (b) This is now subject to the provisions of the Insolvency Regulation and the uncertain area as to the treatment of "centre of main interest" COMIs. ..the uncertainty as to the treatment…should also be noted? (c) Yes, provided the contract is enforceable under the law governing that contract and not invalidated by the mandatory rules of the jurisdiction in which the seller is located, including mandatory insolvency rules. In the case of a sale agreement, up to three different systems of law may be applicable to determine whether the agreement is a 'true sale': the law governing the sale agreement will determine whether it is enforceable against the seller and characterised as a sale; the law of the jurisdiction in which the seller is located will apply mandatory laws that may affect the validity of the sale agreement – for instance, mandatory insolvency rules that apply on the seller's insolvency in its home jurisdiction; and the law governing the underlying receivables will determine what steps are required to perfect their transfer (and this may in turn require a reference back to the law governing the sale agreement to determine whether those steps have been taken). Even if the sale contract is enforceable under its governing law, if the underlying obligations of the receivables have not been transferred pursuant to their governing law the purchaser may be left only with a claim against the seller's estate on insolvency.
Finland	If the transaction includes real estate the location? of the court must be the same as the? location of the real estate.
France	See question 9(II).
Germany	The answer given to question 9(II) applies but with the following exception: as far as contractual agreements creating obligations are concerned, the limitations provided in Article 27(2) of the Introductory Act do not apply. If a matter is eligible for a choice of law, the choice is valid and enforceable irrespective of the jurisdictions of the parties, or the jurisdiction where the matter is adjudicated, or where the relevant asset is located.

COUNTRY	QUESTION 9: Legal Obstacles To Cross-Border Securitisations And Applicable Law (III) In multi-jurisdictional transactions, does the law recognize the parties' choice of a particular jurisdiction reasonably connected to the transaction to govern the documentation dealing with the isolation of the assets irrespective of: (a) the laws of the jurisdiction of the parties; (b) the jurisdiction where the matter may be adjudicated; (c) the laws of the jurisdiction where the assets or debtors are located?
	As outlined above, the choice of law principle does not apply to contractual agreements on assignments or title transfer. They are governed by separate conflict of law rules, which do not permit any deviation by agreement.
Greece	Yes, provided that the provisions of the Securitisation Law are met.
Ireland	See question 9(II).
Italy	The assets that can be securitised pursuant to the Securitisation Law are receivables; it is commonly recognised that under that Law such receivables must be regulated by Italian law. Please also see question 9(II)
Luxembourg	Not quite. Where applicable, Article 23 of Council Regulation (EC) No 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters enables the parties to agree on the competent jurisdiction provided that one or more of the parties is domiciled in a an EU?Member State. Generally, Luxembourg private international law enables the parties to agree on the competent jurisdiction in international commercial matters provided that (i) this is not contrary to any public policy rule (which should not be the case here); (ii) the jurisdiction clause is valid according to the law of the court designated as competent and, as the case may be, according to the law of the court which would have been competent failing such designation.
The Netherlands	
Portugal	See question 9(II).
Spain	Yes, with the same restrictions [described in our answer to question 9(II)?specified above] [and these aspects subject to mandatory rules.?]
Sweden	No (c) will normally apply to Swedish pledgors/transferors.