

Insights

REVITALISING THE EU SECURITISATION MARKET

RECOMMENDATIONS FOR A REVISED REGULATORY FRAMEWORK

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SUMMARY

The European Union's securitisation market has struggled to reach its full potential despite the introduction of the Securitisation Regulation (**SECR**) in 2019. While the market has shown modest growth in recent years, particularly in synthetic securitisations following the introduction of the Simple, Transparent, and Standardised (**STS**) framework for on-balance-sheet transactions in 2021, it remains significantly smaller than pre-2008 levels and highly concentrated in a few Member States.

The Joint Committee (**JC**) of the European Supervisory Authorities (ESAs) has published on Monday, 31 March 2025, a comprehensive report evaluating the implementation and functioning of the **SECR**. This report comes at a critical time as the European Commission considers legislative revisions to the securitisation framework as part of its broader push for a Savings and Investment Union (**SIU**). The report identifies several areas where amendments could enhance clarity, introduce proportionality, and ensure consistent supervision across the Union, all while maintaining robust investor protection.

KEY FINDINGS FROM THE JC REPORT

The JC report identifies several areas where the current securitisation framework could be improved:

SCOPE AND DEFINITIONS

The jurisdictional scope of application needs clarification, particularly for transactions involving both EU and non-EU parties. The definition of "*public securitisation*" may also need revision to better reflect market realities.

DUE DILIGENCE REQUIREMENTS

Current requirements are considered disproportionately burdensome, particularly for investors in securitisations with sell-side parties located outside the EU. The framework does not adequately account for other existing rules addressing similar matters.

STS FRAMEWORK

While generally effective, certain STS criteria could benefit from targeted refinements to enhance efficiency and address implementation challenges.

RISK RETENTION RULES

Further clarification is needed regarding the interpretation of terms like "*predominant source of revenues*" in the context of CLO securitisations.

TRANSPARENCY FRAMEWORK

Current disclosure requirements are often described as excessive, with data that doesn't always align with investors' needs, creating unnecessary reporting burdens.

SUPERVISORY FRAMEWORK

The current fragmented supervision model creates challenges for cross-border transactions and may lead to inconsistencies in oversight.

RECOMMENDATIONS FOR A REVISED SECURITISATION REGULATION

CLARIFY THE JURISDICTIONAL SCOPE OF APPLICATION

The revised SECR should include a clear general provision specifying its scope of application, especially for geographically mixed securitisations involving both EU and non-EU entities. The regulation should apply when at least one securitisation party (sell-side or buy-side) is established in the EU, with EU entities bearing compliance obligations that fall within the jurisdictional reach of EU supervisors.

This would provide legal certainty for market participants without altering the current scope of application in practice. It would merely facilitate understanding of how the SECR applies when some but not all sell-side entities are established in the EU.

REFOCUS DUE DILIGENCE REQUIREMENTS ON RISK ASSESSMENT

A significant overhaul of the due diligence framework is needed to introduce greater proportionality while maintaining investor protection. This could be achieved by:

- a. Introducing a simplified due diligence approach for all institutional investors, focusing on substance over form by allowing flexibility in information format as long as it enables

meaningful risk assessment

- b. Eliminating cross-references to specific SECR articles and instead explicitly defining minimum requirements that investors must verify
- c. Removing the obligation for investors to verify STS criteria compliance, conditional upon either enhanced supervision of originators/sponsors or involvement of supervised third-party verifiers
- d. Allowing delegation of due diligence under strict conditions while ensuring investors retain ultimate responsibility
- e. Providing timing flexibility for documenting due diligence in secondary market investments

This revised approach would lower barriers to entry for new or smaller investors while ensuring all parties have access to necessary information for proper risk assessment.

REFINE THE STS FRAMEWORK

While a comprehensive review of the STS framework is unnecessary, targeted refinements would enhance its efficiency:

- a. Remove duplicate requirements related to risk retention and general transparency from STS criteria
- b. Clarify specific technical aspects of STS requirements for on-balance-sheet securitisations
- c. Consider expanding the list of permitted removals of underlying exposures to accommodate sanctions, objectionable practices, and legal changes affecting enforceability
- d. Revise the allocation of losses and amortization provisions to better reflect the loss-bearing capacity of junior tranches
- e. Evaluate the possibility of allowing insurance and reinsurance undertakings to act as eligible providers of unfunded credit protection

These targeted amendments would address implementation challenges without undermining the framework's overall effectiveness.

CLARIFY RISK RETENTION RULES

The risk retention requirements ensure alignment of interests between originators and investors. However, the current interpretation of the "sole purpose" requirement and the term "predominant source of revenue" in the context of CLO securitisations needs clarification.

The JC recommends that "predominant" should be understood as corresponding to a threshold of more than 50%, meaning that an entity's revenues should come from sources other than securitised exposures for at least 50% of their total revenue. Additionally, the European Commission should explore broadening the definition of "sponsor" to include regulated entities such as CLO managers, addressing concerns about the current model's effectiveness in ensuring economic alignment.

MAKE THE TRANSPARENCY FRAMEWORK MORE PROPORTIONATE

The current transparency requirements impose excessive burdens on sell-side parties without providing commensurate benefits to investors. A revised framework should:

- a. Streamline disclosure templates for public securitisations by focusing on common denominators that effectively cover all asset and transaction types
- b. Transition from loan-level disclosure to stratified (aggregated) data for certain asset classes, particularly those that are revolving in nature, highly granular, or have short-term maturities
- c. Consider exemptions for intragroup securitisations where no third-party investors are involved
- d. Require both public and private securitisations to make disclosures available through securitisation repositories, ensuring consistent requirements across all transactions
- e. Reduce fragmentation by streamlining reporting requirements across various sectoral legislation or authorities

These changes would reduce compliance costs while maintaining the market transparency necessary for investor protection and financial stability monitoring.

ENHANCE SUPERVISORY CONSISTENCY

ADDRESSING POTENTIAL INCONSISTENCIES

The current supervisory framework involves 48 distinct competent authorities (CAs), leading to coordination challenges and potential inconsistencies. Two main options have been identified:

Option 1: Maintain the status quo with enhanced supervisory convergence

This would build upon existing structures like the JC and the SSM securitisation hub, making more systematic use of supervisory convergence tools such as Q&As, opinions, and statements.

Option 2: Develop a more consolidated European supervisory model

This would involve transitioning to a Joint Securitisation Supervision (JSS) under the ESAs, consolidating supervisory mandates to reduce duplication and simplify the framework.

PREFERENCE FOR OPTION 1

The JC considers the first option more proportionate to the current market situation but acknowledges that a more consolidated approach might be beneficial as the market evolves.

Regardless of the broader supervisory approach, there's merit in exploring a harmonized, proportionate supervisory framework for third-party verifiers (TPVs) at the European level, moving from a one-time authorization model to ongoing supervision.

CONCLUSION

The EU securitisation market has significant potential to contribute to the development of European capital markets and support real economy financing. However, realizing this potential requires a regulatory framework that balances investor protection with market efficiency.

The recommendations from the JC report provide a roadmap for revising the SECR to enhance clarity, introduce proportionality, and ensure consistent supervision. By implementing these changes, the European Commission can create a more conducive environment for securitisation while maintaining the safeguards necessary for financial stability.

The revised framework should prioritize substance over form, focusing on the outcomes rather than prescriptive processes. It should also recognize the diversity of securitisation markets and introduce proportionality where appropriate, without compromising on core principles like risk retention and transparency.

Ultimately, a well-calibrated securitisation framework can play a vital role in the broader Savings and Investment Union, channeling capital to productive investments and supporting economic growth across the European Union.

RELATED PRACTICE AREAS

- Securities & Corporate Governance

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