

European Commission Report on the Securitisation Regulation

Background

On 10 October 2022 the European Commission finally published its eagerly anticipated [report](#)¹ (the "Report") on the [Securitisation Regulation](#)². The most notable aspects for SPV issuers are:

- No issues or shortcomings identified in relation to securitisation special purpose entities ("SSPEs") and no recommendation to further regulate SSPEs or to create an SSPE licensing regime;
- The Report invites the European Securities and Markets Authority ("ESMA") to simplify transparency reporting templates for both underlying exposures and wholesale for "private" transactions;
- The Report specifies that EU institutional investors should only invest in securitisations, both EU securitisations and those involving third country issuers, which comply with Article 6 (Risk Retention), Article 7 (Transparency) and Article 9 (Credit Granting) of the Securitisation Regulation;
- No equivalence regime envisaged for simple, transparent, standardised STS³ securitisations at this stage;
- The Commission supports the European Banking Authority ("EBA") [report](#)⁴ on the creation of a specific sustainable securitisation framework and the proposal for an [EU Green Bond Standard](#)⁵ ("EuGBS"); and
- Recommended that guidance be issued to competent authorities in order to ensure harmonised supervision.

¹ COM(2022) 517.

² Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and

Licensing

The Report did not recommend establishing a licensing regime under which limited-licensed banks would perform the functions of SSPEs, have the exclusive right to purchase exposures from originators and sell claims backed by those exposures to investors. The Commission noted that such a licensing system could be detrimental to the independence of SSPEs as it would limit the amount of parties in the market, leading to a higher concentration of risk; such a dynamic would go against the logic underpinning the EU securitisation regime.

Transparency

The Commission retained the private securitisation transaction distinction and encouraged ESMA to draft a dedicated template for such transactions. This is a welcome recommendation which would be anticipated to simplify considerably the transparency requirements for private securitisations.

The Commission also invited ESMA to review the disclosure templates for underlying exposures to address possible technical difficulties in completing the information required in certain fields and to remove possibly unnecessary fields and align them more closely with investors' needs. As part of this, ESMA should consider whether information on a loan-by-loan basis is useful and proportionate to investors' needs for all types of securitisations.

2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

³ 'Simple, Transparent, and Standardised' criteria set out in Regulation (EU) 2017/2402, as amended by Regulation (EU) 2021/557.

⁴ EBA/REP/2022/06.

⁵ A voluntary standard intended to raise the environmental ambitions of the green bond market.

Again, this recommendation is advantageous to participants in the EU securitisation market as it should decrease compliance costs for in-scope structures.

Jurisdictional Issues

The Commission considers it premature to introduce an STS equivalence regime for third country transactions at this time, as the EU STS securitisation framework is based on a demanding set of requirements. Therefore, if a securitisation wishes to achieve the EU STS label, both the issuer and risk retainer vehicles must be located in a European jurisdiction.

The Commission clarified that EU institutional investors may not invest in securitisations unless the originator, sponsor and SSPE, irrespective of their location, are found to be in compliance with their obligations under Article 6 (Risk Retention), Article 7 (Transparency) and Article 9 (Credit Granting) of the Securitisation Regulation. The Report acknowledges this may exclude in-scope EU institutional investors investing in non-EU securitisations unless they comply with such provisions of the Securitisation Regulation in full.

Furthermore, the Commission takes the view that without an amendment of the provision, it is not appropriate to interpret Article 5(1)(e) of the Securitisation Regulation in a way that would leave it to the discretion of EU institutional investors to decide whether or not they have received materially comparable information to that required under Article 7.

As a result, non-EU issuers looking to market transactions to EU institutional investors will likely come under increasing pressure to report to EU standards. The proposed simplification of the EU reporting templates, and particularly the proposal on private transaction reporting, may considerably reduce this friction in due course given that nearly all non-EU securitisations are considered private from an EU perspective.

Sustainable Securitisation

The Commission welcomes the EBA report on the creation of a specific sustainable

securitisation framework. The Commission agrees with the EBA that, at least in the short and medium term, there is no case for creating a dedicated sustainability label for securitisations, considering in particular the low amount of green assets available to be securitised.

The Report is also supportive of the current proposal for EuGBS and the Commission stands ready to assist with the work on specifying the details of securitisation within the EuGBS framework.

Supervision of Securitisation Harmonisation

The Report recommends that guidance be provided to prevent divergences in the interpretation by competent authorities of the Securitisation Regulation and to foster a more harmonised approach. This is a helpful development which would assist in enhancing the overall operating environment for industry stakeholders.

Further Reports

The [Targeted consultation on the review of the EU securitisation framework](#)⁶ included a call for evidence on prudential matters, but this is not covered in the Report; the separate report on prudential matters pursuant to Article 519(a) of the [Capital Requirements Regulation](#)⁷ ("CRR") is expected in the coming weeks.

Proposed legislation on significant risk transfer has been awaited since the EBA published its [report](#)⁸ on significant risk transfer ("SRT") in securitisation under Articles 244(6) and 245(6) of the CRR in October 2020. Once the prudential report and any further proposals on SRT are published, the Commission may go further in its legislative proposals.

Conclusion

The Report suggests the Commission has engaged with feedback from market participants and taken a pragmatic approach in its assessment of the Securitisation Regulation.

⁶ Ended September 2021.

⁷ Regulation 575/2013/EU.

⁸ EBA/REP/2020/32.

No legislative proposal is currently proposed to amend the Securitisation Regulation and it remains to be seen to what extent the recommendations contained in the Report will be implemented, but the Commission's views will influence how stakeholders in the securitisation market interpret a number of provisions of the Securitisation Regulation.

We will continue to monitor developments.

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

Dublin

Stephen McLoughlin

Partner

+353 1 619 2038

stephen.mcloughlin@maples.com

Callaghan Kennedy

Partner

+353 1 619 2730

callaghan.kennedy@maples.com

Una McLaughlin

Associate

+353 1 619 2798

una.mclaughlin@maples.com

October 2022

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