European Commission proposes amendments to EU Securitisation Regulation

July 2025

The European Commission has published its legislative proposals for targeted amendments to the EU Securitisation Regulation ("EUSR") and accompanying amendments to the securitisation aspects of the Capital Requirements Regulation ("CRR")[1], which take into account several supervisory assessments of the functioning of the EUSR since its introduction in 2019, as well as industry feedback to its recent Targeted Consultation and Call for Evidence on the EUSR.

Many of the proposed changes represent positive steps to address calls for simplification and proportionality in the securitisation regulatory framework, and aim to revive the securitisation market across Europe. However, in some instances, the proposals appear to go further than the market had anticipated, and others create additional complexities, which, in our view, may increase the compliance burden on transaction parties in a way that may run counter to the aim of making securitisation a more frequently used funding option.

As part of this 'holistic' review of the securitisation framework, a Call for Feedback has also been issued on related changes to the treatment of securitisations under the Liquidity Coverage Ratio ("LCR"), and amendments to capital charges for insurance and reinsurance companies under the Solvency II Directive are to follow.

The EUSR and CRR proposals will now be reviewed – and likely amended – by the European Council and Parliament. If agreement on those amendments cannot be reached, the proposals will then be negotiated among those bodies in the so-called "trialogue". This process could take anything from 12-18 months but may be shorter depending on how quickly agreement can be reached. Amendments to the LCR and Solvency II Delegated Regulations will not be adopted until the final texts of the EUSR and CRR proposals have been agreed. All this means that it may be 2027 by the time we see the amended securitisation regulatory package taking effect across the EU.

In this briefing note, we explore the most significant changes proposed by the Commission and consider their impact.

1 See: Commission proposes measures to revive the EU securitisation framework - European Commission.

The EUSR proposals

Distinction between public and private securitisations

Proposed amendments to the definitions would define a 'public' securitisation as one meeting any of the following conditions:

- A prospectus is required to be drawn up in accordance with the EU Prospectus Regulation;
- The securitisation is marketed with notes constituting securitisation positions admitted to trading on an EU trading venue, i.e. a regulated market, Multilateral Trading Facility ("MTF") or Organised Trading Facility ("OTF")[2];
- The securitisation is marketed to investors and the specific terms are not negotiable among the parties[3].

A 'private' securitisation would be one that does not meet any of the above conditions. This widely drawn definition of 'public' securitisation would catch a much wider set of securitisations than currently, for example, technical listings and those admitted to trading on exchange-regulated markets within the EU that are currently considered private deals.

The distinction is important with regard to the proposed application of transparency requirements (see below). An envisaged future simplified transaction reporting template for private securitisations would benefit only a limited set of transactions regarded as private under the new definition. In addition, the proposed expansion to private deals of the requirement to submit reporting templates to Securitisation Repositories adds an additional burden which could add significant time and costs to transactions.

Due diligence

Verification

Welcome simplifications and the introduction of greater proportionality are proposed in relation to the due diligence requirements. For deals with EU sell-side parties, the proposed amendments would mean that EU investors would no longer be required to verify certain information (including that risk retention and transparency requirements have been met by the sell-side) prior to investing in a securitisation. The rationale for this is that the sell-side parties are established and supervised in the EU (and therefore subject to sanctions for non-compliance). Importantly, however, these amendments would only apply to transactions involving EU sell-side parties; for investments in transactions with non-EU sell-side parties, investors would still have to verify the sell-side's compliance with all of the requirements under the EUSR, including that the transparency requirements have been met "in accordance with the frequency and modalities provided for [by Article 7(1)]". Those requirements would mean that, as well as EU investors not benefitting from these simplifications of due diligence for non-EU securitisations, any private securitisations from third-countries would have to make the required reports to an EU Securitisation Repository.

2 As defined in Article 4(1) point 24 of Directive 2014/65/EU on Markets in Financial Instruments.

3 By which the Commission means the notes are offered on a "take it or leave it" basis (see p11 of the Explanatory Memorandum preceding the EUSR proposals).

Due diligence (continued)

Other simplifications and relaxations

Other proposed simplifications of the due diligence rules include a more principles-based approach to investors' assessment of the risk characteristics and structural features of the transaction, and the requirements of their written diligence procedures. In addition, it appears that STS compliance would no longer need to be verified.

Certain aspects of the due diligence rules would be waived entirely for investors holding securitisation positions that are guaranteed by a multilateral development bank satisfying certain conditions under the CRR, and those where the first loss tranche representing at least 15% of the nominal value of the securitised exposures is either held or guaranteed by a narrow list of public entities including the EU and "national promotional banks".

The recitals to the proposals also suggest that simplified due diligence may be carried out for investments in certain repeat transactions that are "well-known and transparent". However, there appears to be no detail in the proposed legislative changes to support this statement, leaving a question as to how investors should conduct this simplified due diligence.

Secondary market investments

For secondary market investments, a proposed clarification would provide for investors' due diligence assessment to be documented (note: not "completed") within a "reasonable period of time" not to exceed 15 days after investment.

Sanctions

The proposals would allow national competent authorities to impose administrative sanctions on institutional investors under the EUSR for non-compliance with the due diligence requirements. Since these could result in the imposition of fines representing a percentage of global turnover, there are significant (and disproportionate) potential consequences. Given that existing legislation already imposes sanctions on various categories of institutional investors for breach of due diligence obligations, this appears to be an unnecessary addition which also seems to cut across the advantages of the proposed simplified due diligence requirements.

Delegation of due diligence

The proposed removal of the ability to transfer regulatory responsibility for due diligence to a delegate would be a significant change potentially affecting those investors who currently mandate asset managers to conduct diligence on their behalf. The Commission notes that this is "aligned with other sectoral legislations where delegation of tasks does not transfer the legal responsibility" (namely, the AIFMD and UCITS legislation), but this could impact those investors who rely on delegates to complete diligence where they cannot, and somewhat undermines the parties' freedom to reach commercial agreement on their delegation procedures. Further, the imposition of sanctions for non-compliance with the due diligence requirements (responsibility for which could no longer be delegated) creates an additional risk for investors, potentially disincentivising them further from investing in EU securitisations.

Risk retention

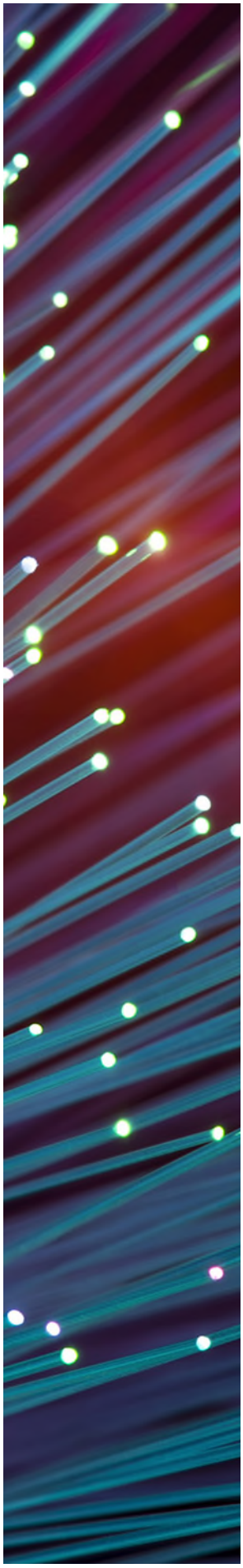
Certain securitisations would be excluded from the risk retention requirement where the first loss tranche representing at least 15% of the nominal value of the securitised exposures is either held or guaranteed by a narrow set of public entities, the list of which would be updated to include "the [European] Union".

Notably, the Commission's proposals do not touch upon the clarifications to the "sole purpose" test that were recommended by the Joint Committee of the European Supervisory Authorities ("ESAs") in its recent "Article 44 Report" on the EUSR[4]. However, since the provisions which flesh out the sole purpose test are contained in the risk retention technical standards and not the EUSR itself, this issue may be dealt with in future changes to the technical standards (despite there being no fresh mandate for the ESAs to do so within the proposed EUSR text).

Transparency

As noted above, the Commission proposes that the EUSR's transparency requirements would apply differently for public and private securitisations. Since the detailed format and content of the transparency requirements is currently contained in separate technical standards, the EUSR proposal provides for the future development of: (i) a dedicated and simplified reporting template for private securitisations that would be largely based on the notification template used within the Single Supervisory Mechanism[5]; and (ii) draft technical standards specifying the information required to be reported and the format of the reporting templates. The Commission suggests that the reporting fields in the existing templates be reduced by at least 35% and require the reporting of aggregate rather than loan-level information where the underlying assets are highly granular and short-term (such as credit card exposures or certain consumer loans). Some mandatory fields would also become voluntary. The European Banking Authority ("EBA") would take on a "leadership" role in developing the technical standards, with the previous consultation of the European Securities and Markets Authority ("ESMA") on streamlined disclosure templates[6] (which was not favourably received by the market) not specifically acknowledged by the Commission.

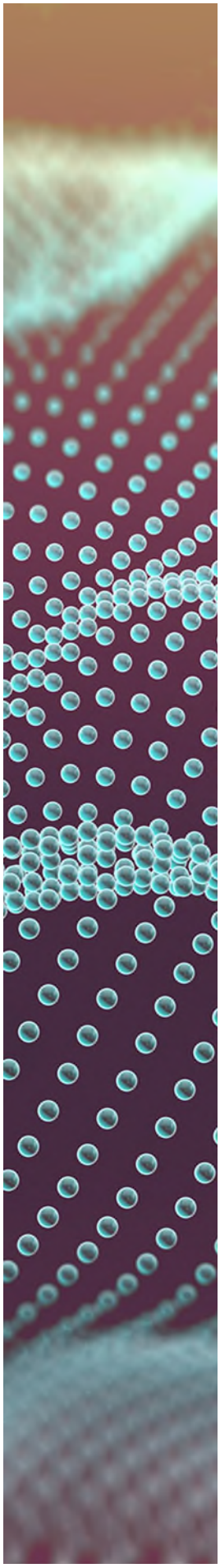
As mentioned above, the proposed amendments provide for the reporting of the simplified private template to Securitisation Repositories, which may further disincentivise third-country sell-side parties from targeting EU investors. However, there would be restrictions on access such that the information reported on private securitisations would only be freely and immediately available to the ESAs, certain supervisory and resolution authorities, national competent authorities and (on request) the European Commission – and not to the wider market.



4 See: JC 2025 14 Joint Committee report on the functioning of the securitisation regulation.

5 The "SSM", the European system of banking supervision comprising the European Central Bank and national supervisory authorities.

6 See our earlier Briefing on ESMA's Consultation: ESMA CP on revised disclosure templates for private securitisation | Simmons & Simmons.



The Simple, Transparent and Standardised (STS) framework

The proposals would modify the requirement for the 100% homogeneity of the underlying exposures in a securitisation of SME loans in order to achieve STS eligibility. Deemed compliance with the homogeneity requirement would apply where at least 70% of an underlying pool consists of SME loans. These are seen as positive developments since the homogeneity requirement is often difficult to meet, particularly for transactions involving SME loans.

For STS on-balance sheet (synthetic) transactions, the requirements for the form of the credit protection agreement would be amended to provide that an unfunded guarantee could be eligible, provided certain requirements are met. These are that the guarantee must be provided by an EU insurer that: complies with Solvency II and uses internal models; has been assigned to Credit Quality Step 3 or better; has at least two non-life business lines; and has assets under management exceeding €20 billion. Not all insurers will be able to meet all four of these criteria so this could restrict the number of insurers able to provide an unfunded guarantee in these circumstances.

Several other technical amendments are proposed to the STS criteria for synthetic securitisations, which the Commission describes as "not substantive". In addition, banking supervisors would take over (from currently designated competent authorities) the role of supervising sell-side parties' compliance with the STS criteria.

The CRR proposals

The proposals for amendments to the CRR are intended to better reflect the actual risks of securitisation transactions and address the concern that capital charges for securitisations are insufficiently risk-sensitive and overly conservative. While the proposals appear to be broadly positive, certain aspects risk bringing additional complexity into the framework. Among the key changes are proposals for:

Addressing capital non-neutrality

To reduce what the Commission describes as "unjustified levels of capital non-neutrality" (i.e. the fact that the capital rules mean that total capital for all tranches of a securitisation is higher than the capital charges that would be applied to the underlying assets if they were held directly), the proposals would make amendments in the following areas that appear, in most cases, to lower the capital requirements:

- Risk weight floors

  For senior positions, the proposals would reduce the minimum risk weightings a bank must apply to securitisation positions (which are currently set at 10% for STS securitisations and 15% for non-STS), so that the risk weight floors would become more proportionate to the average risk weights of the underlying exposures. Under the proposals, a more risk-sensitive method would apply a formulaic approach which uses lower risk-weight floors (the lowest being 5% for STS and 10% for non-STS – although these would only apply to "resilient" securitisations – see below), although there is no risk-weight "cap" proposed which could result, for example, in higher risk weights than currently being applied to riskier assets.

- P-factor

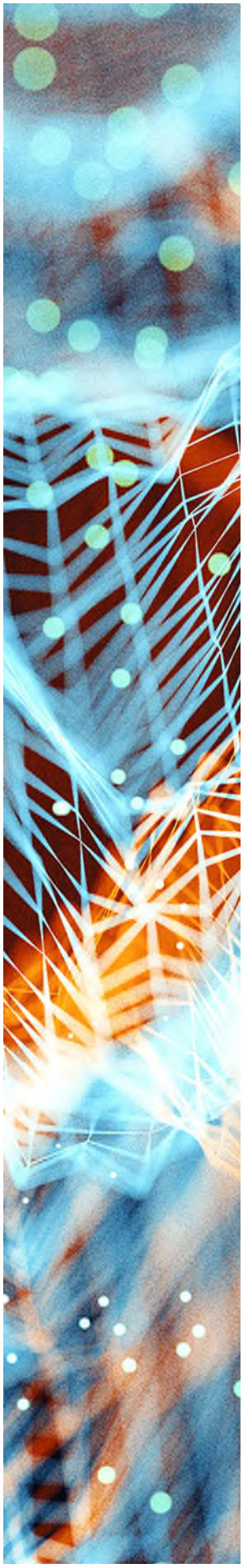
  The 'p-factor' is the element of the securitisation capital requirements that applies a capital 'surcharge' to increase the amount of capital required for securitisation positions above that required for the underlying exposures, under the formulaic approaches. The current lowest possible 'p' is 0.5 for STS and 1 for non-STS under the standardised approach (with a floor of 0.3 available for both under the advanced approach)[7]. The proposals would set the lowest possible 'p' at 0.3 for STS and 0.6 for non-STS under the standardised approach (with a floor of 0.2 for STS and 0.3 for non-STS and respective caps of 0.5 and 1 available under the advanced approach). These figures would be available for originator positions in senior tranches only.

A useful table is provided on pages 12-13 of the CRR proposal which shows the various risk weight and p-factor floors (and caps where relevant), under the current framework and the new proposals. Determining the exact impact of the changes overall is complex since the capital treatment of any particular securitisation position depends on its STS or non-STS status, whether the transaction meets the new "resilient" definition, use of either the standard or advanced approach to capital calculations, whether the position is a senior or non-senior tranche, and the status of the holder as originator/sponsor or investor.

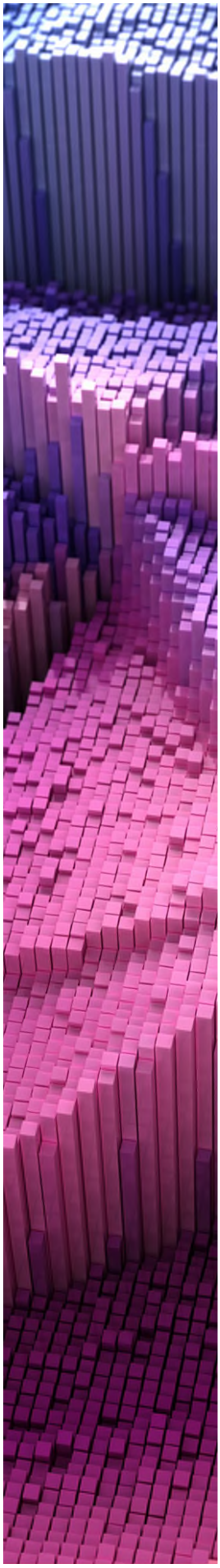
"Resilient" securitisations

As mentioned, the proposals create another new designation – "resilient" securitisation positions – senior positions meeting certain criteria that would benefit from the lowest possible capital charges. The positions eligible for this designation would be originator/sponsor positions in STS *and* non-STS securitisations, and investor positions in STS securitisations only. The eligibility criteria aim to add requirements over and above some that already exist in the STS Criteria. Non-STS positions are required to meet all of the requirements and STS positions must meet only the minimum credit enhancement requirement.

- For non-STS securitisation positions:
  - Amortisation mechanism: only sequential amortisation would be allowed, or pro-rata amortisation provided that the transaction includes performance-related triggers requiring a switch to sequential amortisation (as per the existing STS Criteria);
  - Concentration/granularity: exposures in the pool would be subject to a maximum concentration limit of 2%, i.e. exposures to a single obligor must not exceed 2% of the aggregate exposure value (as per the existing STS Criteria); and
  - Counterparty credit risk (for synthetics only): only credit protection supported by high quality collateral or in the form of sovereign/supranational guarantees would be allowed.



7 As the Commission notes, a p-factor of 1 "should be interpreted as a 100% higher capital requirement or a doubling of the capital requirement for all securitisation positions, compared to the capital requirement of the underlying non-securitised assets…"



- For both non-STS and STS securitisation positions:
  - Minimum credit enhancement: maximum thickness of the senior position: a new formula would be used to calculate the minimum attachment point of the senior position, depending on the approach used (standardised or advanced).

Significant Risk Transfer ("SRT")

With the aim of making the SRT framework more consistent and predictable, and enhancing the assessment process, the proposals would eliminate the existing formulaic SRT test and commensurate risk transfer test and replace them with a new principles-based approach ("PBA") test which requires the disposal of at least 50% of unexpected losses on the underlying exposures to third parties.

The detail of the new PBA test would be set out in technical standards covering the conditions under which national competent authorities will apply the new PBA test, the relevant structural features that could hinder the significant transfer of risk, the high-level principles governing supervisory assessments of SRT so as to harmonise them at EU level, the requirements for originators to complete a proposed new self-assessment of SRT, and the principles that will govern a new fast-track process for SRT approval.

Call for Feedback on the LCR Delegated Regulation

The LCR framework, set out in the LCR Delegated Regulation, requires banks to hold a buffer of certain high quality liquid assets ("HQLA") to cover liquidity outflows. The composition of HQLAs may include securitisations but only up to certain limits and only where they meet certain criteria. In order to incentivise banks to diversify their liquidity buffers and support securitisation market liquidity, the European Commission has released a call for feedback[8] on proposed changes to the LCR Delegated Regulation that would make several relaxations to the eligibility criteria for securitisations in these buffers.

The condition that LCR-eligible securitisations must only comprise senior tranches of STS securitisation is unchanged by the Commission's proposals, notwithstanding the introduction of the concept of "resilient" securitisations which need not be STS yet would qualify for the lowest possible capital treatment. However, several other proposed elements of the changes to the existing eligibility criteria could be beneficial. These include extending the rating requirement beyond only AAA-rated securitisations to those rated down to A-, lowering the valuation 'haircuts' for certain securitisation positions from 35% to 25% (and to 15% for resilient STS securitisations), removing the existing requirement for eligible positions to have a residual maturity of five years, and expanding the categories of eligible securitisations to all those meeting the homogeneity requirements of the STS criteria.

8 See: Amendments to the treatment of securitisation exposures under the Liquidity Coverage Ratio Delegated Regulation

Feedback on the proposals to amend the LCR Delegated Regulation is requested by 15 July 2025.

The final legislative piece of the "package" of amendments to revise the securitisation regulatory framework is the capital requirements for insurance/reinsurance companies under the Solvency II Delegated Regulation. These proposals are expected to be issued within the next few weeks and are expected to improve the regulatory capital treatment of insurer/reinsurer investments in securitisations, in line with the revisions to the EUSR and CRR noted above.

For further information on any of the issues raised in this article please contact any of the Simmons & Simmons lawyers listed below.

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