Milbank Insights

Navigating the Proposed Amendments to the EU Securitisation Regulation: Implications for Europe's CLO Market

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On 17 June 2025, the European Commission (the "**Commission**") published a significant proposal to amend Regulation (EU) 2017/2402 (the "**EU Securitisation Regulation**") (the "**SECR Amending Proposal**"), as part of its efforts to "*relaunch*"[1] the European securitisation market by making the EU securitisation regulatory framework less burdensome and more principles based.[2]

This Client Alert summarises key aspects of the SECR Amending Proposal, focusing on its potential ramifications for the European CLO market. While the SECR Amending Proposal seeks to cut red tape and simplify investor diligence and transparency requirements in the European securitisation market,[3] there are several unclear aspects and certain measures which appear to place additional burdens on CLO market participants. Such measures suggest the proposal may fail to meet its stated objective of a market relaunch.

The SECR Amending Proposal is available here.

Executive Summary

- As anticipated, a definition of "*public securitisation*" has been introduced in a form that will capture European CLOs, requiring them to meet the highest levels of reporting and transparency under the European securitisation framework. The definition of public securitisation will also encompass the warehouse phases of certain CLO transactions (where the senior and/or subordinated debt is commonly listed to benefit from the Quoted Eurobond Exemption[4]).
- US CLO transactions and warehouses are expected, for the purposes of the EU Securitisation Regulation, to constitute private securitisations. This means that US CLOs marketed to European investors may be able to avail of the new private securitisation template which would reduce the reporting and transparency requirements applicable to such transactions.[5]
- All European CLOs and certain warehouses will be required to report to a securitisation repository, imposing an additional burden and cost on transactions.
- Investor due diligence requirements will be simplified in the case of securitisations with a European sell-side party, with additional clarification that due diligence assessments should be proportionate to the securitisation position's risk profile, potentially benefiting investors in more senior CLO tranches.
- Reporting requirements are expected to be reduced following a review of the reporting templates to be undertaken by the European Banking Authority (the "**EBA**"), with the EBA to be ordered by the Commission to reduce mandatory reporting data fields by at least 35%.

[1] SECR Amending Proposal, Explanatory Memorandum, page 1.

[2] SECR Amending Proposal, Explanatory Memorandum, pages 3 and 4. The relaunching of the EU securitisation framework is also expected to include amendments to Regulation (EU) 575/2013 (the "**Capital Requirements Regulation**" or "**CRR**"), Commission Delegated Regulation (EU) 2015/61 (the "**Liquidity Coverage Ratio Delegated Regulation**") and Commission Delegated Regulation (EU) 2015/35 (the "**Solvency II Delegated Regulation**" or "**Solvency II**").

[3] The Commission expects that its "preferred option" will result in cost savings of €310 million per year against estimated operational costs of €780 million per year for the market as a whole.

[4] The Quoted Eurobond Exemption applies in certain jurisdictions and exempts payments on certain debt securities from withholding tax on interest payments.

[5] Further consideration will need to be given where such transaction is marketed to UK investors. See discussion below.

- The proposal is silent on the "*sole purpose originator*" test (including the 50% revenue test recently "*introduced*"[6] by the Joint Committee of the European Supervisory Authorities[7] (the "**Joint Committee**")). This may be addressed in Level 2 delegated regulations to be proposed at a future date.
- The timeline for implementation of the SECR Amending Proposal is unclear, but the proposal refers to a start-up period from 2027 to 2029.[8]
- Additional proposed amendments to the CRR and Solvency II should bring reduced prudential and capital requirements for banks and insurers investing in CLOs, through more risk-sensitivity. The greatest benefits will be for those investments in more senior CLO tranches.

Key Proposed Changes to the EU Securitisation Regulation with Implications for the CLO Market

The SECR Amending Proposal introduces several key changes which, if adopted, will affect the European CLO market, as summarised below.

1. Scope of Public Securitisations

The SECR Amending Proposal inserts definitions of "*public securitisations*"[9] and "*private securitisations*".[10] The definition of "*public securitisations*" will include transactions where the underlying notes are admitted to trading on an EU regulated market, Multilateral Trading Facility ("MTF") or Organised Trading Facility ("OTF").[11] As drafted, European CLOs will fall within the "*public securitisation*" scope, as securities issued in European CLOs are typically listed on Euronext Ireland, as will warehouse transactions for European CLOs where the junior funding (and in some cases the senior funding) is in the form of notes listed or admitted to trading on a European exchange (such as the Vienna MTF).[12]

This limb of the definition is geographically restricted to venues in the EU (excluding the UK, US and all other non-EU trading venues) and the SECR Amending Proposal does not appear to be intended to change the jurisdictional scope of the EU Securitisation Regulation as regards to non-EU parties to securitisations.[13] Accordingly, CLOs listed on (for example) the Cayman Islands Stock Exchange or the International Stock Exchange (Guernsey) would qualify as private securitisations.

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[6] The Joint Committee's Report can be found here.

[7] Being the EBA, the European Securities and Markets Authority, and the European Insurance and Occupational Pensions Authority ("**EIOPA**").

[8] SECR Amending Proposal – Legislative Financial and Digital Statement – Agencies – Framework of The Proposal/Initiative, section 1.6.

[9] For the purposes of the SECR Amending Proposal: "(32) "*public securitisation" means a securitisation that meets any of the following criteria: (a) prospectus has to be drawn up for that securitisation pursuant to Article 3 of Regulation (EU) 2017/1129 of the European Parliament and of the Council; (b) the securitisation is marketed with notes constituting securitisation positions admitted to a Union trading venue as defined in Article 4(1), point (24) of Directive 2014/65/EU of the European Parliament and of the Council; and (c) the securitisation is marketed to investors and the terms and conditions are not negotiable among the parties*."

[10] For the purposes of the SECR Amending Proposal, "*private securitisation" means "a securitisation that does not meet any of the criteria laid down in point (32)*".

[11] SECR Amending Proposal, Article 1(2) (amending Article 2 of the EU Securitisation Regulation), read together with Article (1), point (24) of MiFID II (Directive 2014/65/EU). This is despite a reference in Recital (3) to transactions where the underlying notes are admitted to trading on "*any other trading venue*", which is inconsistent with the fact that MiFID II specifies only three types of trading venue within its scope (i.e., regulated markets, MTFs, and OFTs) and is also inconsistent with the clear position of the Commission and the European Securities and Markets Authority ("**ESMA**") as to the appropriate regulatory perimeter for trading venues. This discrepancy is, fortunately, not included in SECR Amending Proposal, Article 1(2) itself.

[12] Senior and Subordinated debt in European CLO warehouse transactions if often listed in order for the applicable debt to avail of the Quoted Eurobond Exemption.

[13] ESA's Opinion to the European Commission on the Jurisdictional Scope of Application of the Securitisation Regulation (25 March 2021) found here.

It is theoretically possible for some European CLO transactions to be re-positioned as "*private securitisations*", avoiding the highest level of reporting and transparency. However, this would require de-listing (or avoiding listing in the first place) on EU stock markets, potentially listing instead on markets outside the EU (which may limit investor appetite). With respect to warehouse transactions, we may see CLO market participants choosing to list warehouse debt on a third country exchange where such listing allows the applicable debt to continue to benefit from the Quoted Eurobond Exemption. The SECR Amending Proposal will in any case require securitisation repository reporting for private securitisations as well as public (subject to distinctions on access discussed below).

Alternatively, for certain CLOs, accepting the inevitability of a public securitisation status, it may be desirable to upgrade listing to a regulated market[14] rather than the secondary markets. CLOs previously moved to the secondary markets to avoid repository reporting requirements.

There is no express exemption for notes admitted to trading on European regulated market, MTF or OTF without the issuer's consent,[15] and it would be helpful for it to be clarified that such involuntary listings are not covered within the definition of "*public securitisation*".

Importantly, under the SECR Amending Proposal, US CLO transactions will constitute "*private securitisations*". This is because the applicable US CLO debt is listed outside of Europe, no European prospectus is drawn up and the investors in such transactions will negotiate its terms. As a result, US CLO transactions marketed to European investors may be permitted to utilise the new private securitisation reporting template, which will reduce transaction reporting requirements and costs.[16] This is a welcome development for US CLOs marketed to European investors. UK investors subject to the UK securitisation framework, however, are required to undertake due diligence to establish that an issuer of a securitisation will make available *"sufficient information to enable the investor to assess the risks of holding the securitisation position*", including certain prescribed information. Therefore, where the US CLO is also to be marketed to UK investors, consideration will need to be given to whether reporting to be provided under the monthly and payment date transaction reports, and any private securitisation templates to be provided with respect to the EU securitisation framework, for UK investors to take a view that reporting to be received is sufficient to "enable the investor to assess the risks of holding the securitisation position" in accordance with the UK transparency rules.

2. Streamlined Due Diligence Requirements

The SECR Amending Proposal seeks to simplify due diligence requirements as follows:

- Proportionality to Risk Profile: It is expressly clarified that due diligence requirements are to be proportionate to the risk profile of securitisation positions.[17] This means that senior tranches should necessitate a less extensive review compared with junior or mezzanine tranches. For CLO investors, this emphasis on a proportional approach is a welcome development, potentially reducing unnecessary burdens on lower-risk investments. This acknowledges the inherent risk stratification within CLO structures. However, this clarification is recorded only in a recital, not in an operative provision in the body of the SECR Amending Proposal, although it is reflected in removal from the EU Securitisation Regulation of detailed lists of information needing to be checked by investors.[18] It will be important for investors that subsequent guidance issued by regulators reflects this proportional approach.

[14] Such as the regulated market of Euronext Dublin. At present, CLOs invariably list on Euronext Dublin's Global Exchange Market which is operated as an MTF.

[15] Contrast the EU Market Abuse Regulation, Regulation (EU) No 596/2014, Articles 17(1), 18(7) and 19(4).

[16] See discussion below in the section on "Streamlined Transparency and Reporting Requirements" of this Client Alert.

[17] SECR Amending Proposal, Recitals (4) and (6).

[18] See SECR Amending Proposal, Article 1(3)(b)(i) and (c)(i) (amending Article 5(3)(b) and 5(4)(a) of the EU Securitisation Regulation).

- Removal of Redundant Verification for EU Entities: Investors will no longer be required to verify compliance with the EU Securitisation Regulation by EU-established sell-side entities (originators, original lenders, sponsors, or SSPEs). Those reduced obligations apply only where the applicable sell-side parties are based in Europe, meaning that investors will still need to verify compliance by non-EU sell-side entities.[19] For the CLO market, where many originators and sponsors are EU-based, this change could streamline the investment process in European CLOs (although not US CLOs). However, verifying compliance by non-EU-based originators and sponsors remains a substantial compliance burden, as has been noted by the Association for Financial Markets in Europe ("AFME").[20]

- Simplified Due Diligence for Repeat Transactions: It is clarified that investors will be permitted to conduct simplified due diligence for investments in repeat transactions where the key risk characteristics are well-understood. This applies to securitisation positions issued by the same originator, backed by the same type of underlying assets, exhibiting the same structural features, and offering the same or lower credit risk compared with previous investments.[21] For active CLO investors who frequently participate in transactions from established managers with consistent strategies, this change could significantly reduce recurring due diligence. Again, this clarification appears only in a recital rather than in an operative provision of the SECR Amending Proposal, and further guidance from regulators would be welcomed.

- Timing of Due Diligence in Secondary Market Transactions: Investors will have additional time (up to 15 days after the investment) to document due diligence in secondary market transactions.[22] This is a welcome change which has the potential to assist with the liquidity of the secondary market of securitisations, including CLOs; however, investors will still need either to conduct verification prior to their investment or be satisfied that verification is an *ex post facto* administrative formality.

- Clarification on Delegation of Due Diligence: The proposal clarifies that while an institutional investor may instruct a delegated institutional investor to fulfil due diligence obligations, the delegating investor remains ultimately responsible for compliance.[23] There are divergent views among market participants as to how welcome this change is; some, in particular, would have preferred the contractual freedom to allocate the due diligence responsibility between principal and agent as they considered most appropriate.

3. Streamlined Transparency and Reporting Requirements

The SECR Amending Proposal also targets the existing disclosure and reporting requirements, acknowledging that current templates[24] are overly burdensome. In particular:

- Granularity of Disclosure: It is clarified that, for highly granular pools of very short-term exposures (such as credit card exposures and certain consumer loans), disclosure at the level of the underlying exposure is not required.[25] This is unlikely to be relevant for CLOs which typically do not involve such highly granular pools of exposures.

[19] SECR Amending Proposal, Recital (5) and Article 1(3)(a)(i) and (ii) (deleting Article 5(1)(c) and amending Article 5(1)(e)-(f) of the EU Securitisation Regulation).

[20] See AFME's Briefing Note, "AFME comments in anticipation of the European Commission's legislative proposal on securitisation" (21 May 2025) ("**AFME Securitisation Briefing Note**"), page 4. Link here.

[21] SECR Amending Proposal, Recital (8).

[22] SECR Amending Proposal, Article 1(3)(c)(ii) (inserting new Article 5(4)(g) in the EU Securitisation Regulation).

[23] SECR Amending Proposal, Recital (11) and Article 1(3)(e) (amending Article 5(5) of the EU Securitisation Regulation).

[24] In Commission Delegated Regulation (EU) 2020/1224 and Commission Implementing Regulation (EU) 2020/1225.

[25] SECR Amending Proposal, Recital (12) and Article 1(5)(a) (amending Article 7(1) of the EU Securitisation Regulation).

- Simplified Template for Private Securitisations: The proposal mandates the development of a dedicated and simplified reporting template for private securitisations.[26] Nevertheless, both public and private securitisations are to be reported to a securitisation repository,[27] imposing an additional burden on CLO managers (albeit investors and potential investors will be restricted from accessing repositories in respect of private securitisations).

- Streamlined Reporting Templates: A significant proposed change is to direct the EBA, as the leader of a new securitisation sub-committee of the Joint Commission (referred to below), to undertake a review of the reporting templates, with the aim of reducing the number of mandatory data fields by at least 35%.[28]

4. Supervisory Framework Enhancements

Beyond specific regulatory adjustments, the SECR Amending Proposal also includes the following key changes to the supervisory framework designed to improve the effectiveness of regulation:[29]

- Common Supervisory Procedures: A specific securitisation sub-committee is to be established under the Joint Committee. The securitisation sub-committee, to be led permanently by the EBA, is mandated to develop guidelines to establish common supervisory procedures within 12 months of adoption.[30]

- Lead Supervisor Appointment: For transactions involving sell-side entities under the remit of competent authorities from more than one EU Member State, a lead supervisor will be appointed to coordinate actions and avoid divergences in the application of the EU Securitisation Regulation.[31] This could lead to a more streamlined and less fragmented supervisory approach for complex cross-border transactions.

5. Potential Capital Relief in European Securitisations

On 17 June 2025, the Commission also published a proposal to amend the CRR,[32] and has announced it will publish draft amendments to the Solvency II Delegated Regulation for consultation in the second half of July 2025.[33] Both are intended to remove unnecessary prudential costs for securitisations (for banks and insurers respectively), adopting a risk-sensitive approach. In particular, the proposed changes to the CRR include both amendments to the risk weight floors for senior positions and changes to introduce more risk sensitivity in the (p) factor for the purposes of calculating capital requirements. Currently, average required capital for bank sponsors, bank originators and bank investors in securitisations is double that for non-securitised assets,[34] while capital requirements for insurers are higher for investments in the senior tranches of CLOs than unlisted and emerging market equities.[35] These changes are therefore expected to be positive for the European securitisation market and, in particular for the CLO market, we hope it will deepen the bank investor base at the senior end of the capital structure. In the coming months, we hope that the Solvency II Delegated Regulation will follow suit with this

[26] SECR Amending Proposal, Recital (14) and Article 14(5)(b) (amending Article 7(2) of the EU Securitisation Regulation).

[27] Article 7(2) of the EU Securitisation Regulation; SECR Amending Proposal, Explanatory Memorandum, page 10. The SECR Amending Proposal has therefore failed to address the concerns expressed in the AFME Securitisation Briefing Note (page 5) regarding costs, complexity, and additional challenges.

[28] SECR Amending Proposal, Recitals (13) and (15) and Article 1(5)(c)-(d) (amending Article 7(3) and 7(4) of the EU Securitisation Regulation).

[29] SECR Amending Proposal, Recital (26).

[30] SECR Amending Proposal, Recitals (26) to (28) and Article 1(18)(b)-(c) (amending Article 26(3) and inserting new Article 26(3a) of the EU Securitisation Regulation).

[31] SECR Amending Proposal, Recital (29) and Article 1(18)(c) (inserting new Article 26(3b) of the EU Securitisation Regulation).

[32] https://finance.ec.europa.eu/document/download/946faf8f-dd34-4f79-86e5-0177bd0f8b0f_en?filename=250617-proposal-crr_en.pdf

[33] Press release dated 17 June 2025: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1502

[34] Impact Assessment Report, section 2.1.3, page 22: https://finance.ec.europa.eu/document/download/ffee0818-fc14-4f2e-befb-40e8277791ca_en?filename=250617-impact-assessment_en.pdf

[35] Impact Assessment Report, section 2.1.4, page 25.

positive prudential easing. Finally unlocking European insurance capital could be hugely beneficial for the growth of the European securitisation market.

Conclusions

The SECR Amending Proposal includes positive steps for the EU securitisation market, but it remains to be seen whether it achieves its objective of relaunching the market. The proposed simplifications in due diligence and streamlined reporting may in due course offer tangible benefits for the CLO market, potentially reducing operational costs and making CLO investments more appealing for a broader range of institutional investors. The emphasis on proportionality and risk-sensitivity is particularly welcome, as it acknowledges the diverse nature of securitisation products. However, the true impact of these changes will be observed in their implementation. As noted above, it is proposed that securitisation sub-committee of the Joint Committee, under the leadership of the EBA, will undertake a review of the current reporting templates and develop draft regulatory technical standards specifying the information to be reported by originators, sponsors and SSPEs.[36] It is hoped that these will be significantly simplified.

While the SECR Amending Proposal aims to cut red tape in order to facilitate greater securitisation activity in Europe, it would also impose additional burdens on the CLO market, such as requiring designated reporting entities in CLO transactions to report to a securitisation repository. It is also notable that the current proposal does not include any express grandfathering provisions for existing deals; if unamended (or if grandfathering provisions are not included in the Level 2 regulations), this could place an additional burden on pre-existing transactions (subject to market discussion on this point).

It is hoped that Level 2 regulations will in due course be issued clarifying the "*sole purpose originator*" test for CLOs in a manner that supports, rather than hinders, the practical functioning and growth of the European CLO market. This issue was considered in our previous Insights article on "*The JC Report on the Functioning of the European Securitisation Regulation: An Unhelpful Regulatory Intervention for Europe's CLO and Securitisation Markets*" (9 April 2025). Ongoing dialogue between policymakers, supervisors, and market participants will be essential to ensure that the revised framework genuinely helps to unlock the full potential of securitisation as a financing tool for the European economy.

Market participants involved in both the UK and EU CLO markets will also look to see how the Financial Conduct Authority responds to the EU proposals. While the FCA is expected to wish the UK securitisation regime to remain substantially aligned with the EU regime, it is hoped that the FCA will work with its EU counterparts on adopting a principles-based and proportional approach to investor due diligence and reporting.

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[36] SECR Amending Proposal, Recitals (13) and (15) and Article 1(5)(c)-(d).


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