

Securitisation

Feedback on the JC Report on the Securitisation Regulation

Paris Europlace welcomes the report published by the Joint Committee (JC) of the European Supervisory Agencies (ESAs) on March 31, 2025, a report on the implementation and functioning of the Securitisation Regulation (Article 44) which gives insights into the regulators' approach and commends the Joint Committee for its work to advance the revival of the European securitisation market.

While the report falls short of making clear recommendations to the European Commission on many subjects, it provides clear analysis of benefits and pros and cons which should contribute to the Commission's upcoming legislative proposal.

Paris Europlace stresses that the report, being focused on the functioning of the Securitisation Regulation, does not address the prudential aspects of the broader securitisation reform. While the changes envisaged in the Securitisation Regulation would be very welcome, to reduce the due diligence and reporting burden, they would fail to revive the securitisation market if not combined with ambitious and targeted changes in the prudential regulation for banks and insurance companies.

Paris Europlace broadly welcomes the proposals as regards the simplification of due diligence and reporting requirements, which are essential to reduce the barriers to entry to the securitisation market for both issuers and investors. We would like to make some targeted comments on the various proposals analysed in the report.

1. Definitions and reporting requirements

- The proposal to enlarge the definition of securitisation is too vague and too broad, as it could inadvertently capture other financial instruments, such as guarantees with a franchise threshold, on single name exposures, which are not securitisation and should not be subject to Sec-R.
- The proposed definition for public transactions is also too broad. In particular, the listing criteria is inappropriate, because many private transactions are listed for technical reasons, but should not fall in the "public" category, which would trigger inappropriate due diligence and reporting requirements. In order to better capture the

spirit of the distinction between public and private transactions, triggering different investor protection needs, we would recommend to set criteria related to the distribution strategy and to transferability of the instrument.

- Related to the public/private categorisation is the question of the reporting of private transactions to repositories. If the criteria set to define a transaction as private are adequately capturing the concept, then only limited data should be reported to repositories on those transactions, to address mainly market monitoring and financial stability needs, given that in such private transactions, investors go through extensive due diligence on a bilateral basis. Conversely, for public transactions, more detailed data would be reported to trade repositories, in line with the transparency objective of providing investors with data feeding into their primary and secondary market investment decisions.
- Paris Europlace notes that, as regards SRT transactions, issued by banks, the data to be provided to the repository should be a subset of the data provided to the SSM (or other national authorities). Full alignment of definitions and templates should be achieved, to avoid unnecessary double reporting burden for issuers.

2. Retention entities

Paris Europlace concurs with other industry associations that the intended clarification of the “Sole Purpose Test” is problematic, as it may inadvertently eliminates some legitimate entities. We understand that the intention of the Joint Committee is to target dedicated retention vehicles. Even though the JC report refers to CLO transactions, the current wording may capture other types of entities, such as specialized lending entities or fintechs, which use securitisation for more than half of their businesses. The exemption of “original lenders” is essential but the definition of original lender should be clarified to properly capture the intended scope.

All in all, the best solution may be to maintain the current principle-based approach, where the “Sole Purpose Test” is based on a combination of criteria ultimately assessed by the authority.

From a practical angle, this issue is not to be dealt within the legislative proposal, but is an interpretation of an existing RTS. Hence, the JC report has opened a Pandora box and created a major uncertainty for market participants, as the new interpretation offered in the report may be considered as immediately applicable by authorities. In consequence, Paris Europlace urges ESMA to solve the issue at its level, to provide legal certainty and unlock transactions.

3. Unfunded STS

The report examines the feasibility of allowing insurance and (re)insurance undertakings to act as eligible providers for unfunded credit protection under the STS framework, a possibility consulted on in the Commission’s targeted consultation in 2024, which Paris Europlace supported.

While falling short of making recommendations to the Commission, the JC report lists the ‘pros’ and ‘cons’ of allowing (re)insurers to provide unfunded credit protections under the STS framework for on balance-sheet securitisations.

Paris Europlace fully concurs with the four ‘pros’ listed in the JC report, namely:

- ***“The investor side of on-balance sheet securitisations will be broadened, thereby deepening, and enlarging the market.”***
- ***“Allowing unfunded guarantees of insurance companies for STS securitisation could attract well-regulated investors.”***
- ***“Offer counterparty diversification for banks to manage credit risk, thereby also managing their counterparty limits for the counterparts currently providing UFCP [unfunded credit protection] and to achieve additional capital relief that would enable them to increase their lending capacity.”***
- ***“Due diligence requirements and risk retention rules as well as the STS framework has further strengthened the legislative framework.”***

On the other hand, the JC report also lists 3 cons that Paris Europlace believes are misplaced:

- *“Financial stability concerns about the provision of unfunded credit protection to synthetic securitisation by entities without 0% risk weight (lessons learnt from the past e.g., failure of monoline insurers”.* First, the Unfunded Credit Protection Provider, in order to qualify as per CRR requirement, would have to be highly rated. Second, the ***Box 1 - Lessons learned from the Great Financial Crisis (GFC) for insurance companies*** is misleading, given that, on one end, the monolines debacle was mainly due to their investments in US subprime transactions, and on the other end, the credit insurance business was performed in the EU by multiline insurers and reinsurers, with deep credit risk experience.
- Insurers *“would have a competitive advantage over other investors that still need to provide funding for credit protection for STS securitisations which would result in most of the credit risk of synthetic transactions ending up in the insurance sector.”* Such an outcome is highly unlikely, given that other investors, such as credit funds, are unlikely to exit the market, given the diversity of asset classes and tranches that would be offered in a revived market.
- *“Moreover, the economic viability of risk transfers from banks to insurers results from regulatory differences - the capital requirements for insurers providing credit protection to synthetic securitisation are on aggregate lower than on the banking side, for example because Solvency II allows for diversification effects and CRR does not. The regulatory difference will lead to misallocations and will increase the systemic risk.”* This assertion is surprising as it assumes that the two regulatory regimes are inconsistent in their capacity to capture the risks.

In conclusion, Paris Europlace considers that the benefits of expanding Unfunded STS to well-rated, well-diversified (re)insurers broadens the range of market participants, supporting financial stability and enhancing the funding of the EU economy.

Paris Europlace looks forward to the upcoming publication of the securitisation legislative package, and hopes to see a targeted, but ambitious package, covering the various bottlenecks identified in our earlier report, not only in SEC-R but also in CRR (capital and liquidity) and in Solvency 2.