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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Securitisation) Financial Services Attachés
Subject:	Securitisation Framework Review - WP meeting 14.10.2025: Commission Services' Non-Paper on the definition of public securitisation

Delegations will find attached the Commission services' non-paper referred to above, for discussion under agenda item no. 4

Commission Services' non-paper on the definition of public securitisation

DISCLAIMER

This non-paper has been drafted at the request of the Council to structure the discussion in the Council Working Party. It has not been adopted or endorsed by the European Commission. Any views expressed are those of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

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This non-paper aims to facilitate discussions on key issues and possible ways forward regarding the definition of public securitisation. It provides additional background and rationale supporting the Commission's proposed approach.

1. BACKGROUND

Under the current rules ([1]), a securitisation is categorised as public if it requires publishing a prospectus under the Prospectus Regulation. The Prospectus Regulation contains exemptions to issue a prospectus, for example when the offering is addressed to 'qualified' investors (i.e. professional investors), or when the security's denomination per unit amounts to at least EUR 100 000. These exemptions are not well suited for securitisations, as securitisations are primarily marketed to professional investors and commonly have denominations of at least 100 000. As a result, a lot of securitisations are not legally required to issue a prospectus ([2]). However, issuers may choose to issue a prospectus for other reasons, i.e. investor preference, supervisor request, etc. Therefore, the application of the current definition risks an arbitrary outcome as similar transactions could be categorised as public or private.

Currently, public and private securitisations use the same ESMA-developed templates to report information on the securitisation transactions. In addition, public securitisations must report these templates to a securitisation repository, where they undergo data validation checks, while private securitisations are not required to do so. The information disclosed in these templates is intended to be used by the holders of the securitisation position and potential investors for their due diligence, as well as by competent authorities in their supervisory duties and macroprudential oversight. This enhances market transparency and supports sound risk management.

The current regulatory set-up gives rise to two main issues:

1. For transactions that are genuinely bespoke in nature, i.e. addressed to a small number of professional investors, such as many synthetic SRT securitisations, the reporting burden is disproportionately high, since they must use the same templates as public securitisations. It is the Commission's understanding that these types of

([1]) Article 7(2) of the Securitisation Regulation

([2]) See Article 1(4) of the Prospectus Regulation for exemptions to the obligation to issue a prospectus

transactions involve a small number of investors, are structured to cater for the particular needs of their primary investors, and are not widely distributed to external investors.

2. On the other hand, certain transactions, such as Collateralised Loan Obligations (CLOs), are distributed to a wider circle of specialised, professional investors and often admitted to trading on a trading venue. However, due to the exemption described earlier, they do not issue a prospectus under the Prospectus Regulation and thus fall outside the definition of "public" securitisations. Supervisors have flagged that they do not have a sufficiently clear view of the private non-banking part of the securitisation market. Many publicly traded transactions fall outside the current definition of a public securitisation, this weakens the general transparency, monitoring, and supervision in that segment of the market.

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2. PROPOSED APPROACH

To address the first issue, the Commission has proposed a distinct reporting framework for private securitisations. Specifically, this would entail a new private securitisation template for supervisory purposes only, which is simpler and more proportionate to the particular characteristics of private transactions than the current general template used both for public and private transactions. The exact template would be defined under Level 2 technical standards and is expected to be modelled according to the existing SSM notification guidelines. It is acceptable for private securitisation templates to require more limited disclosure, because investors in private transactions can negotiate the terms of the transactions and can request all the information that they need for their due diligence individually, without depending on the templates stipulated under Article 7. At the same time, dedicated private securitisation templates will help develop a comprehensive, general picture of this market segment for supervisors and (prospective) investors alike.

To address the second issue, the Commission has proposed to make reporting to securitisation repositories mandatory for all transactions, regardless of whether they are considered public or private.

A transaction's classification into private or public category will have consequences for the disclosure duties related to that transaction, with a lighter regime applicable to private transactions.

While many sell-side stakeholders seek to preserve the current "private" status of their transactions, it should be recalled that the proposed new reporting template for public securitisation will also be significantly reduced (see Recital 13: "*the number of required fields should be significantly reduced – by at least 35%, or more where feasible. To further reduce the compliance burden on the reporting entities, the review should consider distinguishing between mandatory and voluntary fields.*"). Therefore, the gap in disclosure duties between public and private securitisation will be narrower than today.

As the Commission's proposal envisages a distinction in the reporting templates for public and private securitisations, it is necessary to propose a new definition for public securitisations that better captures transactions that are distributed to a wide group of

investors. This new definition specifically aims to include transactions that are currently classified as private strictly on the grounds that they do not require a prospectus, even if they would otherwise have features of a public transaction.

Under the Commission's proposal, a 'public securitisation' means a securitisation that meets any of the following criteria:

a) 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 trading on 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

c) The securitisation is marketed to investors and the terms and conditions are not negotiable among the parties

Rationale behind criterion (a): This is the existing definition for public securitisations. It is retained in the new proposal to capture all securitisations that are currently considered public.

Rationale behind criterion (b): Securitisation notes that are admitted to trading on a trading venue ([3]) are accessible to a large set of investors. Ensuring consistent transparency requirements for transactions that are admitted to trading on a trading venue will support sound investor decision-making and a level playing field across the market.

Private bespoke securitisations are meant to be negotiated with highly sophisticated and specialised investors who negotiate terms to correspond to their specific needs and can have full access to all the information that they require for their due diligence.

Treating securitisations that have been admitted to trading as "private" risks an information asymmetry between the parties that initiate the transaction and other investors or potential investors. Investors on the trading venue may not have negotiated access to the underlying data or privileged information regarding the deal and will therefore need to rely on publicly available information for their due diligence. Given the due diligence requirements of Article 5, publicly available information may not be sufficient for securitisation investors to fulfil their due diligence obligations, and this would prevent them from investing. Once trading is possible, the securitisation is functionally a public security and should not be labelled "private" just because no prospectus was required at issuance.

This criterion aims to capture in particular Collateralised Loan Obligations (CLOs) which mostly fall outside the current definition of a public securitisation as they are not required to publish a prospectus. CLOs are frequently structured privately, but later listed on trading venues, and they represent one of the most complex, dynamic, and fast-evolving segments of the EU securitisation market. Extending public treatment and reporting requirements to such transactions would strengthen supervisory oversight and help safeguard investor confidence in this critical area of market activity.

([3]) Such as a regulated market, multilateral trading facility (MTF), or organised trading facility (OTF),

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Rationale behind criterion (c): When a securitisation is designated as "private", it is assumed that its investors are highly sophisticated and negotiate bespoke terms, that demand disclosure specific to the terms of the deal. However, when a transaction is marketed more broadly on a standardised, "take-it-or-leave-it" basis, this assumption no longer holds. If the terms and conditions are non-negotiable, investors are supposed to rely entirely on the information provided by the sell side parties under Article 7. This creates a clear informational asymmetry. These investors face the same information risks as buyers of listed or prospectus-backed notes, but as the deal remains classified as "private", they would not benefit from the all the information that is available for public deals under Article 7. Treating such transactions as public recognises the economic reality that they are functionally equivalent to a public offering.

The proposed criteria are taken from the Joint Committee (JC) Report published by the European Supervisory Authorities (ESAs) in March 2025. In this report, the ESAs came up with these criteria to address supervisory concerns about the existing definition of public securitisation.

3. CONCLUSION: RISKS OF KEEPING EXISTING DEFINITION

If we keep the current definition of public securitisation while at the same time streamlining the disclosure template for private securitisations, it risks that "private" transactions, that are public in substance, under-report information that is necessary for investors to carry out their due diligence under Article 5 or for supervisors to effectively supervise and monitor the market. The simplified template proposed for private securitisations is primarily intended for the supervision of the sell-side entities' requirements and not meant to include all the information that investors need to carry out their due diligence for these types of transactions.

Taking into account that the securitisation market is expected to grow in the future, it is even more important to avoid weakening investors' ability to conduct due diligence that could have adverse consequences on financial stability. The definition of public securitisation included in the proposal is key to ensure that investors are well equipped to thoroughly scrutinise their investments and that authorities are able to monitor risks in the public market.

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