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Insights

Alternative Investments Practice

ESMA's Consultation on Private Securitisation Disclosure: Simplified Template Makes Complicated Reading

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On 13 February 2025 the European Securities and Markets Authority ("**ESMA**") published a consultation paper (the "**Consultation Paper**")[i] containing proposals for the revision of the EU securitisation disclosure requirements[ii] for certain private securitisations. In this Client Alert, we summarise the Consultation Paper's proposals, set out initial observations on key issues affecting market participants (including CLO market participants), and summarise the next steps.

Executive Summary

- ESMA proposes to simplify the loan-level reporting requirements under Regulation (EU) 2017/2402 (the "**EU Securitisation Regulation**") for certain private securitisations by introducing a single, simplified template (applicable to any underlying asset class and permitting CSV format) as a new Annex XVI (the "**Private Securitisation Template**") in place of the current asset-level XML format reporting templates.
- The current proposals only apply to "European private securitisations"[iii], being private securitisations where no prospectus has to be drawn up in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council, and where all "sell-side" parties (i.e. the originator, sponsor, original lender and securitisation special purpose entity ("**SSPE**")) are established in the EU. This requirement unhelpfully means that the Private Securitisation Template is not applicable in the case of most European CLOs and all US CLOs, and such CLOs would be required to continue to report in accordance with the existing public securitisation reporting templates.
- No grandfathering for existing transactions is envisaged in the Consultation Paper, which may cause compliance issues for existing securitisations falling within the scope of the new rules.
- Any changes are unlikely to become effective before late 2025/Q1 2026, and will be subject to coordination with the wider review of the EU Securitisation Regulation, which may result in further

delay and amendments. In particular, the utility of the proposals may be undermined if, as part of wider reforms, the definition of "public securitisation" is expanded to include securitisations with public listings.

Background

The Consultation Paper is the latest development in the ongoing review of the functioning of the EU Securitisation Regulation and the wider EU securitisation legislative framework (following the mandate in Article 46 of the EU Securitisation Regulation). ESMA previously consulted on reforms to the current disclosure requirements of the EU Securitisation Regulation in its consultation paper of 21 December 2023 on the securitisation disclosure templates[iv] and summarised the feedback from market participants in a feedback statement dated 20 December 2024[v] (the "**2024 Feedback Statement**"). The 2024 Feedback Statement indicated that most respondents favoured streamlining the current securitisation disclosure framework, and identified a simplified template for private securitisations as the short-term priority. The Consultation Paper contains ESMA's proposals to address this priority issue by amending the existing Disclosure Technical Standards and introducing the Private Securitisation Template for asset-level disclosure under Article 7(1)(a) of the EU Securitisation Regulation for private securitisations. Set against this background is ESMA's Position Paper on "Building more effective and attractive capital markets in the EU"[vi] to ensure that the European capital markets play an important role in supporting growth, innovation and competitiveness in the European economy. As we explore below, it is arguable that to achieve this aim, the proposals will need significant improvement and simplification particularly with regard to grandfathering and jurisdictional limitations.

Next Steps

- ESMA has invited comments on the Consultation Paper by 31 March 2025.
- ESMA will then consider feedback received on the Consultation Paper and plans to publish a final report and submit the draft technical standards to the European Commission for endorsement by Q2 2025.
- If the European Commission endorses the proposals submitted by ESMA, these will then be subject to review by the European Parliament and the Council before (if approved) being published in the Official Journal and entering into force on the 20th day after publication.
- In the Consultation Paper, ESMA has noted that it will coordinate closely with the European Commission to ensure alignment with potential changes to the EU Securitisation Regulation itself. As such, there could be further delays to align with the broader reforms (including consultations as to the scope of the definition of public securitisation under the EU Securitisation Regulation, the implementation of which may undermine the utility of the proposals to implement simplified Private Securitisation Templates for private securitisations).

Initial Observations on the Proposals

***Jurisdictional scope*:** the new Private Securitisation Template will only apply to private securitisations where the originator, sponsor, original lender and SSPE are established in the EU[vii]. The Consultation Paper states that third-country securitisations should continue to use the existing templates[viii]. Whilst this requirement should not be problematic for European credit institution originators issuing receivables transactions or SRT securitisations, the requirement means that most European CLOs (where it is very common to have a UK or US originator) and all US CLOs (which will typically have a third-country SSPE and US originator) will be outside the scope of the Private Securitisation Template. This is unhelpful given

the stated purpose of the proposals is to *"[simplify] disclosure templates for private securitisations*" as "*[investors in private securitisations] have less need for prescribed disclosure templates compared to investors in public securitisations*"[ix] and, noting that the CLO market makes up a material portion of the European private securitisation market, ESMA's wider aim of improving efficiencies in the European capital markets.

In any event, it is unclear why the simplified reporting should be limited to transactions where *all* sell-side parties are in the EU, and this has the appearance of an unhelpfully protectionist stance by ESMA to encourage and benefit European-centric issuance relative to third-country (e.g. US) or cross-border transactions and counter to the benefits that the Draghi Report[x] and European Commission[xi] recently identified as crucial to the competitiveness of Europe's financial markets. Whether a European investor invests in a securitisation with all EU sell-side participants or third-country sell-side participants is irrelevant in assessing the form of information that they require to make an informed investment decision. Implicit in this requirement is a view that European sell-side parties are within the regulatory scope of European competent authorities and can therefore be expected to adequately prepare Private Securitisation Templates in their prescribed form. This view, however, ignores the fact that European investors are best placed, and required from a regulatory perspective[xii], to assess the adequacy of the prescribed information under Article 7 of the EU Securitisation Regulation.

The Consultation Paper is not explicit on whether simplified reporting might apply to transactions where all relevant sell-side parties are EU-established but where there is, for example, no sponsor or original lender involved in the transaction (as may be the case, for example, for CLOs with a UK or US manager, but a European originator retention holder). The Consultation Paper includes a question on whether the presence of an originator and sponsor in the EU should be considered a triggering factor in the requirements for delivery of Private Securitisation Templates[xiii], and we expect that market participants will support any such revisions to this proposal, but we note that there may not be an originator *and* sponsor for a transaction. Further, as considered above, we take the view that the Private Securitisation Template should apply in the case of any private securitisation, regardless of the domicile of the SSPE, sponsor, originator and original lender.

***Template contents and scope*:** the Private Securitisation Template reports, among other things, portfolio data on an aggregated basis (rather than, in the case of the existing templates, granular asset-level information determined by asset class) and may be provided in CSV format (instead of the current XML requirement). Whilst the focus on providing aggregated portfolio data is a welcome simplification of the current granular reporting fields, it will require some further refinement during the consultation process. The template includes some strange additions as compared to the existing templates with the inclusion of new fields, such as the legal names of the trust office and law firm related to the transaction[xiv], and more detailed information than the public templates in certain areas[xv]. Given the stated aim to simplify reporting requirements, it is not clear why the proposals contain new fields which are of questionable utility for investors and regulators and were clearly not considered significant for the existing, more expansive public templates. It is also arguable that the requirement to provide aggregated portfolio data will not materially simplify the reporting process because, to ascertain such aggregated data, reporting entities will need to continue to maintain and collate asset-level data.

Only reporting under Article 7(1)(a) of the EU Securitisation Regulation would be affected by the proposals, so parties would still need to provide the investor report template required by Article 7(1)(e). ESMA recognises that the Private Securitisation Template duplicates certain information contained in the investor reports[xvi], but does not intend to change the format or specification of investor reports. The Consultation Paper does, however, seek feedback on whether such information should be required in both reports[xvii]. Whilst seemingly unnecessary (and so would generally warrant further refinement), we would otherwise anticipate that duplication should not prove troublesome for market participants.

***Requesting "public" reporting*:** notwithstanding the simplified reporting requirements under the Private Securitisation Template, the Consultation Paper refers to originators, sponsors and SSPEs of private transactions being required to provide "public" reporting templates "upon request"[xviii]. The draft amendments to the Disclosure Technical Standards in Annex 3 of the Consultation Paper, however, do not include this requirement, so the statement in the Consultation Paper requires clarification. If this requirement is codified into the final rules, it drives a coach and horses through the proposed simplified reporting, as market participants will be required to maintain processes and procedures to provide full public securitisation template reporting if requested by an investor or competent authority. It also presents operational issues, including the practicality of switching reporting standards mid-transaction, or complying with two sets of reporting templates to service such requests.

***Significant event reporting*:** under the current reporting regime, only "public" securitisations are required to provide template-based significant event reporting under Article 7(1)(g) (albeit some private transactions may have elected to voluntarily adopt the template for such reporting). ESMA's proposals extend template-based significant event reporting to private securitisations, using the new Private Securitisation Template.

***Format and transmission*:** the proposals provide that, for European private securitisations, both the Private Securitisation Templates and investor reports would be provided "*at least in CSV format*" (albeit it is unclear what "at least" means in this context). The Consultation Paper also includes a question on whether there should be flexibility for competent authorities to specify a (different) required format. ESMA also proposes using a "*transmission channel [for reporting]…specified by the respective [competent authority]*" for administrative purposes. The ability to report in CSV format (or another selected by the competent authority) may be welcomed by some market participants where XML reporting has posed difficulties, but introducing different formats and transmission channels by jurisdiction could introduce further complexity.

***Grandfathering*:** no grandfathering or optionality in respect of existing transactions is currently envisaged. The changes to replace public securitisation templates with the Private Securitisation Template would apply to all European private securitisations immediately upon becoming effective (on the 20th day after publication in the Official Journal). This could be problematic, given the operational changes (and related time and costs) that may be required to alter reporting procedures to implement any new reporting templates and processes. Transaction documentation may provide for specific template formats to be used for reporting purposes – parties should confirm that flexibility is included to update formats where required/as agreed (which should typically be envisaged in the relevant provisions).

Conclusion

The proposals to simplify the existing disclosure regime for private securitisations will be welcomed by market participants, but require refinement. ESMA is listening to, and trying to address, the feedback received on the current burdensome requirements of the EU Securitisation Regulation regime, which is a step in the right direction. However, the current proposals could prove problematic for some, given the operational changes that may be required and the current lack of grandfathering for existing transactions. Key points to address in the consultation process are: (i) flexibility on the jurisdictional requirements for sell-side parties to ease the reporting burden for more transactions (in particular, extending the use of the Private Securitisation Template to all private securitisations, regardless of the domicile of the applicable sell-side parties); (ii) grandfathering or optionality to avoid sudden operational disruption to current reporting processes; and (iii) clarity on whether parties may also have to provide public templates on request.

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Please feel free to discuss any aspects of this Client Alert with your regular Milbank contacts or any member of our Alternative Investments Practice.

[i] https://www.esma.europa.eu/press-news/consultations/consultation-revision-disclosure-framework-private-securitisation

[ii] In particular, the Consultation Paper proposes amendments to the EU reporting technical standards contained in Commission Delegated Regulation (EU) 2020/1224 (the "**Disclosure RTS**") and Commission Delegated Regulation (EU) 2020/1225 (the "**Disclosure ITS**" and, together with the Disclosure RTS, the "**Disclosure Technical Standards**").

[iii] Annex 3 of the Consultation Paper sets out the amendments proposed in respect of the Disclosure RTS, including the addition in Article 7 of a definition for "European private securitisation" which "means a securitisation for which no prospectus has to be drawn up in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council and where the originator, sponsor, original lender and SSPE are established in the Union."

[iv] https://www.esma.europa.eu/sites/default/files/2023-12/ESMA12-2121844265-3053_-_Consultation_Paper_on_the_Securitisation_Disclosure_Templates.pdf

[v] https://www.esma.europa.eu/sites/default/files/2024-12/ESMA12-2121844265-3972_-_Feedback_statement_Securitisation_disclosure_templates.pdf

[vi] https://www.esma.europa.eu/sites/default/files/2024-05/ESMA24-450544452-2130_Position_paper_Building_more_effective_and_attractive_capital_markets_in_the_EU.pdf

[vii]As required by the new definition, "European private securitisation". See Note (iii) above.

[viii]Annexes II to XI of the Disclosure RTS.

[ix]Para 16, Consultation Paper.

[x]https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en

[xi]https://commission.europa.eu/document/download/10017eb1-4722-4333-add2-e0ed18105a34_en

[xii]See Article 5 of the EU Securitisation Regulation.

[xiii]Consultation Paper, Question 2: "Do you agree with the proposed scope of application, which requires all of the originators, sponsors, original lenders and SSPEs to be established in the Union? Alternatively, do you see any merit in applying the new template when at least the originator and sponsor are established in the Union? Please provide specific examples where the application of the proposed scope might present practical challenges."

[xiv]In Table 6.

[xv]For example, in respect of position-level information in Table 9.

[xvi]Such as the risk retention information in Table 8.

[xvii]For example, see Questions 17 and 22 of the Consultation Paper.

[xviii]Para 22, Consultation Paper.