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BVI[1] position paper on the Review of the Securitisation Regulation

Introduction

Revitalising the European securitisation market holds significant potential to contribute to the goals of the Savings and Investment Union's (SIU) ambition of a more diversified, resilient and competitive capital markets ecosystem. A well-functioning securitisation framework can unlock new sources of funding for the European economy (including green, digital and defence), reduce systemic risk by shifting exposures off bank balance sheets, and broaden participation from institutional investors across the EU. BVI believes that easing regulatory burdens – particularly around investor due diligence and issuer transparency – can help attract a wider investor base, including UCITS, AIFs, pension funds and insurers, thereby mitigating Europe's over-reliance on bank financing and enhancing financial stability.

However, the current regulatory framework, as outlined in the Securitisation Regulation (SECR), presents several challenges that have so far hampered the market's growth and competitiveness, and we are sceptical that the proposed improvements are sufficient to spark the desired momentum in the market.

Key Concerns and Recommendations

1. Due Diligence and Disclosure Requirements that act as Investment Barriers

Current Challenges: The SECR imposes stringent due diligence and reporting requirements on EU investors, creating a competitive disadvantage compared to their non-EU counterparts. The prescriptive "tick-the-box" approach, in particular in the form of complying with prescriptive templates, limits diversification, investor choice, and returns, while also reducing capital efficiency and increasing complexity in the market.

The suggested Article 7 disclosures and templates contradict the EU's objective of enhancing the competitiveness of local market participants and the strategies they offer to European clients. This is the case as many securitisation issuers outside the EU typically do not produce ESMA-compliant transparency templates, as they operate outside the scope of EU jurisdiction and are not subject to the EU reporting rules; they also are not willing to comply with the templates even though in many cases they comply with the substance of the EU rules and already share extensive information via their trustee reports, given the costs and burden the templates entail with no additional substantial information offered to their investors other than what is already available to them. In simpler terms, an EU investor cannot invest when the issuer has not produced an ESMA Article 7 template, although the issuer may be in line with the substance of the EU rules.

[1] BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 116 members manage assets of EUR 4.6 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 26%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

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This leaves investors in EU investment strategies with a considerably narrower range of investable assets, fewer choices and sub-optimal risk/reward results compared to similar savers and investors across the globe. In this way, the SECR's requirements effectively exclude non-EU securitisations from the EU investor market, limiting access to a €2.5 trillion non-EU market – roughly 70% of the global securitisation market. It is also important to note that given the limited number of EU-originated securitised assets, strengthening the EU securitisation market can only be achieved by broadening the investment universe and allowing for participation of global issuers that meet the substantive criteria of the Regulation.

We would also highlight that for Europe to be able to take a competitive stance and revive its securitisation market, it should move away from imposing dual regulatory obligations to asset managers, which is not a regulatory practice with any of the other global financial centres. Indeed, asset managers in Europe are already regulated under their sectoral legislation on the due diligence they apply; the current regime and the new proposal suggest that on top of their due diligence and risk management operations, which include stress testing at the level of the securitised assets, asset managers are required to conduct granular, additional verification on the securitisation issuers on the basis of a template.

Recommendations:

- Simplification and Flexibility: Adopt a principles-based approach to due diligence that aligns with existing frameworks under UCITSD and AIFMD. This would reduce unnecessary duplication and allow investors to focus on high-quality information and tailored risk analysis.
- Level Playing Field: As we have seen for EU-issued securitisation, remove the mandatory use of Article 7 templates for non-EU securitisations in Article 5(1)(e), allowing for alternative, high-quality disclosure formats agreed upon by both parties.

2. UCITS Single Issuer Limit

Current Challenges: Additionally, Article 56(2)(b) UCITSD imposes a restriction on a UCITS from acquiring more than 10% of the total debt issued by a “single issuing body” in order to prevent the UCITS from acquiring a large ownership percentage and exercising influence over the management of an issuing body (e.g., a company). While this requirement may be appropriate for corporate or sovereign issuers – where a management team and strategic direction are central –, it is ill-suited to securitisations which are inherently passive structures. These vehicles lack managerial discretion or corporate strategy and instead operate as pass-through entities, serving solely to administer loan portfolios and distribute cash flows to investors. Finally, we note that this provision dates back to 1985, predating the first European securitisation by two years. It therefore does not account for the specific characteristics of securitisation markets.

Recommendations:

- Adjust Issuer Limits: Re-evaluate the 10% issuer limit under Article 56.2(b) of UCITSD to better accommodate the structure of securitisation markets, thereby enhancing investment opportunities for funds.
- Clarify the definition of 'single issuing body' and explicitly exempt securitisations from the acquisition limit, recognising their structural distinctiveness and low risk of a fund gaining “undue influence” over a pool of loans.

3. Sanctions for Non-Compliance

Current Challenges: The proposed administrative sanctions regime for non-compliance with due diligence requirements is seen as unnecessary and potentially harmful to market development. It introduces legal uncertainty and may deter new market participants. Supervisors do not lack remediation powers today. It therefore seems that this sanctions regime is duplicative and burdensome. Finally, the introduction of a new administrative sanctions regime under the SECR sits very awkwardly with the broader EU simplification agenda.

Recommendation:

- Avoid Redundancy: Rely on existing sectoral legislation (UCITSD/AIFMD) for sanctions related to due diligence non-compliance. This would prevent duplication and align with the simplification agenda.

4. Definition of Public Securitisations

Current Challenges: Expanding the definition of public securitisations to include materially private transactions increases compliance burdens, discourages issuers and investors alike, and may shrink the EU securitisation market.

Recommendation:

- Maintain Current Scope: Avoid expanding the definition of public securitisations to prevent unnecessary burdens and ensure the availability of credit for SMEs.

Conclusion

While the European Commission’s proposals address some of the sell-side barriers to securitisation issuance, they do not go nearly far enough in support broad-based demand in the EU market. The proposed changes to the SECR must better reflect the practical realities and needs of institutional investors. By prioritising flexibility and substance over rigid procedural constraints, policymakers can create a more engaged institutional investor community and more competitive and efficient European securitisation market. These reforms are essential to achieving the SIU's objectives and supporting Europe's strategic priorities.