

2025: WAS CONSULTATION INVOLVEMENT KEY TO AVOIDING REGULATORY DIVERGENCE?

In this article, Charlie McGarel-Groves and Kate Patane reconsider whether consultation by regulators has been effective in encouraging regulatory alignment and avoiding divergence between the EU and UK securitisation frameworks.

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RISK OF DIVERGENCE

The EU Securitisation Regulation (Regulation (EU) 2017/2402) was the result of many years of development focused on designing a robust regulatory regime that effectively addressed the identified failings of the previous regime following the global financial crisis (GFC) and - though arguably to a lesser extent - encouraging an investable and functioning securitisation market in the EU. Whilst the more fundamental aspects of securitisation regulation in the EU (and the UK) have remained broadly similar since first being adopted following the GFC, such as the rules requiring the sponsor, originator and/or original lender to retain a meaningful interest in securitisation structures they establish, the story of securitisation regulation in recent years has been one of constant tinkering by legislators and regulators. Market participants have had to develop complex origination, reporting, due diligence and investment processes that are designed to ensure compliance with the prescriptive requirements of this regulatory regime. Changes to the securitisation rules and underlying regulatory technical standards require participants to review and adapt those processes, often at significant cost.

As a result of Brexit, the EU Securitisation Regulation was onshored in the UK, subject to limited technical changes, with the result that the securitisation regimes across the EU and UK were broadly consistent. However, as there are now separate EU and UK securitisation regimes, each subsequent review and amendment of either of these regimes gives rise to an additional risk of divergence. As UK and EU originators look to maximise their universe of investors, there is a clear commercial interest in structuring securitisation transactions so that they comply

with both UK and EU regimes. Accordingly, any divergence between those regimes risks introducing additional complexity, enhanced reporting obligations and duplication of processes for those transactions looking to achieve dual compliance, which can increase cost and adversely affect the functionality of the UK and EU securitisation markets.

Consequently, even changes to the UK or EU securitisation regimes that are designed to reduce the regulatory burden for market participants may not have their intended beneficial impact to the extent those changes are not made consistently across the UK and EU regimes.

LATEST ROUND OF PROPOSED CHANGES

EU

On 17 June 2025, the European Commission released the latest hotly anticipated proposals outlining changes to the EU Securitisation Framework. Amendments were proposed to the [EU Securitisation Regulation](#) and the [EU Capital Requirements Regulation \(EU Proposals\)](#).

In addition, during 2025, two consultations were undertaken in respect of the [EU Liquidity Coverage Ratio Delegated Regulation](#) and the [EU Solvency II Delegated Regulation](#) with proposed changes relevant to securitisations, together with numerous other regulatory consultations, including by the European Securities and Markets Authority in respect of simple, transparent and standardised securitisations and the disclosure framework for private securitisations under Article 7.

UK

On 1 November 2024, the new UK Securitisation Framework was implemented by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). This entirely replaced the onshored EU Securitisation Regulation but was in substance generally consistent with that legacy regime.

A new wave of proposed amendments and associated consultations was predicted for 2025, but indications suggest that those may be delayed pending the outcome of the consultations in respect of the EU Proposals.

CONSULTATIONS

The EU Proposals presented new areas of divergence with the UK securitisation regime. Areas of particular concern include:

- (a) new definitions of public and private securitisation, which, among other things, materially impact reporting requirements for securitisation transactions;
- (b) allocation of legal responsibility for compliance with due diligence requirements; and
- (c) potential sanctions for failure of institutional investors to meet due diligence requirements.

There has been active participation in consultations regarding the EU Proposals by a broad range of interested parties and industry bodies (e.g., with the Association for Financial Markets in Europe and the International Capital Market Association). Each of the above topics - and a range of other more technical issues - have been the subject of significant discussion and debate across all constituents of the securitisation market - regulators, originators, arrangers, investors and advisors.

Responses to these consultations have evidenced the competing objectives of the diverse population of securitisation market participants, including:

- (a) encouraging the opening up of the EU securitisation market;
- (b) prudently maintaining a stable and secure EU securitisation market;
- (c) ensuring clear and objectively measurable regulatory standards that facilitate compliance by participants; and
- (d) maintaining consistency of operational and legal processes for participants.

Clearly an effective consultation process requires more than active engagement by interested parties. The success of these processes also greatly depends on the effectiveness of regulators to discern common themes in the responses, and their willingness to adapt their proposals and objectives to properly reflect those themes. The breadth of responses has no doubt created challenges for EU regulators to discern a consistent market view on a number of aspects of the EU Proposals. However, these consultations also provide EU regulators with an invaluable view of the issues that securitisation market participants consider need addressing as well as giving them access to a wide range of sophisticated views regarding the potential solutions to those issues, which regulators can evaluate against their proposals and could ultimately look to incorporate into the final versions of the EU Proposals.

CONCLUSION

The EU Proposals have been submitted to the European Parliament and Council of the EU for approval and will continue to be revised as they work their way through the consultative legislative process. At this stage, it is difficult to conclude whether the latest round of consultations has been effective in adapting the more controversial aspects of the EU Proposals. However, the expectation remains that implementation of the EU Proposals will result in further divergence from the current UK securitisation regime.

Therefore, focus now turns to the UK regulators and the anticipated consultations regarding amendments to the UK securitisation regime. Considering the EU Proposals, those consultations provide market participants with another opportunity to deliver a message promoting broadly harmonised regulatory regimes across the EU and UK. The question to be debated between participants is whether that harmonisation outweighs any potential benefits of looking to have a more permissive principles-based regime in the UK. The effectiveness of that consultation in prompting any change in regulatory development will likely depend on the strength and consistency of the responses from participants, and the willingness of UK regulators to reflect that feedback in the implemented proposals. It is encouraging that UK regulators appear to have taken a “wait and see” approach with respect to the EU Proposals, which may be evidence that there needs to be a regulatory objective of limiting divergence with the EU that is balanced against the UK regulators’ own views as to how best to design a stable and investable UK securitisation market.

Following Brexit, the risk of EU and UK regulatory divergence is an ever-present danger that needs to be constantly considered against the perceived benefits of regulatory change. Consultations provide regulators with a critical tool to test the temperature of the market as to the relative weights of that risk and benefit. If participation in consultations was the measure of success, then the high level of engagement from securitisation market participants during 2025 could be seen as a victory. However, the influence of those responses on EU legislators and regulators remains to be seen, and we await the next chapter with the anticipated consultations in respect of the UK securitisation regime. This story never ends!

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