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Securitisation 2026

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Luxembourg: Trends and Developments

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Trends and Developments

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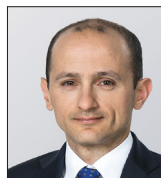
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Securitisation in the EU and Proposed Reform

The EU Commission has recognised that securitisations are an important component of well-functioning financial markets, since they contribute to diversifying financial institutions' funding sources and releasing regulatory capital that can be reallocated to support further lending. Furthermore, securitisations provide financial institutions and other market participants with additional investment opportunities, thus allowing portfolio diversification and facilitating the flow of funding to businesses and individuals, both within member states and on a cross-border basis throughout the EU.

Important institutions, such as the European Investment Bank and the European Investment Fund in Luxembourg, are making good use of securitisation techniques to fulfil their mandate and to balance the allocation of risk assumed by them and the provision of direct or indirect funding to banks, corporates or investment funds within the EU. Securitisations can, amongst other things, help to reduce the burden on banks' balance sheets and can release additional liquidity, which can then be used to finance projects in the real economy.

Since the adoption of the Luxembourg Law of 22 March 2004 on securitisation undertakings in 2004, as amended from time to time (the "Securitisation Law"), Luxembourg has been a very active market for the setting up of securitisation vehicles and the structuring of securitisation transactions, and has become one of the major hubs for securitisation transactions in Europe. The Securitisation Law is very flexible and allows any type of securitisation transaction, with private placement or offer to the public, true sale or syn-

thetic, tranching or untranching. Securitisation vehicles may be regulated or unregulated and can create compartments to ring-fence the assets and liabilities of a securitisation transaction from those of other transactions of the same securitisation vehicle. Of more than circa 1,600 securitisation vehicles (more than 6,000 compartments) active in Luxembourg at the time of writing, only 27 are regulated.

Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (the "EU Securitisation Regulation") is further mitigating the negative perception caused by the 2008 financial crisis. In accordance with the EU Securitisation Regulation, a securitisation vehicle can issue senior and junior tranches of notes, each having a different risk profile triggering risk-retention requirements and reporting obligations towards the regulator in Luxembourg.

On 17 June 2025, the Commission released a legislative package proposing measures to revive the EU securitisation framework. The proposed amendments to the EU Securitisation Regulation aim to reduce the operational costs for issuers and investors by simplifying due diligence and transparency requirements. The proposal also removes the requirement for investors to verify certain information when the selling party is based and supervised in the EU, as competent authorities already oversee compliance. Furthermore, it suggests that mandatory and securitisation-specific due diligence requirements are fully removed for regulated investors.

The proposed amendments further aim to enhance the homogeneity requirement for simple, transparent and standardised (STS) securitisations. Accordingly, pools composed of at least 70% loans to small and medium-sized enterprises (SMEs) would be deemed homogenous, which is expected to simplify cross-border transactions and promote SME financing. Currently, to qualify as an STS securitisation, the underlying credit facility must consist exclusively of commercial loans either secured by immovable property located in the same jurisdiction or granted to obligors residing in the same jurisdiction. Such amendments would significantly increase flexibility and support SMEs within the EU.

Synthetic Securitisation of Loan Portfolios

In a synthetic securitisation transaction, the originator is seeking credit protection via the use of credit derivatives in respect of the assets to be transferred but without selling that asset to the securitisation vehicle. A true sale of the assets is, in general, not possible due to the regulatory framework applicable to the originators, which are often regulated financial institutions, such as banks.

Generally, the originator, as protection buyer, transfers the credit risk in respect of a portfolio of loans to the securitisation vehicle as protection seller. While the credit risk in respect of the portfolio's assets is transferred, the legal ownership of that portfolio remains with the originator. Credit risk can be transferred via a multitude of derivative instruments embedded, for instance, in credit-linked notes, whereby the originator issues credit-linked notes to the securitisation vehicle, which assumes the risk of a default in respect of the underlying risk. Further, the risk can also be transferred by way of a credit default swap or other complex credit derivative transactions.

In addition, the securitisation vehicle can enter into a collateral agreement with the originator and guarantee any failure to pay of the originator in connection with a portfolio of reference obligations. The originator will pay a fee to the securitisation vehicle for entering into the collateral agreement and to provide credit protection. Typically, the securitisation vehicle will provide a cash deposit to the originator, funded by the issue proceeds derived from the issue of securities by the

securitisation vehicle to investors, which ultimately will bear the risk of the underlying loan portfolio. The main purpose of the collateral agreement is to achieve a better regulatory capital treatment for the originator.

Even though the Securitisation Law clarifies that transactions qualifying as securitisations under the Securitisation Law do not qualify as activities that are subject to the legal framework applying to the insurance sector, there have been discussions in the Luxembourg legal literature (as well as Belgian and French legal literature, to which Luxembourg courts tend to turn) as to whether the provision of credit protection by the use of credit derivatives or a guarantee could be recharacterised as an insurance contract. Without going into the details of the main difference between an insurance contract and a credit derivative or a guarantee, there are strong arguments in support of the proposition that these instruments would not be considered as insurance contracts under Luxembourg law.

This position was further strengthened by the adoption of the Luxembourg Law on professional payment guarantees dated 10 July 2020 (the "Professional Guarantee Law"), which introduced a special regime for personal securities (*sûretés personnelles*) providing for a payment obligation and granted in a professional context.

The professional guarantee (the "Professional Guarantee") is defined as an arrangement by which the guarantor undertakes towards a beneficiary to pay, at the request of the beneficiary or of an agreed third party, a sum determined in accordance with the specific terms in relation to one or more claims or the risks associated with them. The Professional Guarantee may be granted by any person, including an individual, in a professional context.

As stated above, there were discussions as to whether the granting of a guarantee in the context of a synthetic securitisation, in which credit risk of loss is transferred by using such an instrument, could constitute an insurance contract and hence a regulated insurance activity carried out by a securitisation vehicle. With the adoption of the Professional Guarantee Law, there are now further arguments, strengthening

the view that such a guarantee will not qualify as an insurance contract under Luxembourg law.

The Commission's recent legislative proposals to amend the EU Securitisation Regulation do not address the characterisation of credit protection arrangements as insurance contracts. However, the proposals introduce the possibility for unfunded guarantees provided by insurance and reinsurance undertakings, provided these entities meet certain solvency, creditworthiness and diversification criteria. Under the current EU Securitisation Regulation, only funded credit protection qualifies for STS on-balance-sheet (synthetic) securitisation if the protection provider does not fall within the limited list of eligible entities.

Provision of Loans

The granting of loans as a business is heavily regulated in Luxembourg in accordance with the Luxembourg Law of 5 April 1993 on the financial sector, as amended from time to time (the "Financial Sector Law"). Professional lenders must either hold a banking licence or hold a licence as a professional of the financial sector carrying out lending operations. The main difference between a licensed bank and a licensed professional carrying out lending operations is that the latter is not allowed to take deposits or other repayable funds from the public – ie, its lending activity is financed by its own funds and borrowing from affiliates and banks.

The capital requirements imposed on banks following the financial crisis in 2008 have been, in part, considered as having contributed to a reduction in the lending activities of certain EU banks. The reduction of bank lending has led to a gap in available bank funding for the EU economy. Therefore, the EU has aimed at fostering lending solutions to spur growth within the EU. One of the tools to pursue this goal was the promotion of a label of "high-quality securitisation" under the EU Securitisation Regulation. This was also intended to help achieve a Capital Markets Union (CMU) so that securitisation was once again recognised as an important tool to diversify the sources of financing for the real economy. The Commission's legislative proposal introduces amendments to the capital requirements under Regulation (EU) 575/2013 on capital requirements (the "Capital Requirements

Regulation", or CRR). The proposed changes to the liquidity cover ratio (LCR) would permit notes with lower credit ratings to be included in an institution's total liquidity buffer, subject to relevant haircuts. Additionally, the amendments to the net stable funding ratio (NSFR) provide for the application of lower rates. These measures are expected to be advantageous for banks and insurance companies.

Undertakings qualifying under the Securitisation Law are expressly excluded from the scope of the Financial Sector Law, similar to alternative investment funds qualifying under Directive 2011/61/EU of the European Parliament and the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (the "Alternative Investment Fund Managers Directive", AIFMD).

Securitisation vehicles can therefore, in principle, act as first lenders but are not permitted to arrange loans. This means that securitisation undertakings may, in principle, act as lenders and provide loans to corporate borrowers provided they do not carry out a credit activity on their own account and do not raise funds from the public. Further, the loan agreement must not have been negotiated by, or on behalf of, the securitisation vehicle. The latter is in line with the general idea of passive management, save for the active management of securitised assets in certain types of transactions as now allowed under the Securitisation Law, of the assets allocated to a securitisation vehicle and that a securitisation vehicle should not itself create the risk pertaining to a loan origination, such as the identification and screening of the borrowers, the credit risk assessment and the negotiation of the loan agreement.

The documentation relating to a securitisation vehicle acting as first lender must therefore either clearly define the assets on which the service and the repayment of the loans granted by the securitisation vehicle will depend, or clearly describe the borrower(s) and/or the criteria according to which the borrowers will be selected, so that the investors are adequately informed of the risks, including the credit risks and the

profitability of their investment at the time securities are issued by the securitisation vehicle.

According to a guidance note of the European Central Bank, which is relevant when assessing the qualification of a securitisation under the AIFMD, securitisation transactions may consist of the “adhesion by the purchaser to a set of predetermined terms that are identical or essentially similar to those on offer to other investors”, such as participation in a loan syndication, unless the vehicle has underwriting responsibilities.

Tokenisation of Securities

Luxembourg has taken important steps to promote the digitalisation of the capital markets and introduced a “digital” security alongside the existing framework applicable to bearer, registered and dematerialised securities. The Luxembourg Law of 1 March 2019 (the “Blockchain Law I”) established that a security token held via digital ledger technology such as blockchain qualifies as a security and satisfies the criteria of being a transferable and negotiable instrument. Similarly to securities cleared via clearing systems, the Blockchain Law I recognises that transfers of securities are perfected by registration in the relevant account held on a blockchain.

The Luxembourg Law of 22 January 2021 (the “Blockchain Law II”) brings additional improvements to the fintech legal framework in Luxembourg and bridges a gap regarding the regulation of dematerialised securities in Luxembourg. The Blockchain Law II allows investment firms and credit institutions to hold and manage securities issuance accounts via secured electronic registration systems – eg, distributed ledger technology (DLT) and databases.

In addition, with Regulation (EU) 2022/858 (the “EU DLT Pilot Regime”), a new pilot regime has been created on a European level to allow the development of DLT market infrastructures, applicable from 23 March 2023. The Luxembourg law of 15 March 2023 (the “Blockchain III Law”) supplements the EU DLT Pilot Regime in Luxembourg and, amongst others, explicitly recognises the possibility of using DLT instruments for financial collateral arrangements.

On 19 December 2024, the Luxembourg parliament passed a new law (the “Blockchain IV Law”), introducing, amongst other things, the possibility of using a monitoring agent for securities issuance. Such monitoring agent will fully employ DLT technology to perform its tasks, which include managing the issuance account, overseeing the chain of title for securities, and reconciling issued securities.

With these legislative initiatives, Luxembourg contributes to enabling financial market participants to take full advantage of the opportunities offered by new technologies and at the same time provides for legal certainty in this evolving sector.

Latest Amendments to the Securitisation Law

The amendments to the Securitisation Law in February 2022 broaden the means of financing securitisation transactions, including also the possibility to finance through loans on an exclusive basis or to issue financial instruments (covering, unlike the previously used term “securities”, amongst others, a broader field of instruments). In practice, more and more securitisation transactions are now financed via the provision of loans by investors to the securitisation vehicles.

Further, the Securitisation Law now explicitly allows active management of the securitised assets in certain types of transactions, as long as the transactions are not financed by way of offering financial instruments to the public. Luxembourg securitisation vehicles may now securitise a pool of risks consisting of debt securities, financial debt instruments or receivables which are actively managed, either by the undertaking itself, or by a third party. In practice, the amended legal framework allows for securitisation of actively managed collateralised debt obligations (CDOs) and collateralised loan obligations (CLOs) in private placements.

Unlike the initial legal framework which limited the possibility of a securitisation vehicle to provide collateral to other parties to securing the claims of direct creditors and investors, the Securitisation Law has now also a widened scope of possible collateral arrangements by allowing a securitisation vehicle to grant collateral in favour of all parties involved in a securitisation transaction.

In addition to broadening the means by which a securitisation transaction may be financed, the Securitisation Law also provides for rules governing the legal ranking of different instruments. By way of example, shares/fund units rank junior to beneficiary shares, which in turn rank junior to debt securities issued by the securitisation vehicle. Such subordination rules are aligned with general rules applicable to commercial companies and mutual funds and incorporate the subordination principles in accordance with current market practice. Depending on the structure, and in accordance with the rules of the Securitisation Law, the subordination may fall outside the scope of the EU Securitisation Regulation, even though the structure might constitute economic tranching.

The Securitisation Law distinguishes between securitisation companies and securitisation funds, which qualify as securitisation vehicles and are eligible to carry out securitisation transactions within the meaning of the Securitisation Law. Under the Securitisation Law, it is possible to set up securitisation companies as a public limited company (*société anonyme*), a corporate partnership limited by shares (*société en commandite par actions*), a private limited liability company (*société à responsabilité limitée*), a co-operative company organised as a public limited company (*société cooperative organisée comme une société anonyme*) and, following the amendment in February 2022, an unlimited company (*société en nom collectif*), a common limited partnership (*société en commandite simple*), a special limited partnership (*société en commandite spéciale*), and a simplified joint stock company (*société par actions simplifiée*).

Securitisation funds are not within the scope of the AIFMD and consist of one or several co-ownerships, or one or several fiduciary estates. Securitisation funds do not have legal personality and are managed by a management company. In accordance with the Securitisation Law, while previously only the management companies of securitisation funds needed to be registered with the Luxembourg Trade and Companies Register, securitisation funds will also need to be registered.

The Law of 15 July 2024 on the transfer of non-performing loans (the “NLP Law”), implementing Directive (EU) 2021/2167 (the “NLP Directive”), introduced amendments to the Securitisation Law and the Financial Sector Law. Notably, the NLP Law establishes the credit servicer as a new category of specialised professional working in the financial sector (“*Professionnel du Secteur Financier*” or PSF), subject to authorisation and supervision by the *Commission du Surveillance du Secteur Financier* (CSSF). Credit servicing is now a regulated activity under the NLP Law, requiring licensing and compliance with regulatory requirements. Securitisation vehicles acquiring non-performing loans from originating banks are considered credit purchasers and fall within the scope of the NLP Law, unless they qualify as STS securitisations under the EU Securitisation Regulation.

Conclusion

The Securitisation Law, together with the EU Securitisation Regulation, provides a comprehensive toolkit for the European securitisation market and ensures that the regulatory framework enables securitisation to play its part in the European Capital Markets Union. Securitisation vehicles can effectively assume the risks pertaining to synthetic securitisation transactions and help to free up regulatory capital of institutional lenders, resulting in additional lending capacities of these entities to the real economy. The Professional Guarantee is perfectly fit to support sophisticated structuring of these transactions and to allocate the senior and/or junior risk pertaining to the underlying loan portfolios. Under certain circumstances, securitisation vehicles may, via the private placement of securities to institutional investors, be used as funding vehicles for SMEs in distress. The possibility to digitalise securities under Luxembourg law may be useful for the diversification of the investor base using securitisation structures and the broadening of funding capacities. In particular, with the latest amendments to the Securitisation Law, Luxembourg has increased the flexibility and legal certainty of the securitisation framework by updating the national legal regime to match the needs of the securitisation market, while at the same time focusing on investor protection.

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