Securitisation: The Case For A 28th Regime

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EU law; Financial regulation; Securitisation

Abstract

The European securitisation framework remains fragmented. Without a coherent legal foundation, the market cannot function as a single one. This article argues for a sector-specific, optional "28th regime", centred on a pan-European securitisation vehicle and harmonised rules, to provide the legal infrastructure needed for the emergence of a unified market and the deployment of pan-European investments.

Europe has spent the past decade trying to deepen its banking and capital-markets architecture. Yet one of the most effective bridges between bank credit and capital markets—securitisation—still operates in Europe as a largely national product. This article argues that the next step should be an optional European Union 28th regime for securitisation.

Following the Banking Union, established in response to the sovereign debt crisis, which led to the creation of a single supervision for systemic banks in the euro area, the Capital Markets Union (CMU) has been launched to foster the diversification of the EU financial system, reduce the Union's reliance on bank lending, and ultimately create a single market for capital. The agenda has now been reframed under the Savings and Investments Union (SIU) strategy, announced in March 2025.[1] The SIU sets a broader objective: by harnessing the combined capacity of both capital markets and the banking sector, it seeks to channel savings more efficiently into investments and to enhance the depth and liquidity of the single financial market in pursuit of the Union's strategic objective to support growth, competitiveness and strategic autonomy.

A broad policy consensus has emerged around one proposition: achieving these objectives will require a significantly larger securitisation market. The message emerging from reports prepared by influential leaders as Enrico Letta,[2] Mario Draghi[3] and Christian Noyer[4] is clear: securitisation can serve an essential role for real economy and policy objectives, by providing an alternative funding channel to traditional banking system. It enables financial institutions to speedily recycle capital into new lending, manage liquidity needs, transfer financial risk outside the banking sector and preserve financial stability. Banks can deploy the freed-up capacity for various purposes, including to support EU competitiveness.

Yet, despite its recognised potential, the EU cash securitisation market remains significantly underdeveloped when compared with its global competitors.

While recent legislative proposals rightly seek to ease burdensome regulatory requirements and improve the prudential treatment of securitisation exposures, they leave largely untouched the principal structural obstacle to market integration: the fragmentation of national legal frameworks governing asset transfers, insolvency, servicing and securitisation vehicles.

The result is a paradox. Europe has a single rulebook for securitisation disclosure, due diligence and risk retention, but not for the legal foundations upon which true-sale securitisation ultimately depends. In practice, securitisation continues to function as a collection of national markets rather than a genuine European market.

This article focuses on identifying the main legal and operational barriers to pan-European cash securitisation and examines how such a framework could be re-designed. This article further argues that the next stage of reform should move beyond prudential recalibration and regulatory simplification. It proposes the creation of a securitisation-specific "28th regime": an optional EU framework, operating alongside the twenty-seven national

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[1] See European Commission, "Commission unveils Savings and Investments Union strategy to enhance financial opportunities for EU citizens and businesses" (19 March 2025), *https://ec.europa.eu/commission/presscorner/detail/en/ip_25_802*.

[2] See E. Letta, *Much More Than A Market* (Report to the President of the European Commission, April 2024), *https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf* (the Letta Report). Notably, Letta highlights the need to mobilise private capital for the EU to meet its policy agenda and recognises securitisation "as a unique link between credit and capital markets" (cfr. Letta Report, p.32).

[3] See M. Draghi, *The Future of European Competitiveness* (Report to the President of the European Commission, Part A, 9 September 2024), *https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20_%20A%20competitiveness%20strategy%20for%20Europe.pdf* (the Draghi Report). The former Head of the European Central Bank (ECB) remarks that Europe's competitiveness depends on a deeper financial integration, noting that "EU banks also face some specific regulatory hurdles which constrain their capacity to lend" and that "to increase the financing capacity of the banking sector, the EU should aim to revive securitisation and complete the Banking Union." (cfr. Draghi Report, pp.64 and 65).

[4] See the work of the High-Level Group on the Future of the Capital Markets Union, *Developing European Capital Markets to Finance the Future—Proposals for a Savings and Investments Union* (April 2024), *https://www.true-sale-international.de/fileadmin/tsi-gmbh/tsi_downloads/aktuelles/EN_-_Report_-_Developing_European_capital_markets.pdf* (the Noyer Report). The committee of experts chaired by Christian Noyer estimates that Europe will face additional financial needs approaching EUR 1 trillion each year, with the green transition alone requiring EUR 700 billion of annual additional investments and that, in this context, securitisation can play a pivotal role to finance the European economy. The Noyer Report considers the revitalisation of the securitisation market as one of the transformative reforms to relaunch the Capital Markets Union (CMU) (p.27) and outlines a concrete implementation plan including correcting the regulatory and prudential framework and the creation of a common securitisation platform which would grant a European guarantee of last resort for securitisation of mortgage or small and medium enterprise (SME) loans (pp.52–59).

legal systems, that would provide harmonised rules on true-sale transfers, bankruptcy remoteness and securitisation vehicles.[5]

A decade of reform, a decade of stagnation

Since the 2008 global financial crisis, the EU securitisation market has contracted and remained below pre-crisis levels. Outstanding volumes declined from around EUR 2 trillion in 2010 for asset-backed securities (ABS), collateralised debt obligations (CDO) and mortgage-backed securities (MBS) to roughly EUR 1.25 trillion (including CLOs) at the end of the second quarter of 2025,[6] in sharp contrast to the United States. In 2022, securitisation issuance in the EU stood at approximately 0.3% of GDP, compared to 4% in the US.[7] This gap is too wide to be explained by market maturity alone and reflects deeper structural and regulatory divergences. At the same time, the Chinese securitisation market has experienced rapid growth in recent years, driven by regulatory reforms and a concerted policy effort to diversify funding sources for financial institutions.[8] By 2022, China's securitisation issuance represented 1.8% of GDP.[9]

The regulatory response to the global financial crisis in Europe produced a dense framework of interlocking rules, initially through the Capital Requirements Regulation[10] for banks and financial institutions, later complemented by the Securitisation Regulation[11]. Together with the framework on Liquidity Coverage Ratio[12] and the Solvency II and relevant delegated regulation[13] regime applicable to insurance undertakings, these measures now constitute the foundations of the EU securitisation framework. Their introduction was a necessary and proportionate response to the shortcomings exposed by the crisis and played an important role in reinforcing financial stability. Yet, the cumulative effect of successive layers of regulation has been to create a framework that remains significantly more conservative than those of other major jurisdictions. As a result, the European securitisation market has struggled to regain momentum, limiting its ability to support financing, investment and capital markets integration across the Union.

Against this background, the European Commission (the *Commission*) has reopened the debate on securitisation through a targeted consultation on the functioning of the EU securitisation framework, which culminated in the legislative reform package unveiled in June 2025.[14] The proposals have since advanced through the adoption of the Council of the European Union's general approach,[15] the approval of the European Parliament's Committee on Economic and Monetary Affairs (ECON) position and the first interinstitutional negotiation taking place in June 2026, under the EU level 1 legislative process. As a cornerstone of the SIU, the package amends the Securitisation Regulation, the CRR and the LCR, while parallel reforms to the Solvency II DR have also been adopted.[16]

[5] This article does not attempt to address every issue faced by the European securitisation market. In particular, it does not examine the complex questions of tax treatment of securitisation vehicles and instruments at national level, nor the prudential calibration of securitisation exposures currently under reform. While these topics are central to the overall functioning of the market, they lie beyond the scope of the present analysis.

[6] For the 2010 figures, see European Securities and Markets Authority (ESMA) TRV Risk Analysis, "The EU securitisation market—an overview" (21 September 2023), p.3, *https://www.esma.europa.eu/sites/default/files/2023-09/ESMA50-524821-2908_TRV_risk_analysis_-_EU_securitisation_markets_overview.pdf*; and for the 2025 figures, see ESMA, "Securitisation Report Q2 2025" (2025), *https://www.afme.eu/media/ikjfwijl/securitisation-data-report-q2-2025.pdf*.

[7] SSee M. Draghi, The Future of European Competitiveness (Report to the President of the European Commission, Part A, 9 September 2024), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=comnat:COM_2024_0297_FIN (the Draghi Report) fn.3 p.64: "Annual issuance of securitisations in the EU stood at just 0.3% of GDP in 2022, while for the US the figure was 4%".

[8] See Zong Jun, "The Future of China's Bond Market", International Monetary Fund (March 2019), Ch.8, *https://www.elibrary.imf.org/display/book/9781484372142/ch008.xml* Mr Zong identifies five phases in the development of China's asset-backed securities (ABS) market: (i) 1992–2004: exploration of the market and regulation to establish a practical and legal framework for asset securitisation in China. In 2004, the People's Bank of China and the China Banking Regulatory Commission presented multiple applications for credit assets securitisation pilot programs to the State Council; (ii) 2005–2008: launch of the first securitisation pilot, together with China's first regulatory document to standardise asset securitisation operations, jointly issued by the People's Bank of China and the China Banking Regulatory Commission. Three sets of supporting regulations were announced to standardise accounting treatment, refine regulatory requirements and clarify tax incentive policies; (iii) 2009–2011: suspension of the pilot scheme following the global financial crisis; (iv) 2012–2013: relaunch of the credit asset securitisation pilot program with an initial issuance limit of RMB 50 billion, subsequently raised to RMB 400 billion in 2013, with strengthened risk-control measures. Market activity resumed its expansion. In July 2013, the State Council confirmed the policy objective of gradually promoting the development of credit asset securitisation, revitalise funding support for small and micro enterprises, and adjusting the economic structure; (v) 2014–present: strong, steady market growth, supported by "the improvement of system design, simplification of issuance procedures, and strengthened information disclosure and risk management" and the transition from a deal-by-deal review and approval system to a registration-based regime.

[9] See Association for Financial Markets in Europe (AFME), "US and Asia securitisation markets contribute far more to financing their economies than Europe—'Now is the time to address the gap'" (*Press Release*, 6 June 2023), *https://www.afme.eu/news/press-releases/details/us-and-asia-securitisation-markets-contribute-far-more-to-financing-their-economies-than-europe---now-is-the-time-to-address-the-gap?utm_source=chatgpt.com*.

[10] Regulation No.575/2013 on prudential requirements for credit institutions and investment firms [2013] OJ L176/1 (Capital Requirements Regulation or CRR).

[11] Regulation 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 [2017] OJ L347 (Securitisation Regulation).

[12] Commission Delegated Regulation 2015/61 of 10 October 2014 supplementing Regulation No.575/2013 with regard to liquidity coverage requirement for credit institutions [2015] OJ L11/1 (LCR DR).

[13] Directive 2009/138 of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) and relevant Commission Delegated Regulation 2015/35 of 10 October 2014 supplementing Directive 2009/138 [2015] OJ L12/1 (Solvency II DR).

[14] See DG Fisma, "Targeted Consultation on the Functioning of the EU Securitisation Framework" (9 October–4 December 2024), *https://finance.ec.europa.eu/document/download/fb451cdc-4e5b-4d74-9411-cb8bd0789090_en?filename=2024-eu-securitisation-framework-consultation-document_en.pdf&utm_source=chatgpt.com*; European Commission, "Revitalising EU Securitisation: Legislative Reform Package" (*Press release*, 27 June 2025), *https://finance.ec.europa.eu/news/revitalising-eu-securitisation-2025-06-27_en?utm_source=chatgpt.com*.

[15] See Council negotiating mandate on the general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (STS), *https://data.consilium.europa.eu/doc/document/ST-16740-2025-INIT/en/pdf* and Council negotiating mandate on prudential requirements for credit institutions as regards requirements for securitisation exposures, *https://data.consilium.europa.eu/doc/document/ST-16741-2025-INIT/en/pdf*.

[16] Commission Delegated Regulation 2026/269 of 29 October 2025 amending Delegated Regulation 2015/35 as regards technical provisions, long-term guarantee measures, own funds, equity risk, spread risk on securitisation positions, other standard formula capital requirements, reporting and disclosure, proportionality and group solvency [2026] OJ L26/269, *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32026R0269*.

These initiatives aim to restore market confidence, improve access to finance for the real economy, and promote sustainable capital market growth, fostering a well-functioning and sustainable securitisation market that supports financing for businesses across the Union. These proposals represent an important first step towards addressing long-standing concerns of market participants, notably the high operational costs and complexity of certain due diligence obligations,[17] transparency requirements[18] and the homogeneity requirement for simple, transparent and standardised (STS) securitisations.[19]

However, the proposed reforms do not address deeper structural obstacles to the emergence of a genuine pan-European securitisation market—most notably, the persistent fragmentation of national legal frameworks and the lack of harmonisation of applicable insolvency rules.

As of today, around 80% of the underlying loans securitised in EU capital markets remain concentrated in just five Member States: France, Germany, Italy, Spain and the Netherlands.[20] This is certainly due to a larger size of those countries and their economies, but it goes beyond that. Those jurisdictions have in fact a set of rules and market practices that fit better the securitisation business.

In addition, alongside these Member States, Luxembourg and Ireland play a central role in European capital markets, having become leading jurisdictions for listings and issuer incorporation.

It should further be noted that the securitisation market presents major divergent dynamics also between the true sale (or off-balance sheet securitisation) and synthetic (or on-balance sheet securitisation) markets.[21] As at the end of 2023, the EU was the largest market for synthetic securitisations in the world, representing half of the global outstanding amount[22] and the volume of synthetic securitisations issued by significant institutions has grown by 85% in 2025, compared with the same period in 2024.[23] In the meantime, the true sale securitisation market stagnated.

This is due to multiple reasons that need to be analysed and addressed by the regulator. True sale securitisation market suffers from a lack of senior investors, partly because senior ABS tranches offer lower yields and receive less attractive prudential and liquidity treatment than comparable products. ABS notes and true sale securitisations operate at a competitive disadvantage against other structured finance products, such as covered bonds, that equally serve funding purposes and may present a comparable risk profile. As a result, senior tranches are often retained by originators or placed with multilateral development banks, which partly fill this market gap.

But the problem is not only one of investor demand. Additional legal and structural impediments continue to prevent pan-European and cross-border true sale securitisations from fully supporting the objectives of the SIU.

The fragmentation trap: one market, twenty-seven legal regimes

National securitisation regimes: success at home, barriers across borders

Although the Securitisation Regulation introduced a framework for securitisations at EU level, it coexists with bespoke national securitisation regimes in several Member States.[24] These domestic frameworks provide legal certainty to issuers and investors by setting out clear structural protections. While each national framework has its own specificities, they generally share certain core features: the bankruptcy remoteness of the securitisation vehicles, whether established as special purpose vehicles (SPVs) or dedicated securitisation funds, provides reasonable certainty that the financial instruments collateralised by a pool of assets are isolated from the

[17] EU institutional investors would no longer be required to verify compliance with the Securitisation Regulation by EU sell-side parties in the transaction (originators, original lenders, sponsors and securitisation vehicles). This proposal recognises that sell-side entities established in the EU are already subject to EU regulatory supervision and can be sanctioned for breach. In addition, the requirement for investors to verify compliance with the STS requirements would be removed, since compliance is already subject to regulatory compliance and notification. A related proposal provides that third party verifiers of STS compliance would need to be supervised, in addition to being authorised, by their respective national competent authority.

[18] To reduce the reporting burden on issuers, the Commission proposes that reporting templates be streamlined to reduce required fields by at least 35%, or more where feasible, and that certain mandatory fields be converted to voluntary ones. In addition, a dedicated and simplified reporting template for private securitisation is to be developed which focuses solely on the needs of supervisors.

[19] To support SME's access to finance, it is proposed that a pool of underlying receivables will be treated as homogenous where at least 70% of the exposures at origination consists of exposures to SMEs (as opposed to 100% currently).

[20] See ESMA, *The EU securitisation market—an overview,*p.7 (*op. cit.* fn.6) and European Commission, *Revitalising EU Securitisation* (*op. cit.* fn.8).

[21] While synthetic securitisation plays a valuable role in risk management and regulatory capital relief for credit institutions, true sale securitisation can provide banks with new funding from capital markets that can be then deployed into the real economy.

[22] See European Systemic Risk Board (ESRB), "Unveiling the impact of STS on-balance-sheet securitisation on EU financial stability" (May 2025), p.4, *https://www.esrb.europa.eu/pub/pdf/reports/esrb.report202505_syntheticSTSsecuritisation.en.pdf?6c3885349149fe9b6edb268d98d24490*.

[23] See P. Machado, "Securitisation: you can never tranche the same portfolio twice" (30 September 2025), keynote speech at the European Financial Institutions Conference, Frankfurt am Main, *https://www.bankingsupervision.europa.eu/press/speeches/date/2025/html/ssm.sp250930~224d637bdc.en.html*.

[24] Among the five Member States accounting for 80% of the EU securitisation activity, three have adopted dedicated securitisation frameworks. France originally enacted domestic legislation in 1988, revised through successive reforms, most recently by *Ordonnance No.2017-1432 du 4 octobre 2017 relative au régime de la titrisation*; the current provisions are codified in the *Code monétaire et financier*, art.L214-166-1 *et seq* (hereinafter the *French Securitisation Law*). Spain consolidated its securitisation regime with *Ley 5/2015, de 27 de abril, de fomento de la financiación empresarial* which sets out the rules for securitisation vehicles and transactions (hereinafter the Spanish Securitisation Law). Italy adopted *Legge 30 aprile 1999, No.130*, subsequently amended by *Legge 30 dicembre 2020, no.178* to extend its scope to transactions involving the granting of loans to SPVs (hereinafter the *Italian Securitisation Law*). By contrast, Germany and the Netherlands, which lack dedicated securitisation frameworks, rely on general civil, insolvency and capital-market law to structure transactions (contractual securitisation approach). In the Netherlands, clear rules on assignment and SPV bankruptcy remoteness, combined with tax neutrality and a well-developed residential mortgage (*RMBS*) market, explain its large share of EU issuances. Outside this group, other Member States, namely Luxembourg and Ireland, although not major origination markets, have competed to attract non-resident originators by offering favourable tax and regulatory securitisation regimes. Luxembourg, with the *Loi du 22 mars 2004 relative à la titrisation*, as amended (most recently by *Loi du 25 février 2022*) (hereinafter the Luxembourg Securitisation Law), was one of the pioneering Member States to offer a comprehensive statutory framework, introducing the concept of "compartments" within a single vehicle and broad asset-class flexibility.

originator's insolvency, thereby excluding any recourse by the originator's creditors or liquidator to the vehicle's assets. This protection is typically enacted in the securitisation laws through provisions aiming to ensure the bankruptcy remoteness of the vehicle, such as limited recourse[25] and non-petition provisions,[26] a statutory regime of segregated bank accounts to limit commingling risk,[27] and, in some jurisdictions, the possibility of establishing fully segregated compartments or sub-funds within a single vehicle[28]. In addition to these structural safeguards, certain Member States have complemented their securitisation frameworks with simplified transfer formalities to facilitate the true sale of receivables into securitisation vehicles by reducing operational burdens and costs, while ensuring legal certainty of the true sale.[29]

Out of the five Member States where 80% of the outstanding securitisations are located, three (France, Italy and Spain) have maintained dedicated securitisation regimes for years. This suggests that the existence of a dedicated and stable legal regime is one of the factors contributing to the expansion of the securitisation market, allowing arrangers to lower legal risks and transaction costs.

Market size, however, also plays an important role in this hegemony: these three jurisdictions are among the EU's largest economies by GDP (together with Germany, which instead has developed a 'contractual securitisation approach') and hold a large share of the EU's total bank-loan stock.[30] Nonetheless, the Netherlands' position in the top five illustrates that market size is not the only growth driver, and that a clear contractual framework and a deeply homogenous underlying asset class (notably RMBS) can also foster a strong securitisation market.

By contrast, true sale securitisation activity in Central and Eastern Europe (*CEE*) remains small in scale and lacks the track record of the Western European markets. While some cash transactions have been executed in Austria, Poland, the Czech Republic and Hungary, in other jurisdictions, it "practically never kicked in".[31] The synthetic market has instead been relatively active,[32] allowing even small originators to have access to the capital market.[33] This limited activity is, however, not solely due to a lack of legal and regulatory framework. In many CEE countries, the size of the market leads to challenges for originators in reaching the critical mass required to attract investors and to justify the fixed costs involved in structuring transactions. In this context, the ability to participate in pan-European structures—pooling assets across borders and enabling involvement in larger, more diversified transactions—would be transformative.

Robust national regimes have fostered domestic securitisation activity in certain Member States, but they have also reinforced a siloed, country-by-country market. For cross-border securitisations, the absence of a uniform framework leads to higher costs and legal uncertainty, as market players must navigate multiple local laws and

[25] For instance, art.62(1) of the Luxembourg Securitisation Law expressly provides for limited recourse: "The rights of the investors and of the creditors are limited to the assets of the securitisation undertaking. Where such rights relate to a compartment or have arisen in connection with the creation, the operation or the liquidation of a compartment, they are limited to the assets of that compartment". Article 3(2) of the Italian Securitisation Law provides that each securitisation operation carried out by an SPV constitutes a separate estate (*patrimonio separato*) from that SPV and from other operations and that recourse is limited to the assets of that estate. In France and Spain, while the concept of limited recourse is not spelled out as such, securitisation vehicles are deemed to be outside of insolvency laws. In France, this results from art.L.214-169, VI, last paragraph and L.214-175-III of the *Code monétaire et financier;* in Spain, securitisation funds (*fondos de titulisación*) lack legal personality and, under art.1.1. of Royal Legislative Decree 1/2020, the status of "debtor" can only be applied to a natural and legal person, which precludes insolvency proceedings against the funds. As a result, the transfer of the securitised assets from the originator to the vehicle may not be challenged in case of the originator's insolvency.

[26] Non-petition provisions (or no-petition clauses) are typical features of English law governed securitisation documentation, whereby transaction parties contractually agree not to initiate insolvency, bankruptcy, or winding-up proceedings against the issuer to ensure bankruptcy remoteness of the structure. However, these contractual clauses do not bind or restrict creditors other than transaction parties, e.g. tax authorities.

[27] The French Securitisation Law has introduced the regime of a specifically dedicated collection bank account (*compte spécialement affecté*) under arts L.214-173 and D.214-228 of the *Code monétaire et financier*, pursuant to which the creditors of the servicer are not entitled to claim any payment over the sums credited by the servicer to such an account, including in the event of the servicer's insolvency. In Italy, art.3, paras 2-bis and 2-ter of the Italian Securitisation Law provides that the sums credited to the accounts opened in the name of the issuer or the servicer with an account bank (whether before or during the relevant insolvency proceeding of such account bank) will not be subject to suspension of payments, will not be deemed to form part of the estate of the servicer or the account bank, as the case may be and shall be immediately and fully repaid to the issuer, without the need to file any petition.

[28] The French (art.L.214-169 *Code monétaire et financier*), Luxembourg (art.5 of the Luxembourg Securitisation Law) and Spanish regimes (art.15(2) of the Spanish Securitisation Law) expressly permit the creation of fully segregated compartments within a securitisation vehicle, provided this is envisaged in its constitutive documents. Italy, by contrast, has not incorporated the concept of "compartment" into its regime but provides for statutory segregation on a per-transaction basis, where each securitisation operation constitutes a separate estate from the SPV and from other operations (art.3(2) Italian Securitisation Law).

[29] The Italian Securitisation Law introduced one of the most efficient perfection mechanisms in the EU. In accordance with art.4, the assignment of receivables to a securitisation vehicle becomes effective *erga omnes* upon publication of a notice in the Official Gazette (*Gazzetta Ufficiale della Repubblica Italiana*) and registration in the companies' register, without the need for individual debtor notifications or acknowledgments (provided that such notification may still be needed to mitigate set-off risks). The process has also been fully digitalised, as publication in the Official Gazette is now effected through the GURI online portal, allowing electronic submission and payment of a modest publication fee. France recognises a simplified transfer instrument for securitisation purposes. Transfers to securitisation vehicles (*fonds communs de titrisation* or *sociétés de titrisation*) are effected through the execution and delivery of a single transfer document (*bordereau)* governed by arts L214-167 *et seq*, notably L214-169 V of the *Code monétaire et financier*, which may be established, stored and transmitted electronically. The assignment becomes effective execution of the instrument, without registration or debtor notification and all ancillary rights and guarantees follow automatically. However, in accordance with art.1323 of the *Code civil*, the assignment is not enforceable against the debtor until it has been notified or acknowledged.

[30] See CEPS, *Key Findings—ECRI Statistical Package 2024* (2025), in 2023 "about 66 % of the total outstanding amount of EU loans is held by the four major EU economies—Germany (24.5 %), France (22.2 %), Italy (9.9 %) and Spain (8.6 %)." p.2: available at: *https://cdn.ceps.eu/wp-content/uploads/2025/01/Key-Findings-ECRI-SP-2024.pdf?utm_source=chatgpt.com*.

[31] See Schoenherr, *Roadmap 2020: Securitisations in CEE* (2019), p.3, available at: *https://www.schoenherr.eu/media/btplbbnr/roadmap_2020_securitisations_in_cee_191014.pdf?utm_source=chatgpt.com*.

[32] For instance, in March 2025, the EIB Group issued a CZK 1.4 billion guarantee on the mezzanine tranche of a synthetic securitisation to Ceska Sporitelna to expand lending to SMEs and Mid-Caps in the Czech Republic, see *https://www.eib.org/en/press/all/2025-133-czech-businesses-to-get-financing-support-as-eib-group-and-ceska-sporitelna-join-forces*.

[33] In a separate transaction, in November 2024, the EIB Group signed the first synthetic securitisation backed by solar panels loans to private individuals in Poland with Inbank, an Estonian financial technology company, see *https://www.eif.org/InvestEU/news/2024/eib-group-signs-first-synthetic-securitisation-backed-by-solar-panel-loans-to-private-individuals-in-poland-with-pln-625-million-to-inbank.htm?utm_source=chatgpt.com*.

reconcile divergent standards between jurisdictions and with the Securitisation Regulation.[34] Without greater legal coherence in origination and transfer rules, cross-border securitisation will remain complex and uneven across the Union.

Regulatory hurdles to cross-border investments

The non-harmonisation of insolvency frameworks and servicing practices among Member States is a major reason for the fragmentation of the European securitisation market. The validity of a true sale, the requirements for the assignment of receivables, the rules regulating debtor notification and transfer enforceability, the possibility to sell future receivables, are governed by the national civil law of the relevant Member State. Therefore, even where national legal regimes and market standards are well-developed, cross-border transactions remain heavily burdened by divergent rules. The absence of homogeneity, both in terms of pool origination and applicable credit and collection policies, makes it inefficient for market participants to aggregate portfolios at pan-European level, as the resulting legal analysis and financial implications create a significant burden.

One of the most striking examples of the barriers to true pan-European transactions concerns the acquisition and origination of receivables by securitisation vehicles. While some jurisdictions, such as France,[35] have relaxed their banking rules to allow direct lending by securitisation entities, in many Member States, securitisation vehicles are generally not authorised to originate new credit and are limited to acquiring receivables. In addition, certain jurisdictions further limit the latter activity to local vehicles only.[36] Finally, certain jurisdictions restrict the acquisition of receivables by securitisation vehicles to specific asset classes.[37]

Beyond origination, the rules governing the assignment of receivables remain another area of legal fragmentation, even in jurisdictions with long-established securitisation frameworks.

True sale of the receivables is the cornerstone of cash securitisations. Ensuring that receivables are effectively transferred to the securitisation vehicle is therefore essential for this product.

While jurisdictions with well-developed securitisation markets allow the transfer of receivables without prior notification to the debtor, enabling securitisations to rely on so-called silent assignments, the legal effects of such assignments differ. In France and Germany, the assignment becomes effective upon agreement between the parties but is not enforceable against the debtor until notice.[38] In Spain, assignments are likewise valid without notification, although certain regional laws impose limited notification duties in consumer cases.[39] In Italy, by contrast, the assignment becomes enforceable against third parties upon publication in the official journal (*Gazzetta Ufficiale*) and registration in the companies' register, without the need for individual debtor notifications or acknowledgments (except for the mitigation of set-off risk).[40] These divergences in formalities and effects continue to complicate the execution of pan-European securitisations, particularly where pools of receivables originate from multiple jurisdictions.

Navigating insolvency risks across the EU

The lack of harmonisation in national insolvency laws across the EU significantly hinders the development of an integrated, efficient, and scalable securitisation market, particularly for cross-border and pan-European transactions.

True sale securitisation structures, which require a legally sound, insolvency-proof and enforceable transfer of credit exposures to the securitisation vehicle, are heavily dependent on the robustness of domestic insolvency laws. Achieving, on the one hand, a legally irrevocable true sale and, on the other hand, ensuring the bankruptcy remoteness of securitisation vehicles remain fundamental preconditions for setting up a securitisation transaction.

[34] For instance, the Luxembourg Securitisation Law does not require any tranching for a transaction to qualify as a securitisation transaction while it is condition under the Securitisation Regulation. See art.1 (1): *"Securitisation, within the meaning of this law, means the transaction by which a securitisation undertaking acquires or assumes, directly or through another undertaking, risks relating to claims, other assets, or obligations assumed by third parties or inherent to all or part of the activities of third parties and issues 'financial instruments or contracts, for all or part of it, any type of loan', whose value or yield depends on such risks*."

[35] See, in France, *Ordonnance No.2017-1432 du 4 octobre 2017 relative au régime de la titrisation* which allows French securitisation vehicles to lend to corporate entities. Spanish securitisation funds, by contrast, are not permitted to engage in direct lending and may only acquire present or future receivables.

[36] Such restrictions inevitably impede pan-European transactions, as an originator would not be able to acquire receivables in more than one Member States within the same SPV structure, even when compartmentalisation is available. This leads to a substantive increase in costs, as SPVs must meet minimum capital requirements, maintain a registered address, appoint a manager or board of managers and comply with local governance rules. Originators or arrangers operating on a cross-border basis are therefore forced to manage multiple structures across different Member States.

[37] Specifically, in Belgium, the purchase of residential mortgage credit receivables by a securitisation vehicle is subject to this vehicle also being licensed as a mortgage credit provider, see art.VII.159, §3 and arts VII.163–VII.166 of Book VII of the Belgian *Code de droit économique.*For consumer credit receivables, assignment is restricted to eligible entities, including institutional securitisation vehicles, under art.VII.102 of Book VII of the Belgian *Code de droit économique.* This prevents any foreign securitisation vehicles—even those with equivalent status or subject to similar prudential supervision in their home jurisdiction – from being an eligible purchaser of Belgian consumer credit receivables.

[38] See fn.29 above regarding the French simplified assignment regime. In Germany, the sale and assignment are perfected by entering the receivables purchase agreement (*RPA*), without any required prior notice to the debtors. RPAs usually provide that obligors are not notified of the transfer from the originator to the issuer while the originator remains in compliance with its obligations under the RPA and servicing agreement. The issuer may, however, notify obligors of the assignment upon the occurrence of an "obligor notification event", typically aligning with a servicer replacement event, after which obligors are instructed to pay the issuer directly.

[39] For example, in certain Spanish autonomous communities (e.g. Comunidad Foral de Navarra), if the seller fails to notify the assignment in accordance with the regional regulations, it may be subject to penalties. However, the breach of notification rules will not affect the assignment of receivables, which is governed by the general provisions of the Spanish Civil Code.

[40] See CEPS, "Key Findings—ECRI Statistical Package 2024" (op. cit. fn.30).

In addition, the predictability of insolvency procedures and the reliability of creditor protection therefore constitute the backbone not only of true sale securitisations, but also of cross-border capital market transactions more broadly.

Across the EU, however, the ease of resolving insolvency and the recovery rates vary dramatically between Member States.[41] Despite being a long-standing subject of discussion at EU level,[42] insolvency laws have not been substantively harmonised.[43]

The concern about these fundamental preconditions is two-fold. First, in jurisdictions where no dedicated framework exists to ensure the insolvency-proof and enforceable transfer of receivables to a special-purpose vehicle, securitisation transactions become prohibitively expensive and subject to high legal risks. Second, the absence of harmonised rules across Member States leads to inconsistent rules on asset transfers, claw-back and creditor treatment in the event of default. This impairs investors' ability to assess recovery prospects and properly price risk, increases structuring costs through duplicative advisory work, particularly in relation to enforceability and insolvency, and discourages the formation of large, diversified cross-border portfolios. These structural inefficiencies prevent securitisation from operating as an effective funding channel in certain Member States, deter cross-border investments, and thus directly impede the emergence of a genuine SIU. This is even more relevant for smaller Member States, which struggle to achieve a critical mass of homogeneous receivables that can be securitised and for which the development of an effective pan-European market is key to access such financing tool in the capital market.

Addressing these insolvency-related divergences requires solutions that go beyond the needed revisions currently under review by the European co-legislators, including targeted structural reforms at EU level. In particular, greater convergence of insolvency and assignment rules applicable to securitisation transactions would facilitate the emergence of a more integrated European securitisation market.

From fragmentation to integration: building a single rulebook for securitisation

In his report, Letta remarks that a successful SIU cannot be established without "an institutional framework and market structure governing the movement of that capital". He further cites the harmonisation of insolvency regimes as a component of such a framework.[44] The following section considers how a targeted, sector-specific harmonisation of insolvency and transfer rules for true sale securitisations could be implemented in practice at EU level.

Towards a sectoral harmonisation of insolvency framework and transfer rules

While full harmonisation of Member States' insolvency laws appears politically challenging, a targeted, sector-specific approach focused on securitisation has gained increasing traction.[45] This approach could draw inspiration from the model adopted in 2002 in the context of the Financial Collateral Directive, which established a harmonised legal framework for the creation and enforcement of financial collateral arrangements.[46] In this case, however, consistent and effective implementation across the Union would be best achieved through an EU Regulation rather than a Directive, as "Regulation is where the Union can act fastest and most decisively".[47]

A sectoral harmonisation regime should first establish a clear safe harbour for true-sale securitisation transactions. The transfer of receivables to a securitisation vehicle should be protected from clawback risk in the absence of fraud, bad faith or other exceptional circumstances involving the seller. Equally important, a transfer that satisfies the requirements of the regime should not be subject to re-characterisation as a different legal arrangement, such as a secured financing, a fiduciary transfer or an assignment with recourse to the originator. Legal certainty regarding the effectiveness and nature of the transfer is a fundamental prerequisite for any true-sale securitisation structure.

[41] See World Bank & International Finance Corporation, *Doing Business 2020: Regional Profile—European Union (EU)* (World Bank Group, 2020), *https://www.doingbusiness.org/content/dam/doingBusiness/media/Profiles/Regional/DB2020/EU.pdf*. The report studies the time, cost and outcome of insolvency proceedings to calculate the recovery rate, expressed as cents on the dollar recovered by secured creditors through reorganisation, liquidation or debt enforcement. The most recent data, collected in 2019, shows that this rate ranges from 90.1 and 89.4 in the Netherlands and in Belgium to 34.4 and 32 in Romania and Greece. The report also ranks economies on the ease of resolving insolvency: Finland and Germany top the ranking with scores of 92.7 and 89.8, respectively, while Luxembourg and Malta are at the bottom with 45.5 and 38.3, well below the EU average at 70.5. The overall score for resolving insolvency is the average of the recovery rate score and the strength of the insolvency framework index. The full methodology is available at: *https://www.doingbusiness.org/en/methodology/resolving-insolvency*.

[42] See 81/1068: Commission Opinion of 10 December 1981 on the draft Convention on bankruptcy, winding-up, arrangements, compositions and similar proceedings.

[43] Regulation No.205/848 on insolvency proceedings (recast) did not materially address the fragmentation of insolvency laws, instead it only provided a set of conflict of law rules in the field of insolvency. Directive 2026/799 harmonising certain aspects of insolvency law is also not sufficient to address the fragmentation of insolvency rules applicable to securitisation transactions.

[44] See E. Letta, *Much More Than A Market* (op. cit. fn.2), pp.29 and 33–35.

[45] In addition to the Letta Report, the Banque de France examined the harmonisation of insolvency law in its Bulletin no.249, "Speeding up the process of harmonising European insolvency law to strengthen financial integration" (November–December 2023), *https://www.banque-france.fr/en/publications-and-statistics/publications/speeding-process-harmonising-european-insolvency-law-strengthen-financial-integration*. It highlighted that the "creation of common standards is also essential to lower the barriers to cross-border investments and thus contribute to a better allocation of capital." The Dutch Authority for the Financial Markets (AFM) and De Nederlandsche Bank (DNB) likewise identified enhanced cooperation in the field of insolvency as a priority in their joint position paper "Next Steps for the European Capital Markets Union" (2023), *https://share.google/1UhB5UOWGqtuZjElt*.

[46] Notably, the Financial Collateral Directive strengthened enforcement rights in the event of default by the collateral provider, allowing the collateral taker to realise the collateral immediately, whether within or outside insolvency proceedings, and minimised formalities such as registration, notification or notarisation requirements. See Directive 2002/47 of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements [2002] OJ L168 (the Financial Collateral Directive).

[47] See M. Draghi, "High Level Conference—One year after the Draghi report: what has been achieved, what has changed" (16 September 2025), keynote speech at the high-level conference on competitiveness, *https://commission.europa.eu/document/download/0951a4ff-cd1a-4ea3-bc1d-f603decc1ed9_en?filename=Draghi_Speech_High_Level_Conference_One_Year_After.pdf*.

Additionally, the harmonised framework should also ensure bankruptcy remoteness of securitisation vehicles throughout the Union, including in jurisdictions that do not currently provide dedicated securitisation legislation. A degree of harmonisation in the hierarchy of creditors—in particular, for preferential claims, such as those of tax authorities—would further facilitate resolution procedures and enhance predictability for investors, in particular where securitisation structures might be subject to multiple regimes. Such harmonisation is appropriate in the context of securitisation, where creditors are typically a limited number of sophisticated market participants that contractually agree, ex ante, to a clearly defined allocation of cash flows through negotiated priority-of-payment provisions.

Another pillar of the regime should be the establishment of simplified and standardised formalities governing the transfer of receivables to securitisation vehicles, as well as clear determination of the law applicable to assigned claims. A harmonised sectoral regime could address these inefficiencies by establishing a clear, single EU-wide rule applicable to eligible securitisation vehicles operating in the Union. Assignments could become effective and enforceable *erga omnes* upon compliance with standardised requirements, such as registration through a simplified and preferably digital process in a central European register.

Beyond sectoral harmonisation: the case for a 28th regime for securitisation

Building on the proposal for sectoral harmonisation of insolvency rules for securitisation transactions, the question arises as to how such a harmonised framework should be implemented legally.

Two possible paths can serve this purpose.

The first approach would build on mutual recognition of securitisation vehicles through an EU passport regime applicable to national securitisation vehicles. Under this model, securitisation vehicles and funds established under national law and supervised by local authorities could operate more easily within the common market by meeting pre-defined eligibility criteria that ensure high-quality standards. Such vehicles could be granted access to a harmonised framework and to a set of protections ensuring the uniform treatment of true-sale transfers and bankruptcy remoteness under directly applicable EU regulation, thereby promoting consistency while leveraging on existing national frameworks.

This model would build on the approach adopted in the European Long-Term Investment Fund (ELTIF) Regulation,[48] which grants an EU passport to nationally constituted funds that are managed by authorised alternative investment fund managers, operate through national legal forms, and comply with uniform standards. ELTIFs function as a single harmonised label, coexisting with national fund categories and available on a voluntary basis to eligible market participants.

However, residual challenges would remain. In particular, only a limited number of Member States offer securitisation vehicles that could benefit from this kind of approach, therefore the integration would remain limited. In addition, the concern raised by an increasing number of commentators regarding the barriers resulting from divergent supervisory practices among the different national competent authorities would also need to be addressed. As remarked in the Letta Report, "existing barriers or breaches in achieving a level playing field are evident through variations in national supervisory intensity".[49]

A more ambitious avenue would therefore consist in the creation of a pan-European securitisation vehicle and/or fund (the PESV), established directly under EU law and subject to an *ad-hoc* regime: the so-called *28th regime*.[50]

This second, more effective approach would be the most potent way to pursue sectoral harmonisation, while taking into account the political reluctance of Member States to surrender control over certain matters, the most sensitive of which being insolvency.

Building on the idea proposed by Letta in his report on the future of the EU Single Market, the 28th regime would constitute an EU-wide legal framework for securitisation vehicles, sitting alongside the existing national laws of the twenty-seven Member States. Rather than forcing Member States to overhaul or merge their domestic laws—an approach that has historically stalled in the Council of the European Union—it would provide market operators with an additional, parallel option that could, over time, also facilitate broader harmonisation. The idea is not to replace national laws, but to create an additional EU common regime that market participants may choose when they wish to operate on a cross-border basis under a single harmonised set of rules.

The Commission has launched its flagship proposal for the creation of a 28th regime known as *EU Inc.*[51] This initiative aims to create a single, harmonised corporate legal regime across the European Union.[52] The initiative is particularly relevant because it demonstrates that the Union is increasingly willing to offer an optional

[48] Regulation 2015/760 on European long-term investment funds [2015] OJ L123/98, as amended by Regulation 2023/606 (the ELTIF Regulation).
[49] See E. Letta, *Much More Than A Market* (op. cit. fn.2), pp.34 and 35.
[50] The need for the adoption of a 28th regime for securitisations is argued by the industry. See e.g. A. Vickery, A. Shopov, J. Hecht-Harbeck, G. Gooderham and G. Malaty, "Unlocking the potential: why the EU needs a dedicated securitisation special purpose entity" (February 2026) *International Banking and Financial Law*.
[51] European Commission proposal for Regulation on the 28th regime corporate legal framework—'EU INC.'. See, *https://eur-lex.europa.eu/legal-content/EN/ TXT/?uri =comnat%3ACOM_2026_0321_FIN*.
[52] The EU Inc initiative provides for a single set of EU-wide rules covering key aspects of their corporate life cycle, including incorporation, governance, capital operations, share transfers and simplified resolution procedures. While particularly designed for innovative companies and startups, it will be available to any founder who considers it suitable, alongside existing national company forms. See, *https://commission.europa.eu/topics/business-and-industry/doing-business-eu/company-law-and-corporate -governance/eu-inc-new-harmonised-corporate-legal-regime_en*.

European legal form to overcome fragmentation in national legal regimes. The same logic could be transposed to securitisation, in a more tailored, sector specific way.

Unlike the passport-based approach, this structure would not rely on existing national legal forms. It would instead provide for a single, uniform vehicle incorporated under and governed by a directly applicable EU Regulation. Under this regime, PESVs would embody a label of compliance with EU high standards of quality[53] and would automatically fall within the harmonised 28th regime. PESV would therefore benefit, on an EU-wide basis, from the proposed sectoral harmonisation, ensuring a safe harbour for true-sale securitisation transactions, protected treatment of true-sale transfers, insolvency protections, bankruptcy remoteness, and consistent, standardised formalities governing the acquisition of receivables and their enforceability.

The legal basis for a securitisation-specific 28th regime rests more naturally on art.114 TFEU. Recent debates surrounding the proposed EU Inc. framework have highlighted concerns about the use of art.114 TFEU where the centre of gravity of a measure is the creation of a new company law vehicle, raising questions about its relationship with the more specific company law legal basis in art.50 TFEU.[54] By contrast, a 28th regime for securitisations would not primarily pursue company law harmonisation or the creation of a new European corporate form. The proposed PESV would merely serve as a tool to achieve a broader internal market objective: removing legal barriers that impede the free movement of capital, cross-border financing and the integration of European capital markets. Its substantive focus would therefore not lie in company law, but in improving the functioning of the internal market. In that context, art.114 TFEU appears particularly appropriate, as the principal aim of the reform is to facilitate cross-border financing and reduce the legal fragmentation that continues to hinder the development of a genuine European securitisation market.

In line with the approach adopted in jurisdictions such as France and Luxembourg, and to accommodate the preferences of investors and originators, the PESV framework should provide flexibility in the choice of legal form. Vehicles could be constituted either as corporate entities (SPVs) with legal personality or as securitisation funds managed by a supervised management company. Operationally, the PESV regime should also allow for the creation of separate compartments or sub-funds, ensuring strict segregation of assets and liabilities for each securitisation transaction. This would reduce legal and transactional costs and provide a scalable structure.[55]

To ensure credibility and investor confidence, PESVs should be subject to uniform governance standards, including requirements for independent directors. They should also be recorded in an EU-wide register to ensure transparency and legal certainty.

Such an approach would allow smaller originators to issue securities under a less burdensome regime and would encourage the development of the private true-sale securitisation market, which plays a crucial role in the securitisation of certain receivables.[56]

Direct oversight could be entrusted to ESMA, thereby strengthening its direct supervisory powers.[57] This reform could pioneer direct supervision by ESMA in the securitisation field, allowing market participants to operate under a single interpretation of the applicable legal framework and avoid the supervisory divergence that persists under national regimes.

Taken together, the PESV and the harmonised framework would constitute a genuine *28th regime* available for market participants in the securitisation field: a uniform, optional EU framework operating alongside national regimes, designed to remove the legal and structural divergences that continue to impede a fully integrated pan-European capital market.

The European securitisation framework now stands at an inflection point. Recent regulatory reform proposals have the undeniable merit of addressing several of the issues faced by operators in the European securitisation market, especially in relation to prudential rules and risk management. Yet, as this article has demonstrated, these reforms do not rectify the deeper structural problem: the continuing fragmentation of the national insolvency and transfer regimes governing such transactions, both of which are core elements underpinning the robustness of cross-border true-sale securitisation. Without a more

[53] The 28th regime could also be limited to those securitisation transactions contributing effectively to the financing of the "real economy" or supporting specific policy goals such as access to affordable housing or the green transition.

[54] European Parliament, Committee on Legal Affairs, Draft Report with recommendations to the Commission on a 28th regime for innovative companies (European Start-Up and Scale-Up Company—ESSU), Rapporteur René Repasi, 2025, Explanatory Statement, p.145. Rapporteur Repasi expresses reservations as to the use of art.114 TFEU for the EU Inc. reform: "*Choice of the Legal Base - The legal base for the proposal chosen by the Commission tests the limits of Union's competences. It is questionable whether the creation of a corporate form is the right occasion to do so as the choice of the legal base raises important questions of legal certainty for companies choosing to opt-in to the legal form. While the ambition of the proposal is to be welcomed, its legal design warrants careful scrutiny [..] Article 50 TFEU, as a lex specialis, provides for the use of directives. The Commission, by contrast, chose Article 114 TFEU as the sole legal basis, in order to avoid both unanimity under Article 352 TFEU and to enable the adoption of a regulation. This represents a significant departure from previous approaches to European company law harmonisation. The Commission fails to explain how it bases a company law proposal exclusively on Article 114(1) TFEU although this legal base is explicitly subordinate to any more specific legal base in the Treaties such as Article 50 TFEU.*"

[55] The proposal advanced in "Unlocking the Potential: Why the EU Needs a Dedicated Securitisation Special Purpose Entity" (*op. cit.*fn. 50) for a bespoke audit and accounting regime for securitisation vehicles should also be considered. Given the detailed loan-level reporting already required under the Securitisation Regulation, simplified annual accounts and audit requirements would reduce unnecessary administrative costs while preserving a high level of investor protection and transparency.

[56] See AFME, European Datawarehouse and TSI,*European Benchmarking Exercise (EBE) for Private Securitisations—Report of H2-2022 Results*(September 2023).This report shows that the private securitisation market is estimated at least EUR 196 billion of total commitments. Trade receivables and auto loans/leases are the dominant asset types in private true sale securitisations, making up around 73% of the market.

[57] This is line with Letta who, while recognising that a single, centralised supervisor in the EU may be premature, advocates for powers to ESMA being gradually strengthened. "Targeted changes to ESMA's mandate to reduce uncertainty and improve supervisory effectiveness" is also one of the recommendations by the AFM and the DNB (*op. cit.*fn. 47) highlighting that "centralised supervision can help to reduce market fragmentation and contribute to a better functioning and more integrated European capital market".

coherent and harmonised legal foundation, the EU securitisation market will continue to function as a set of national markets rather than as a single European one.

This persistent fragmentation reflects the trap that Mario Draghi identified when he observed that Europe's challenge lies in "acting together, not fragmenting our efforts".[58] In the field of securitisation, however, the Union's approach still couples uncoordinated national frameworks with the expectation that market forces alone will deliver integration—an expectation that is unlikely to be borne out.

Drawing on earlier examples of sectoral harmonisation, this article has therefore argued for a sector-specific EU regime addressing the core legal and structural obstacles that most directly impede a pan-European market. Clear and harmonised rules on bankruptcy remoteness, insolvency protection and the recognition of creditor safeguards would reduce legal uncertainty and support the emergence of a genuinely unified EU securitisation market. Their incorporation into an optional 28th regime, centred on a pan-European securitisation vehicle, would offer market participants a credible alternative to navigating multiple national structures and could provide the common legal infrastructure needed for larger and more diversified cross-border transactions.

None of this is to overstate the case. Admittedly, the torpor of the European securitisation market has root causes beyond regulatory and legal hurdles: high capital charges, Europe's bank-centric financing model, tax treatment and varying origination standards all play a role. A 28th regime, in and of itself, would not be sufficient to address all the factors currently hindering the development of the market at an EU scale. It is, nonetheless, a precondition for the development of truly pan-European securitisation structures and therefore a necessary step for unlocking market growth.

The question is no longer whether securitisation matters for Europe's competitiveness and growth; it is whether Europe is prepared to give securitisation a truly European legal framework. If Europe is serious about building a single market for securitisation, it must recognise a simple but fundamental reality: one market requires one rulebook. The optional 28th regime advanced in this article offers precisely that. By anchoring securitisation in a broader EU legal framework, the European Union would take a tangible step towards realising the wider objectives of the SIU.

[58] See the Banque de France, "Speeding up the process of harmonising European insolvency law to strengthen financial integration", Bulletin No.249 and AFM and DNB, "Next Steps for the European Capital Markets Union" (op. cit. fn.45).