Comeback king?

The sustainable recovery of the European securitisation market is widely believed to lie in the hands of policymakers. Vincent Nadeau investigates whether a 'regulation tsar' could serve as a unifying authority for the industry to facilitate this process.

Fifteen years after the global financial crisis, the European securitisation market's reputation appears to remain heavily tarnished. At the core of this perception is the idea that a long-term sustainable recovery for the sector continues to lie in the hands of regulators and policymakers. Within this context, the concept of a 'regulation tsar' as a potential unifying authority for the industry is gaining traction.

The EU Securitisation Regulation (EUSR) became effective on 1 January 2019, consolidating the patchwork of legislation previously found in various EU Regulations and directives into a single and coordinated structure. However, since its introduction, differences, uncertainties and the lack of pragmatic solutions have often been highlighted as problematic issues. If regulation is generally associated with frustration or scepticism, then the EUSR tends to fit the platitude.

For example, this year, two notable public consultations were issued in July. The first – launched by the EBA – targeted draft regulatory technical standards (RTS) specifying the criteria for the underling exposures in securitisation to be deemed homogeneous, in line with requirements under the EUSR and as amended by the Capital Markets Recovery Package (CMRP). ▶

Ian Bell, PCS

A morose sentiment is often expressed around securitisation regulations, which tends to highlight an apparent lack of political will. It also triggers the question of what could bring momentum and growth back to the securitisation market – at least from a regulatory viewpoint. Within this context and whispered at IMN's Global ABS conference in June is the idea to appoint a 'regulation tsar' for the securitisation market.

"If a regulation tsar comes with clear momentum and a political mandate, then I think it would be a brilliant idea," states Ian Bell, ceo of PCS.

However, he immediately contextualises this view by suggesting that the idea of a tsar remains a secondary consideration. Rather, the primary consideration is that the European Commission has to take on seriously the need to promote a healthy securitisation market.

"Securitisation shapes the financial architecture of Europe and you get the feeling that regulatory measures necessary for a healthy market are put in the 'nice to have' box. Securitisation is not a nice to have, but fundamental to the market and it needs some real political capital to be expended on its behalf. If 'tsar' is only a plaque on someone's door, then frankly no," observes Bell.

Another industry insider also highlights a problematic hurdle in connection with the concept and implementation of a regulatory kingpin. "Tsars are despots and nobody can be a despot in Europe," he notes.

However, he highlights fundamental issues within the current environment and structure. He says: "There are two aspects to regulation generally: what the law says and how it is implemented."

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The first aspect needs clarification. "Everybody understands and knows that the regulation does not work. There are many grey areas and nobody is willing to provide answers. The second aspect is equally as difficult and I know for a fact that national regulators have restricted banks in terms of their ability to invest in ABS," he states.

Another recent example – albeit less polemical – which further highlights the apparent divide between securitisation market participants and regulators is the Autorité des marchés financiers'

Then came EIOPA's consultation paper on its response to the European Commission's call for advice on the review of the securitisation prudential framework under Solvency 2, in which EIOPA affirmed that it "considers that the current framework is fit for purpose." The paper attempted to analyse recent performance of the rules on capital requirements (for banks and (re) insurance undertakings) and liquidity requirements (for banks) relative to the framework's original objective of contributing to the sound revival of the EU securitisation market on a prudent basis.

To suggest that both papers were met with reservations by market participants would be a euphemism. While for the former, the proposed grandfathering for STS synthetic ABS and the reduced flexibility for portfolios backed by both corporate and SME loans have raised eyebrows *(SCI 5 August)*, the latter's overall methodology and approach to regulation was viewed as "absurd beyond belief" *(SCI 22 August)*.

Alex Campbell, Fieldfisher

(AMF) recent investigation of STS practices by French banks[1]. The report, published in August, can be interpreted as a benchmark in terms of the expectations of other national and EU-level supervisors as to the standards for compliance with the STS label.

The report identified significant shortcomings in market practices relating to STS securitisations. Specifically, the AMF highlighted flaws in the required due diligence performed by the investment service providers in relation to the relevant STS securitisations and, in particular, the arrangements in relation to the granting, monitoring and withdrawal of the STS label.

With so many disagreements and the apparent need for structural reforms, it seems obvious that a regulatory tsar would be a beneficial addition to the securitisation market as a whole. Alex Campbell, partner at Fieldfisher, also conceptually supports this idea: "Securitisation is a very specialised sector and some form of securitisation tsar would be very helpful. Given the size of the market and the complex nature of the structures, such a figure would certainly help towards more workable solutions and the implementation of regulatory changes."

One practical benefit of such a figure would be to bring an end to the 'silo effect', which is often expressed in connection with the securitisation market as impacting discussions between all entities. One investor highlights this particular aspect: "The problem is not just about the securitisation regulation, because the way legislation tends to be written is that you have a group of people that focuses on each particular part of the legislation. And where all those things touch upon securitisation, you don't necessarily have people that understand securitisation and securitisation markets."

Reflecting on the UK context, Campbell highlights the need for proper legitimacy: "They would have to come from a leading financial institution or be a clear securitisation devising expert and report directly to the Bank of England, as to not be bulldozed like many other bodies."

Yet, the investor expresses strong scepticism as to the feasibility of such a role and such a figure emerging. "I can see the upside from the market's perspective, but what is the upside from the Commission's perspective? Unless sorting out the securitisation market is top of its list, I don't see

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the benefit to the Commission. I just cannot see it happening, unfortunately."

Nevertheless, the investor puts forward one candidate that would fit the bill. "I can definitely recommend someone: I would have Christian Moor as my regulatory tsar. He truly understands the market and was very, very open to having discussions with everyone when he was at the EBA *[SCI 25 October 2021]*."

The investor adds: "A nice way of solving that issue would be to have someone whose job is to be involved in all the different discussions. And it sounds lovely."

However, practical questions around where such a figure would sit – as well as which qualities could aid their nomination – would need to be satisfied. "Presumably, it would have to be someone in the European Commission," the investor suggests. "They're the people that come up with the ideas in the first place; they're in all the conversations, they're part of the tripartite and they spend their lives dealing with the likes of the EBAs and banks of this world. Therefore, it seems to me that this is where that person needs to sit, as the Commission is involved in the legislation from the ground up."

1. *Between November 2021 and February 2022, the AMF investigated a sample group of five credit institutions authorised to provide investment services, comprising three ABCP sponsors, an arranger of non-ABCP transactions and an originator of both ABCP and non-ABCP transactions. The relevant transactions were notified as STS during the period between 1 January 2019 and 30 September 2021 and the number of STS transactions for the individual ISPs ranged from two to 101. Synthetic securitisations were excluded from the scope of the inspections.*