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NOTES ON EU SECURITISATION LAW

BRIEFING DOSSIER

CRE Structured Credit

An Expanding Universe

CMBS · SRT · Fund Finance · Back Leverage

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1. Executive summary

> *Banks are not leaving CRE. They are re-plumbing how they lend to it — keeping the borrower relationship but moving the capital and the risk through structured-credit pipes. For lawyers, the centre of gravity has shifted from the underlying real-estate loan to the structure around it.*

European commercial real estate (CRE) credit markets are passing through the most profound structural change of the post-GFC era. The combination of Basel 3.1 / CRR3, the post-2022 rate reset, and a €315 bn refinancing wall across 2025–2026 has forced banks — historically the dominant providers of CRE debt — to re-engineer how they originate, warehouse and fund real-estate loans. The answer is no longer a single product. It is an expanding toolkit of structured-credit techniques that sits between the traditional senior bank loan and pure private credit.

This dossier maps that toolkit across the four products that define the CREFC Europe Spring Conference 2026 agenda — CMBS, Significant Risk Transfer (SRT), Fund Finance (in particular NAV lines, subscription lines and Collateralised Fund Obligations) and Back Leverage. It opens with the regulatory backdrop that makes each of these products economically necessary today, then walks through the mechanics, the 2025/26 market data, the regulatory framework and the principal legal issues for practitioners.

Key data points at a glance

Indicator	2025 / 2026
European CMBS issuance 2025	€8.7 bn across 17 transactions (≈4× 2024 volume)
Global SRT issuance 2025	USD 41 bn (+40% YoY); CRE & infra tranches more than doubled
European back-leverage outstanding	c. €30 bn and expanding; 55% of lenders now active
NAV finance — 2025 deployment estimate	USD 70 bn; path to USD 145 bn by 2030 (17Capital)
CRE refinancing wall 2025/26 (Europe)	c. €130 bn in 2025 + c. €185 bn in 2026 = €315 bn
Bank share of CRE originations (Q3 2024)	18% (vs. 38% prior year); non-banks 34%

2. The setting: Basel 3.1 / CRR3 and the capital squeeze on CRE lending

2.1 The Basel Endgame — divergence across jurisdictions

Basel 3.1 — the "Endgame" — is the final chapter of the Basel III reforms agreed after the 2007–08 crisis. It rewrites the credit-risk standardised approach, re-calibrates IRB models, introduces a new output floor at 72.5% of standardised RWAs, and overhauls operational and market risk. In CRE, it strips out much of the capital arbitrage that internal models historically delivered and tightens valuation rules. The catch is that the three major jurisdictions are no longer in step:

- **United Kingdom.** The PRA has delayed Basel 3.1 twice. Final rules were published in PS1/26; the main capital regime now applies from 1 January 2027, with the transitional period running to 31 December 2029.
- **European Union.** CRR3 / CRD VI came into force on 1 January 2025, but the FRTB market-risk package has been postponed to 1 January 2027. The EU has also used its discretion to extend the output-floor transition to 2032 (rather than 2028).
- **United States.** No final rule. A revised Fed proposal is expected in 2026, reportedly aimed at easing the calibration for large U.S. banks. Non-banks — outside the Basel perimeter altogether — continue to take share.

For cross-border lenders, the divergence itself is the problem. A German Pfandbrief bank, a London branch of a U.S. bulge-bracket and a Paris insurer now face materially different capital costs for the same underlying real-estate exposure. That asymmetry is a primary driver of the four products covered in this dossier.

2.2 Mechanics of the squeeze on CRE balance sheets

Three mechanics are doing the work on banks' CRE books:

- **Output floor.** IRB RWAs cannot fall below 72.5% of the standardised calculation. German, Dutch and Nordic lenders whose internal models priced low-LTV income-producing CRE at sub-30% risk weights lose that advantage. Because CRE standardised risk weights remain relatively high, the floor bites hardest where it hurts most.
- **Revised standardised approach for real estate.** The new SA is granular and LTV-sensitive. It removes the old 100% blanket floor for exposures not materially dependent on property cashflow — which is directionally helpful for investment-grade lending — but layers on stricter valuation rules, a revaluation cap, and more punitive treatment of transitional / development lending.

- **Operational and concentration overlays.** CRR3's new operational-risk framework (SA-OR) and the ongoing EBA focus on CRE concentration mean that, even before the output floor, CRE loans consume more of the bank's scarce capital budget than they did under Basel II.

2.3 The €315 bn refinancing wall

Against this tighter capital backdrop, roughly €130 bn of European CRE loans matured in 2025, with a further €185 bn due in 2026. Capital values have partially recovered from their 2023 trough but are still materially below origination LTVs for vintages struck in 2020–2022. The result is a structural funding gap that no single lender, and no single product, can close alone.

2.4 Strategic responses — three bank playbooks

Faced with Basel 3.1 and the refinancing wall, banks are gravitating towards three playbooks, all visible today in the European CRE market:

- **Raise capital.** Politically expensive, particularly for institutions with state or Länder shareholders. Rarely sufficient on its own.
- **Retrench.** Scale back from capital-inefficient business lines — development lending, high-LTV transitional deals, certain geographies. This is already creating a funding vacuum that private credit is filling.
- **Re-engineer.** Keep the customer, move the capital. This is where CMBS (distribute the asset), SRT (distribute the risk), back-leverage (fund the non-bank lender that takes the asset) and fund finance (finance the fund that holds the loan) all come in. The four products on the CREFC agenda are, in effect, four tools in a single re-engineering playbook.

> **Author's view.** The Basel Endgame is not a one-off capital event. It is a permanent, structural re-pricing of CRE risk inside the banking system. The market is pricing in that the re-engineering tools — not the raise and retrench — will do the heavy lifting over the next three to five years.

3. Product 1 — Commercial Mortgage-Backed Securities (CMBS)

3.1 What CMBS is

A CMBS is a securitisation in which one or more commercial real-estate loans — single-loan, pan-European pool or conduit — are transferred into an SPV that issues rated, tranched notes to institutional investors. The originator keeps 5% vertical or horizontal risk retention under the EU / UK Securitisation Regulation; the rest moves off balance sheet. Servicing is performed by a specialist master / special servicer, with control-valuation-events and cash-trap mechanics driving post-issuance governance.

3.2 Market snapshot 2025 / 2026

2025 was the strongest year for European CMBS issuance since the pre-GFC era: €8.7 bn across 17 transactions, against only €2.2 bn (5 deals) in 2024. Issuance in 2025 alone was higher than the previous three years combined. Weighted-average note margins tightened to their tightest levels in four years. 2026 opened with the first European CMBS of the year already in the market.

Ratings agencies (Scope, S&P, KBRA) describe the sector outlook as cautiously positive for logistics / industrial and multifamily, neutral for retail, and negative for offices — where refinancing stress is concentrated. Deutsche Bank, Goldman Sachs, Morgan Stanley and Bank of America remain the dominant book-runners in Europe; sponsors include Blackstone, Starwood, EQT Real Estate and Brookfield.

3.3 Why CMBS is back

Three forces have re-opened the European CMBS window:

- **Pricing arbitrage.** Post-2023 spread compression in AAA / AA tranches, combined with bank RWA cost, makes securitised distribution economic again.
- **Investor appetite.** ABS / RMBS accounts (e.g., Aegon AM, Bracebridge, Cheyne) have CRE allocations that they were unable to deploy 2021–2023.
- **Balance-sheet necessity.** The large CRE refinancings coming through 2025–2027 cannot all be held on bank balance sheets under CRR3.

3.4 Legal / structural themes for practitioners

- **Risk retention & STS.** CMBS remains generally outside the EU STS regime; retention is usually by the originator, occasionally by a third-party sponsor (original-lender route). Output-floor interaction with retention is a live topic.

- **Operating-advisor / controlling-class mechanics.** Control-valuation events, appraisal reductions and B-piece transfer restrictions drive most post-closing disputes.
- **Servicing standard.** The U.S. "servicing standard" has largely been imported into EU deals; enforcement regimes (Germany, Spain, Italy, Netherlands) remain materially different, shaping expected recovery timelines.
- **ESG / Article 9 overlays.** Green-labelled CMBS tranches are increasingly demanded by EU institutional buyers; CRR3 does not yet formally reward them, but reporting expectations are tightening.

4. Product 2 — Significant Risk Transfer (SRT)

4.1 What an SRT is

An SRT is a synthetic securitisation in which the bank keeps legal title to a reference loan portfolio but transfers a defined tranche of credit risk — usually the first-loss or mezzanine layer — to third-party investors via credit-linked notes, credit default swaps or a funded guarantee. If the transaction meets the regulatory conditions in Article 244/245 CRR (traditional) or, more commonly for CRE, Article 245 CRR (synthetic), the bank can reduce its RWAs on the retained senior tranche.

The attraction is simple: the bank keeps the customer, the origination capability and the servicing income; the capital comes down.

4.2 Market snapshot 2025 / 2026

Global SRT issuance hit a record USD 41 bn in 2025 — the fifth consecutive annual record — referencing USD 475–500 bn of underlying loan portfolios. Q4 2025 alone exceeded full-year pre-2022 volumes. Europe accounts for more than 70% of global issuance (U.S. 21%, Canada 4%). Banks have securitised only c. 5% of their corporate loan books and c. 3% of total portfolios — on Crescent Capital's estimates, a 5-percentage-point utilisation rate increase could add USD 75 bn of annual issuance.

In CRE specifically, 2025 was the first breakout year. CRE and infrastructure SRT issuance more than doubled year-on-year. CRE still represents only c. 5% of the SRT asset mix (corporates 58%, SME 14%, consumer 8%, fund finance 6%, project finance / infra 5%) — but the trajectory is clear. 36% of European bank respondents in a 2026 industry survey said they already use or are actively exploring SRT; 65% expect SRT to become a significantly important tool for the European CRE lending market.

4.3 Regulatory framework

- **Core instruments.** CRR Articles 244–249; EBA Guidelines on SRT assessment (2024 final, effective 2025); ECB SSM public communications on genuine-risk-transfer (GRT) tests.
- **Three regulator gates.** (i) Is enough risk actually transferred; (ii) is the pricing / tranche sizing commensurate; (iii) is the structure robust (clean-up calls, amortisation, replenishment, early-termination).
- **Investor universe.** Pemberton, AXA IM Alts, Ares, KKR, Cheyne, PGGM, Chorus Capital, Christofferson Robb, plus a growing list of insurance / pension mandates. UK PRA and ECB have publicly warned about "negative feedback loops" where the risk stays within the wider banking system — a governance point to watch.

4.4 CRE-specific considerations

- **Granularity.** Classical SRT logic depends on pool diversification. CRE is lumpy. The 2025/26 CRE SRT breakthrough has come from pools that look more like traditional securitisation pools (≥30 names, geographic spread, sector spread) rather than 3-loan chunky decks.
- **Valuation volatility.** Tranche thickness and attachment points are far more sensitive to valuation swings than in corporate SRT. Reference-pool LTV cut-offs and MtM triggers are heavily negotiated.
- **Interaction with back leverage.** Investors in SRT tranches increasingly part-fund their position with back leverage from other banks — creating the circular exposure that regulators have flagged. The legal documentation needs to anticipate bifurcated funding and collateral flows.
- **Accounting / derecognition.** SRT only releases capital if the accounting treatment follows. IFRS 9 derecognition and the SPPI test must align with the regulatory SRT position — mis-alignments are a classic source of execution risk.

5. Product 3 — Fund Finance: NAV lines, subscription lines, CFOs

"Fund finance" is shorthand for the family of secured credit facilities extended to private-markets funds themselves (as opposed to their underlying investments). In a CRE-credit context, the three most relevant variants are subscription (capital-call) lines, NAV facilities and Collateralised Fund Obligations (CFOs).

5.1 Subscription / capital-call lines

The traditional bridge: a revolver secured on the right to call uncalled commitments from limited partners. Pricing tight (SOFR / EURIBOR + 125–225 bps, depending on LP quality and advance rate). Primary risk: LP default and exclusion events. Basel 3.1 has pushed some U.S. banks to recalibrate pricing but has not fundamentally changed the product. LP-based advance rates, gross/net limits and the interaction with side-letter obligations remain the key negotiation points.

5.2 NAV facilities

Secured against the NAV of the fund's portfolio rather than uncalled commitments. Used to finance follow-ons, accelerate distributions, bridge to a secondary sale, or gear-up mid- to late-life funds. In 2024, weighted average NAV-deal volume per lender reached €800 m, up 142% on 2023. 17Capital estimates USD 70 bn deployment in 2025, and a plausible path to USD 145 bn by 2030 out of a total addressable market of USD 700 bn. 73% of 2025 NAV term-sheet counterparties were non-bank lenders — a striking inversion of the subscription-line market.

The ILPA 2024 guidance on NAV financing and several EU regulator statements have brought governance, LP-consent and use-of-proceeds disclosure to the front of the agenda. Hybrid facilities (subscription + NAV on the same collateral package) are the fastest-growing segment heading into 2026.

5.3 Collateralised Fund Obligations (CFOs)

A CFO is a securitisation of LP interests in one or more private funds, issuing tranched, rated notes to institutional buyers — conceptually a cousin of CLOs, but on fund stakes rather than loans. They are used by GPs and LPs to obtain capital-efficient exposure to private equity, secondaries, credit or real-estate fund portfolios in a rated format. Fitch limits investment-grade ratings to LTVs of 50% or less; S&P and KBRA have published similar frameworks. Recent precedent: the USD 750 m NPC SIP 2024-1 Churchill / Nuveen CFO closed in March 2025 as a 30-year bond with a 25-year investment period.

CFOs are the most structurally complex of the fund-finance family and tend to attract the most bespoke legal work.

5.4 Overlap with back leverage

Where a NAV facility is extended to a CRE credit fund and secured on its underlying loans — rather than on fund equity value — the product converges with back leverage. Documentation convention today is to call it *back leverage* when the facility is at loan level, and *NAV* (or hybrid) finance when the facility is at fund level; the underlying credit analysis can look nearly identical.

6. Product 4 — Back leverage

6.1 What back leverage is

Back leverage is debt on debt. A non-bank lender — typically a CRE debt fund — borrows from a bank (or, increasingly, from another non-bank) on the security of the real-estate loans it has itself originated. Two dominant structures: a secured loan-on-loan facility (bilateral or club, usually English-law LMA-style, with a facility agent and a security trustee); or a repo / master-repo structure (GMRA-based, with daily mark-to-market and margin-call mechanics).

The economic effect: the fund levers its senior-loan book to amplify equity returns and, critically, to meet its double-digit net return targets even as underlying asset yields compress. The bank, in turn, gets a senior, diversified, low-LTV exposure with a professional sponsor on the hook — an attractive trade under CRR3 compared with direct CRE lending.

6.2 Market snapshot 2025 / 2026

Recent industry surveys (see section 9) provide the most comprehensive picture of European back leverage. Headlines:

- Back-leverage outstanding in European CRE has grown to approximately €30 bn and is expanding rapidly.
- 90% of debt-fund respondents said they can use back leverage (up from 80% in 2025); 40% use it on all or the majority of their transactions (up from 25%).
- 55% of surveyed lenders are now active in back-leverage lending (50% in 2025); a further 25% expect to enter the market in the near term.
- ~30% of active back-leverage lenders have entered the market within the last 12 months.
- Programmatic (rather than deal-by-deal) back-leverage utilisation up c. 90% year-on-year.
- Minimum day-one ticket sizes have shifted upwards: 75% of lenders now prefer tickets >£50 m or >£100 m, vs. c. 40% last year.
- Look-through LTVs: 63% of lenders accept >55% look-through LTV; a minority will now go above 85% maximum advance.

6.3 Structural flavours

- **Loan-on-loan.** Term or revolving loan secured over eligible underlying receivables via an assignment-by-way-of-security and (where required) English-law deed-of-charge.

Eligibility criteria, concentration limits, consent rights and veto rights over new assets are heavily negotiated. 90% of borrowers today use loan-on-loan.

- **Repo.** Title-transfer-style financing under a GMRA. Simpler insolvency analysis in most EU jurisdictions, cheaper on bank RWA, but with full mark-to-market and margin-call risk. 40% of borrowers use repo, up from c. 30%.
- **Hybrid / programmatic platforms.** The clear 2025/26 direction of travel. A single facility with a defined eligibility envelope supports a growing underlying portfolio — closer to a warehouse than to a bilateral deal.

6.4 Key commercial & legal issues

- **Mark-to-market mechanics.** Which party sets the "V" in LTV? Industry surveys report an even three-way split between lender-discretion, third-party valuation and negotiated mechanics. Bespoke dispute protocols (independent valuer, time-bounded reference-panel) are becoming standard.
- **Fund guarantees and recourse.** 90% of lenders do not require a full fund guarantee; partial recourse / specific-obligation guarantees are now standard. The economics of the guarantee (capped, limited to breach events) matter more than its presence.
- **Control rights.** 70% of lenders require approval of "material modifications" on underlying loans. Practical problem: what is a material modification? Clear, exhaustive lists are the lawyer's job.
- **Securitisation classification risk.** If a back-leverage facility references a growing pool of underlying loans, there is an active question whether it falls within the EU / UK Securitisation Regulation. The analysis is fact-specific; getting it wrong triggers retention and disclosure obligations the parties never priced for.
- **Regulator scrutiny.** The PRA, ECB and FSB are all focused on the circularity of back leverage funding SRT investors funded by other banks' back-leverage lines. Expect supervisory attention to tighten over 2026–2027.
- **Development lending.** Historically the hardest sub-asset-class to back-lever. 80% of borrowers now need back leverage for development loans (up from 65%); c. 40% of providers can already offer loan-on-loan for development, rising to 90% including those who expect to in the near term. Construction risk, drawdown mechanics and practical completion tests drive documentation length.

> **Author's view.** Back leverage has moved from niche to core. The legal work has moved with it — from one-off term-sheet translations to programmatic documentation, platform-level negotiation and governance frameworks that sit on top of the underlying real-estate loan documents.

7. The interplay — one stack, four tools

The four products on the CREFC Europe Spring Conference 2026 agenda are complementary rather than competing. Each is a different way of answering the same underlying question: how does capital reach a European CRE borrower in 2026, given that the Basel regime no longer lets banks hold that exposure on their balance sheets as efficiently as they used to?

A stylised end-to-end flow: (i) a bank originates the senior real-estate loan; (ii) it either distributes the asset via CMBS or transfers the risk via SRT; (iii) the asset (or a mezzanine / junior piece of it) ends up in a non-bank debt fund; (iv) that fund finances itself through a combination of subscription / NAV / hybrid fund-finance facilities and back-leverage facilities drawn from other banks. At each step, capital treatment and legal documentation change — but the underlying economic exposure remains the same real-estate loan.

80% of European bank respondents to recent industry surveys believe back leverage is, or will become, a key component of the banking market. Nearly 80% of respondents do not expect SRT growth to restrict the growth of back leverage — the two products address different constraints and coexist. Fund finance, and CFOs in particular, then sit over the top of all of this, giving institutional LPs a rated point of entry to the stack.

Quick comparison

Dimension	Product
Transfer of asset	CMBS (cash) **|** SRT (risk only)
Distribution of risk	SRT, CMBS
Funding for non-bank lender	Back leverage, NAV, hybrid
Rated LP access to private credit	CFO
Basel 3.1 capital efficiency for originator	SRT (highest RWA relief) **|** Back leverage (moderate) **|** CMBS (depends on retention + output floor)
Regulator scrutiny intensity (2026)	SRT (highest) **|** Back leverage (rising) **|** CMBS (stable) **|** Fund finance (rising)

8. Take-aways for practitioners

- Basel 3.1 / CRR3 is no longer a forward-looking risk. It is shaping term sheets today. Any CRE financing opinion issued in 2026 should reference the capital position of the originating institution, not just the underlying collateral.
- The €315 bn 2025–2026 refinancing wall means demand for all four products will structurally outrun supply. Pricing power sits with capital providers — but documentation power sits with sponsors who can credibly run a competitive process.
- CMBS is back, with €8.7 bn of issuance in 2025 and tightening spreads. Expect public-CMBS + private back-leverage + SRT combinations on the same underlying pool.
- SRT is the single biggest capital-relief tool in the European CRE credit market. The 2026 supervisory agenda (ECB GRT tests, PRA warnings on circularity) will shape how deals are structured.
- Fund finance — and in particular NAV and hybrid facilities — has become non-bank-led. 73% of 2025 term sheets were written by non-banks. That changes the counterparty documentation landscape materially.
- Back leverage has matured. Programmatic, platform-level facilities are the new norm. MtM mechanics, securitisation-classification risk and control rights are the three most negotiated clusters.
- The circularity between SRT, back leverage and private credit is the regulator's single largest current concern. Documentation should anticipate heightened disclosure and stress-testing expectations over the life of the deal.
- The practitioner's value-add has shifted from single-product expertise to stack-level advice — advising a sponsor on the full combination of CMBS, SRT, fund-finance and back-leverage options against its capital, rating and investor-base constraints.

9. Sources & further reading

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