JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

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Joint Committee Report on the implementation and functioning of the Securitisation Regulation (Article 44)

Final report

1. Contents

2. Abbreviations

Acronyms

ABCP Asset-Backed Commercial Paper

AIFM Alternative Investment Fund Manager

AIFMD Alternative Investment Fund Managers Directive

CMBS Commercial Mortgage-Backed Security

COREP common reporting framework

CCPs Central Counterparties

CRD Capital Requirements Directive

CRR Capital Requirements Regulation

EBA European Banking Authority

ECB European Central Bank

EIOPA European Insurance and Occupational Pensions Authority

ESA European Supervisory Authority

ESMA European Securities and Markets Authority

ESRB European Systemic Risk Board

EU European Union

IORPs Institution for Occupational Retirement Provision

ITS Implementing Technical Standards

JSA Jurisdictional Scope of Application

JC Joint Committee

JCSC Joint Committee Securitisation Committee

LCR Liquidity Coverage Ratio

RMBS Residential Mortgage-Backed Security

RTS Regulatory Technical Standards

SECR Securitisation Regulation

SSPE Securitisation Special Purpose Entity

STS Simple, Transparent and Standardised

TPV Third-Party Verifier STS compliance

UCITS Undertakings for Collective Investment in Transferable Securities

3. Executive Summary

1. This report presents the findings of the Joint Committee (JC) of the European Supervisory Authorities (ESAs) regarding the functioning of the Securitisation Regulation (Regulation (EU) 2017/2402, SECR). The JC's evaluation serves two main objectives: first, to assess the extent to which the SECR has achieved its original policy objectives since its implementation in 2019; and second, to provide legislative recommendations to the European Commission (EC). This report is part of a multi-year review of the SECR. In particular, Article 44 of the SECR mandates the JC of the ESAs to publish an evaluation report on the functioning of the Simple, Transparent and Standardised (STS) framework, the actions taken by competent authorities (CAs) to mitigate major risks, and the effectiveness of the due diligence, retention and disclosure rules. Following the 2021 review of SECR, the scope of the JC mandate was expanded by one additional element namely the assessment of the geographical location of Special Securitisation Purpose Entities (SSPEs).

2. This report is published at a particular juncture, coinciding with the EC's examination of the legislative revision of the securitisation regulatory framework, including SECR, and shortly after the publication of the Financial Stability Board's (FSB) report on the *Effects of the G20 Financial Regulatory Reforms on Securitisation*[1], which concluded that the BCBS and IOSCO reforms have strengthened the resilience of the securitisation market without strong evidence of material negative side-effects on financing to the economy. Moreover, the FSB report highlights that while the evaluation has not identified instances where differences in implementation across jurisdictions have had a material negative impact on cross-border investments and financing to the economy, it would be important for authorities to consider the implications of these differences and explore opportunities to adjust their frameworks where possible [2].

3. The revival of the EU securitisation market has been highlighted in reports by Christian Noyer[3], Enrico Letta[4], and Mario Draghi[5] as critical for achieving the Saving and Investment Union (SIU)[6]. In this context, the Eurogroup has identified securitisation as a priority for the 2024–2029 legislative term. The mission letter to Commissioner Albuquerque outlines measures to unlock

[1] Evaluation of the Effects of the G20 Financial Regulatory Reforms on Securitisation: Final report, as available here: https://www.fsb.org/uploads/P220125-1.pdf .

[2] Page 3 of the FSB report, ibid.

[3] https://www.tresor.economie.gouv.fr/Articles/e3283a8f-69de-46c2-9b8a-4b8836394798/files/6b8593b5-ca31-45a3-b61c-11c95cf0fc4b

[4] https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf

[5] https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en#paragraph_47059

[6] https://finance.ec.europa.eu/document/download/13085856-09c8-4040-918e-890a1ed7dbf2_en?filename=250319-communication-savings-investmlents-union_en.pdf

the use of securitisation with due attention to safeguarding financial stability.[7] To advance this agenda, the EC launched a targeted consultation[8] on 9 October 2024 regarding the functioning of the securitisation framework, seeking feedback on the securitisation framework, with responses due by 4 December 2024[9].

4. The evaluation of the securitisation framework has been streamlined compared to the 2021 JC report[10]. This report focuses on recommendations to enhance the functioning of the SECR and, where applicable, to simplify the supervisory framework to support the sound and robust development of the securitisation market in the future, in line with the recommendations in the FSB report.

5. Based on evidence gathered from market participants and competent authorities (CAs), this report proposes measures aimed at unlocking the potential of traditional securitisation markets while maintaining strong investor protection. The key recommendations include clarifying definitions, incorporating further proportionality into due diligence and transparency requirements, and ensuring consistent supervision across the Union[11].

Key areas for legislative amendments

6. The JC of the ESAs has identified several key areas where amendments to the SECR could enhance clarity and proportionality. The JC of the ESAs recommends the EC to incorporate the following considerations into its legislative proposal and the accompanying impact assessment:

1- Clarifying the jurisdictional scope of application

7. The JC of the ESAs recommends the introduction of a general provision to clarify the jurisdictional scope of the SECR. Specifically, the SECR should apply if at least one securitisation party (sell-side or buy-side) is established within the Union. Only EU-based entities should bear compliance obligations under SECR, ensuring they fall within the jurisdictional reach of EU supervisors.

8. The JC of the ESAs proposes the following triggers for application:

[7] https://commission.europa.eu/document/ac06a896-2645-4857-9958-467d2ce6f221_en

[8] https://finance.ec.europa.eu/document/download/fb451cdc-4e5b-4d74-9411-cb8bd0789090_en?filename=2024-eu-securitisation-framework-consultation-document_en.pdf

[9] The Factual summary report of the targeted consultation on the functioning of the EU securitisation framework published on 17 February 2025 by the European Commission is available at https://finance.ec.europa.eu/document/download/35846dc8-8ebc-4bc9-967d-de77ef5d9234_en?filename=2024-eu-securitisation-framework-summary-of-responses_en.pdf.

[10] jc_2021_31_jc_report_on_the_implementation_and_functioning_of_the_securitisation_regulation_1.pdf

[11] https://www.esma.europa.eu/sites/default/files/2025-03/ESMA42-2004696504-7945_STS_Securitisation_Peer_Review_Report.pdf

- If at least one sell-side party is EU-based (regardless of the location of buy-side parties which may be located within the Union or outside the Union);
- If at least one buy-side party is EU-based (regardless of the location of sell-side parties which may be located within the EU or outside EU).

2-Broadening the definition of public securitisation

9. The JC of the ESAs has noted concerns that the current definition of public securitisation may not encompass all relevant transactions. Therefore, it is important to carefully assess whether there are cases in which transactions of a public nature have been considered private and whether these cases have been an obstacle for investors to have access to proper information, and any effect on monitoring systemic risks as a whole. The JC of the ESAs recommends the EC to consider reviewing the definition to capture securitisation transactions meeting the following criteria:

- A prospectus approved under the EU Prospectus Regulation; or
- Notes traded on EU-regulated markets, multilateral trading facilities (MTFs), organised trading facilities (OTFs), or other EU trading venues; or
- Securities marketed broadly with non-negotiable terms—based on a market test where EU originators/sponsors must demonstrate that a transaction is not placed to a broad audience of investors.

3-Focusing Investors Due Diligence Requirements on risk assessment

10. Regarding due diligence requirements, which are perceived as disproportionate by investors, the JC of the ESAs propose a more balanced approach that ensures a meaningful risk assessment by investors while reducing compliance burden and safeguarding investor protection.

11. Key proposals include:

- Introducing a simplified due diligence approach applicable to all institutional investors, regardless of transaction type (public/private) or sell-side location (inside/outside the EU). This approach aims to prioritise substance over form by allowing flexibility in the format in which the information is provided, as long as it enables a meaningful risk assessment. It also ensures that investors receive sufficient information for risk assessment and obtain commitments from sell-side parties to provide the required information throughout the transaction lifecycle;
- Clarifying terms such as “sufficient to the risk assessment” and “commensurate to the different risks” through technical standards or guidelines;
- Establishing an STS equivalence/recognition regime for third-country securitisations may be necessary only when EU investors seek preferential prudential treatment;

- Focusing risk retention disclosures on substance rather than on prescribing a specific format in which it will be provided;

- Providing timing flexibility for documenting due diligence in secondary market investments, with a 15-calendar-day window post-investment for documentation;

- Removing the obligation for investors to verify compliance with STS criteria conditional upon either (i) enhancing the supervision of compliance of originators/sponsors with the STS criteria and/or, (ii) involving a third party verifier (TPV) in the relevant transaction, provided that the TPV is subject to on-going supervision (in opposition to the current authorisation-only regime); and

- Allowing delegation of due diligence under strict conditions, while ensuring (i) that investors retain ultimate responsibility and oversight, and (ii) consistent sanctions for Article 5 breaches, whether from direct non-compliance or failed delegation.

4-Introducing targeted changes to the STS Framework

12. While a comprehensive review of the STS framework is not deemed necessary, targeted refinements to specific STS criteria could enhance its efficiency, the potential implications of which should be carefully assessed. The JC of the ESAs has assessed the implementation of the STS framework for on-balance-sheet (OBS) securitisations introduced under the Capital Markets Recovery Package (CMRP), and recommends selective amendments to improve the overall efficiency.

13. Additionally, this report examines the feasibility of allowing insurance and (re)insurance undertakings to act as eligible providers for unfunded credit protection under the STS framework.

5-Clarifying the risk retention rules in specific cases

14. The SECR requires the retention of a material net economic interest to ensure a proper alignment of interests and mitigate the risk of moral hazard. As part of its evaluation, the JC of the ESAs assessed the implementation of the risk retention requirements. Acknowledging the current interpretation issues in relation to this requirement in the context of CLO securitisations, the JC of the ESAs deems it necessary to provide further clarification on the legislative intent of the term ‘predominant source of revenues’ used in the Regulatory Technical Standards (RTS) on risk retention stemming from the sole purpose requirement in SECR.

15. As part of this, the JC of the ESAs recommends the EC to further explore the possibility of broadening the definition of sponsor to include regulated entities such as CLO managers. While CLO-specific issues are highlighted in this report, similar challenges might manifest in other securitisation types, ensuring broader applicability. The JC of the ESAs also suggests exploring

how the proposed changes (e.g., broadening sponsor definitions or clarifying "predominant source of revenue") may impact smaller market participants or emerging CLO structures.

6-Making the transparency framework more fit for purpose

16. Recognising the need to simplify disclosure requirements and reduce overall transaction costs, the JC of the ESAs recommends the EC to bring greater proportionality into transparency requirements while maintaining overall market transparency. The JC of the ESAs also considers that a balanced approach is needed to enhance standardisation and comparability, while also accommodating the market's evolving segmentation. This requires introducing greater flexibility in the transparency framework, with specific details addressed through Level 2 instruments.

17. While the current transparency requirements mandate loan-level disclosure (LLD) for non-ABCP asset classes, covering the obligor, loan characteristics, and collateral at loan-level granularity, the JC of the ESAs recognises that the disclosure can be burdensome and offers limited added value for certain asset classes, particularly those that are (a) revolving in nature, (b) highly granular or (c) have short-term maturities. The high cost of producing these reports does not justify the benefits, as the data could be more used for portfolio-based risk assessment. In light of this, the JC of the ESAs recommends that the EC explores moving away from LLD for certain asset classes. To implement this proposal, the JC of the ESAs suggests amending Article 7 of the SECR to clarify that the level of granularity in information should be tailored to the characteristics of each asset class. This would provide greater flexibility and allow for the introduction of stratified/aggregated information in the relevant technical standards.

7-Enhancing the consistency of the European supervisory framework

18. The JC of the ESAs has identified supervisory issues that, if left unaddressed, could hinder the long-term revival of the securitisation markets, including: (i) fragmentation and reporting burden, (ii) cross-border coordination challenges, (iii) possible resource constraints and (iv) the need for further convergence in supervision.

19. The JC of the ESAs has identified possible approaches to enhance the consistency of the supervisory framework. The JC of the ESAs however, acknowledges that these proposals extend beyond the scope of its mandate in Article 44 of SECR, particularly in light of potential implications at national and European levels. The approaches identified by the JC of the ESAs are the following:

- Maintaining the status quo, with a stronger emphasis on promoting consistent supervisory practices particularly at JCSC level, an option that seems to be more proportionate to the current market situation.

- Developing a more consolidated European supervisory model, notably with a focus on the supervision of cross-border transactions. This means transitioning to a Joint Securitisation Supervision under the ESAs – with set-up or potential intermediate

stages remain solely under the discretion of the European legislators given the broader implications. This approach aims to consolidate supervisory mandates, reduce duplication and simplify the framework.

- Regarding the supervision of TPVs, the JC of the ESAs sees merit in exploring introducing a harmonised, proportionate supervisory framework for TPVs which could be implemented at European level.

4. Introduction

4.1 Background and rationale

20. The SECR establishes a harmonised, cross-sectoral regulatory framework applicable to all market sell-side participants—originators, original lenders, sponsors, and SSPEs—as well as buy-side parties, including institutional investors such as credit institutions, insurers, hedge funds, pension funds, and UCITS. It also includes the STS framework, which was extended to on-balance-sheet (synthetic) securitisations in 2021[12].

21. On the supervisory side, Member States are required to designate CAs responsible for the supervisory duties outlined in the SECR which must cooperate closely with the European Supervisory Authorities (ESAs) through the Joint Committee's Securitisation Committee (JCSC).

22. The securitisation framework is further supported by technical standards, guidelines, and reports—collectively referred to as Level 2 and Level 3 regulations. These include updated risk retention rules, guidelines on the interpretation of STS criteria for traditional and synthetic securitisations, as well as technical standards defining homogeneity, disclosure requirements, operational standards for securitisation repositories and STS notifications and ESG disclosure for securitisation exposures.

4.2 ESAs' Joint Committee Mandate

23. In accordance with Article 44 of the SECR, this report analyses the implementation of the general requirements applicable to all securitisations and the STS requirements also from a supervisory perspective.

24. More specifically, Article 44 of the SECR requires that the JC of the ESAs publishes a report on:

    a *the implementation of the STS requirements as provided for in Articles 18 to 27; an assessment of the actions that CAs have undertaken on material risks and new vulnerabilities that may have materialised and on the actions of market participants to further standardise securitisation documentation;*

[12] Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis (Text with EEA relevance). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0557

b *the functioning of the due-diligence requirements provided for in Article 5 and the transparency requirements provided for in Article 7 and the level of transparency of the securitisation market in the Union, including on whether the transparency requirements provided for in Article 7 allow the CAs to have a sufficient overview of the market to fulfil their respective mandates;*

c *the requirements provided for in Article 6, including compliance therewith by market participants*

d *and the modalities for retaining risk pursuant to Article 6(3).*"

25. Following the 2021 amending Regulation, Article 44 of the SECR was supplemented by a new provision (new letter (e)) addressing "the geographical location of SSPEs". As specified in the amended SECR, this provision requires the JC of the ESAs to assess "*the reasons behind the location choice of SSPEs, including, subject to the availability of information, the extent to which the existence of favourable tax and regulatory regimes plays a critical role*."

26. After reviewing the information provided by CAs—particularly in cases where the originator, sponsor, or SSPE is located in a jurisdiction listed on the EU's list of non-cooperative jurisdictions for tax purposes—the JC of the ESAs concluded that the scope of the data collected on this topic did not warrant further development of concrete proposals. Therefore, the JC of the ESAs concluded that a dedicated section addressing letter (e) of Article 44 SECR was not necessary.

4.3 Feedback from the targeted consultation

27. As part of the mandate under Article 44 of the SECR, in December 2023, the JC of the ESAs launched two targeted surveys to collect evidence on the implementation and functioning of the SECR. One survey was addressed to market participants and the other to CAs. A total of 14 responses were received from CAs and 21 from market participants. Both surveys ran in parallel and covered the main areas within the scope of the Article 44 report. Based on the results of the surveys as well as on the information gathered from other sources, this report examines the status of the implementation of the SECR, and the challenges associated with the functioning of these requirements and identifies possible solutions and recommendations to address these challenges.

5. State of the EU securitisation market

5.1 Background

28. This section provides an overview of the EU securitisation market based on supervisory data obtained from various sources. As part of the review of the securitisation framework the JC of the ESAs has performed a comprehensive market analysis. Issuance volumes and outstanding amounts have been derived from supervisory data under the common reporting framework (COREP), covering the period from 2020 to 2023. The relevant COREP templates on securitisation are C14.00 and C14.01[13] and collect data on a semi-annual frequency. For public securitisations, this has been further complemented with information obtained from Securitisation Repositories (SRs) in accordance with the transparency requirements outlined in Article 7 of the SECR. In addition, to facilitate a comprehensive assessment of the STS market, data from the ESMA STS Register – submitted by originators and/or sponsors using the STS notification templates pursuant to Article 27 of the SECR [14] - have also been analysed.

29. It is important to highlight that discrepancies may arise when comparing COREP data with other publicly available sources on securitisations within the EU. These differences primarily stem from the scope of COREP reporting which is entirely based on the EU banking sector[15] and encompasses both public and private securitisations. Similarly, information provided by SRs includes data solely on public securitisations, as private securitisations— as defined under SECR—are exempted from reporting to SRs[16]. Regarding the ESMA STS Register it includes a list of all public and private securitisations that have been notified to ESMA as meeting the STS requirements under SECR.

5.2 Analysis

[13] The COREP information on securitisations consists of two templates: C14.00 provides a general overview of the securitisations gathering information on a transaction basis on all securitisations the reporting institution is involved in. Template C14.01 is only be reported for those securitisation positions treated under the securitisation framework. More details on COREP can be found at the following link: Reporting framework 3.2 | European Banking Authority

[14] According to Article 27, originators and sponsors (where relevant) are required to notify ESMA where a securitisation meets the STS requirements set out in Articles 19-26e of the SECR.

[15] The data includes all securitisations originated by EU financial institutions and securitisation positions which are held by EU banks. It may not include any non-bank originated securitisations unless any of these securitisation positions are held by banks.

[16] According to Article 7 private securitisations are defined as securitisations where a prospectus has not been drawn up in compliance with Directive 2003/71/EC of the European Parliament and of the Council.

30. Following the review of the SECR by the JC of the ESAs[17] which was published in 2021, the EC concluded in its October 2022 report[18] that it was premature to evaluate the impact of the new framework considering also the delay in implementation of the level 2 and level 3 regulation (most of these entered into force in 2020). In 2022, in response to the EC call for advice[19], the JC of the ESAs performed a review of the prudential framework including an assessment of the EU securitisation market. The market analysis was also based on COREP data and covered the period 2016-2021. However, due to a change in the COREP reporting in 2020 as part of the European Centralised Infrastructure for Supervisory Data (EUCLID), the sample used for this analysis differs from previous assessments[20].

31. Consistent with the findings of the prudential framework review performed by the JC of the ESAs, the current analysis indicates a positive trend in the EU securitisation market, as reflected in outstanding amounts. While the issuance volumes in the initial years following the implementation of the SECR have remained relatively stable, a moderate upward trend was observed between 2020 and 2022. In addition to the market conditions (e.g. lack of funding needs due to cheaper alternative funding options), the COVID-19 pandemic and the time needed for the adoption of the level 2 implementing measures contributed to a slower than anticipated development of the EU securitisation market during the first years of the implementation of the SECR. While the volumes increased moderately after 2020, overall market activity has remained relatively stable. Notably, synthetic securitisations have demonstrated significant growth in the last years, especially following the introduction of the STS framework for synthetic securitisations in 2021. By 2022, the share of synthetic securitisations reached 53%, up from 32% in 2020, underscoring the increasing use of synthetic securitisations as a tool for capital management and risk transfer (Figure 1.b).

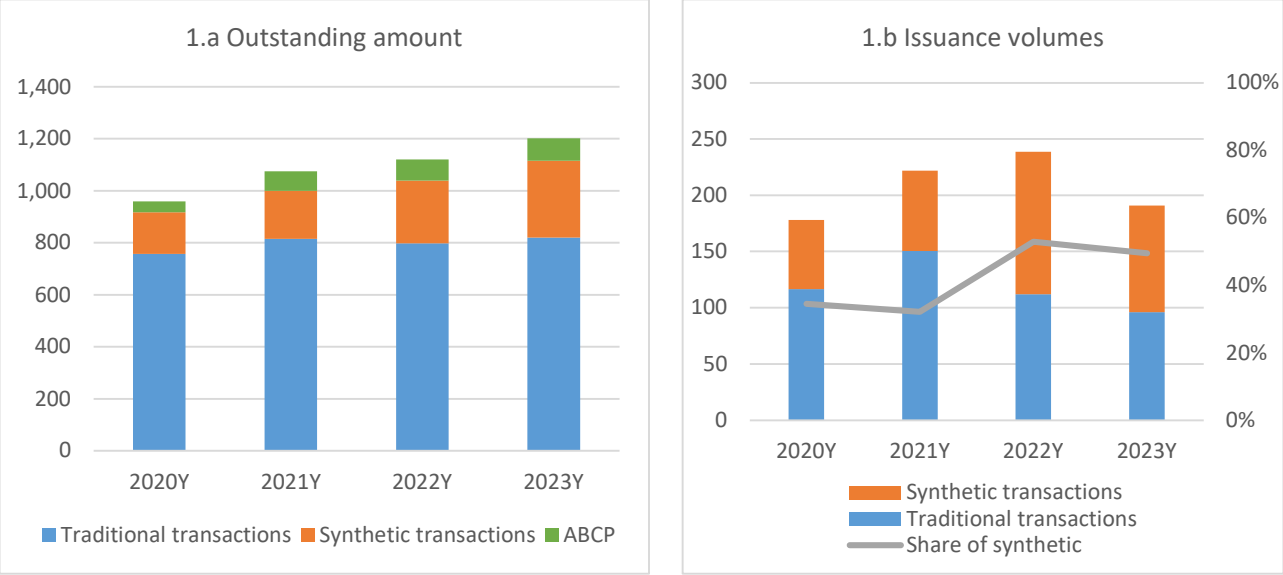
[17] JC 2021 31 (JC Report on the implementation and functioning of the Securitisation Regulation) (1).pdf

[18] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0517

[19] Published on the EBA website at the following link: CfA_Review Framework _JC ESAs_Final.pdf

[20] In 2020 the number of entities reporting under the new framework increased by 2465 (from 283 to 2748). Despite the increase of the outstanding amount of cash and synthetic securitisation was relatively small (3.5%). More information on EUCLID can be found at the following link: EUCLID: The platform for banking and financial data.

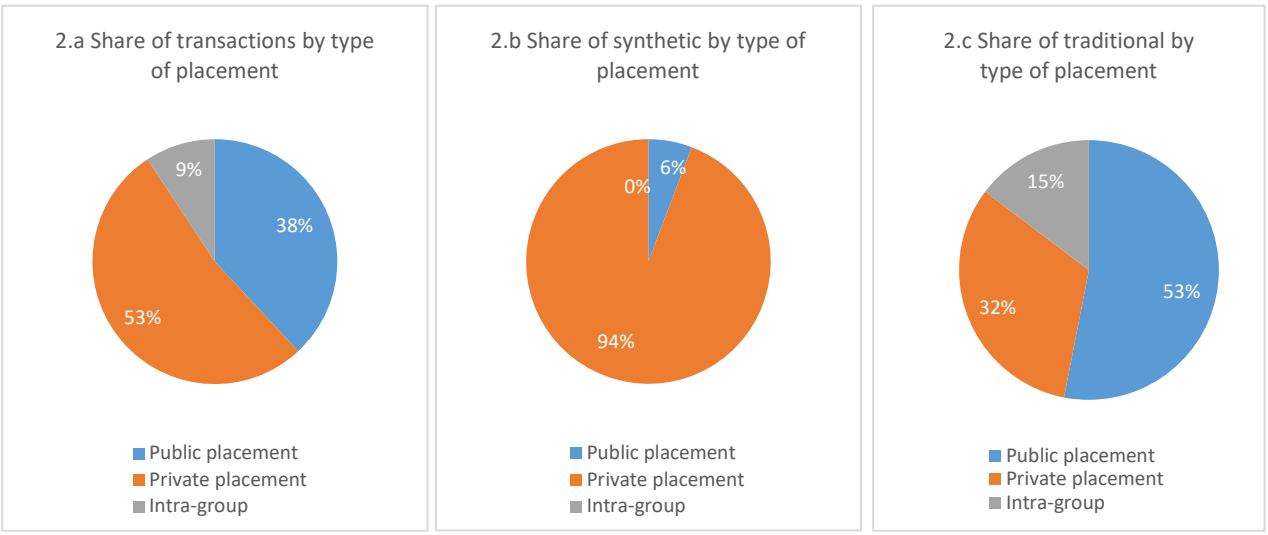
Figure 1: Outstanding and issuance volumes by type of securitisation (in billion EUR)



Source: COREP

32. As of December 2023, approximately half of the transactions reported by originators, sponsors and investors in COREP were privately placed while 38% of the transactions were publicly placed (Figure 2.a). A more detailed analysis on the type of placement reveals that traditional securitisations account for around half of the publicly placed securitisations (Figure 2.c). Conversely, as illustrated in Figure 2.b, privately placed transactions are dominated by synthetic (94%).

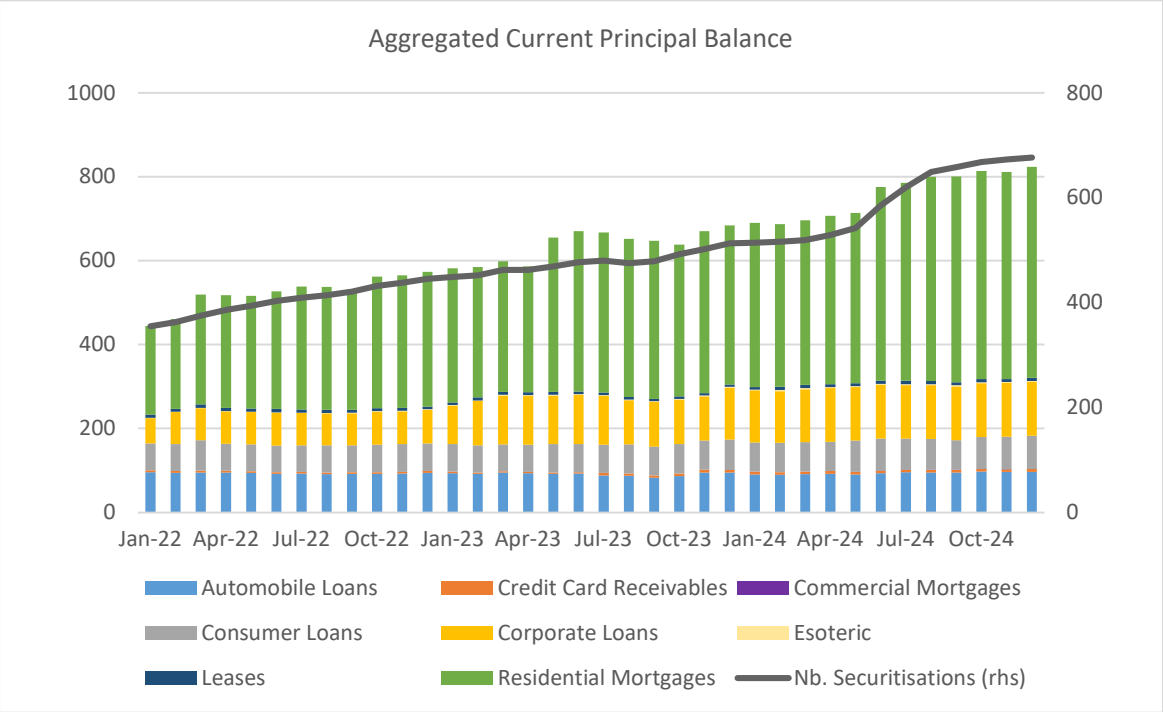
Figure 2: Share of transactions by type of placement (public vs. private) by outstanding amount as of December 2023.



Source: COREP

33. Focusing the analysis on information reported to SRs, Figure 3 shows that in 2023 approximately half of the outstanding amount (≈EUR 600bn) of the outstanding EU securitisations (≈ EUR 1.2bn in COREP – Figure 1a.) report to SRs. The increase in the outstanding amounts in 2024 reflect the end of the transitional provisions for ECB ABS loan level data templates[21]. It is important to note that reporting to SRs is mandatory for public securitisations pursuant to Article 7 of the SECR to ensure compliance with the transparency requirements. Moreover, reporting to SRs is also a prerequisite for securitisations seeking eligibility as Eurosystem collateral. Therefore, the aggregate current principal outstanding balance (ACPB) may also include securitisations reported for Eurosystem collateral eligibility purposes, regardless of any exemption from reporting to SRs under the SECR. The upward trend in the outstanding amount of securitisations reported to SRs (Figure 3) aligns with the moderate growth observed of the overall EU securitisation market in the last years.

Figure 3: Evolution of outstanding securitisations reported to SRs (in billion EUR) from January 2022 to December 2024



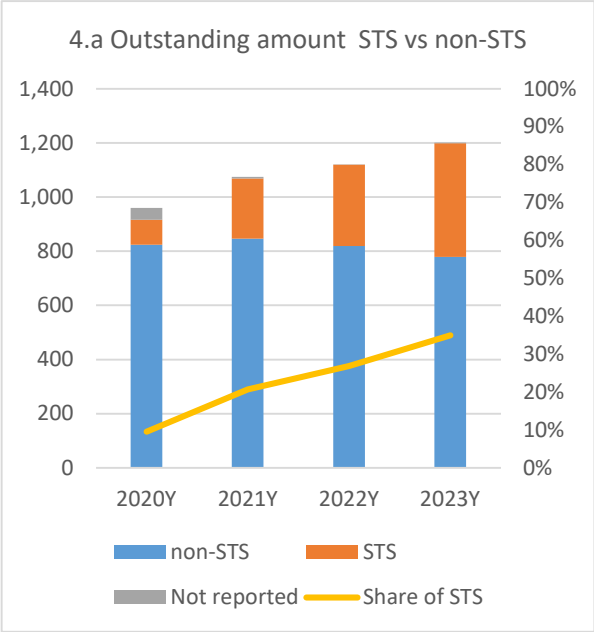
Source: ESMA, SRs

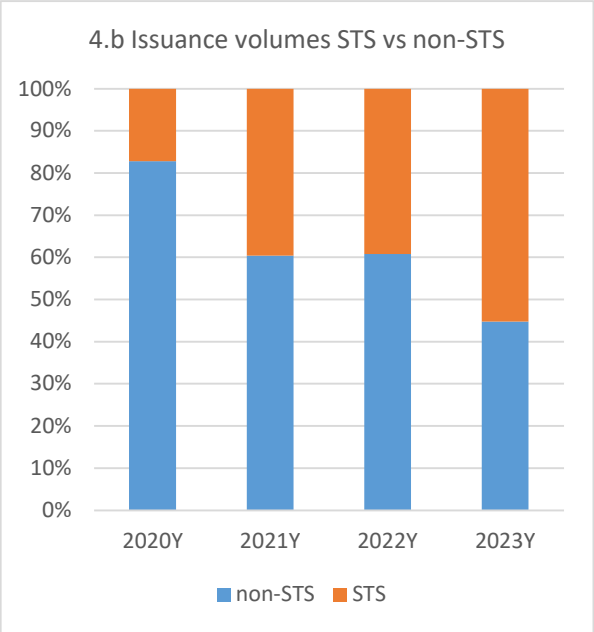
[21] Note: The increase in the outstanding amounts in 2024 reflects the end of the transitional provisions for ECB ABS loan level data templates. As of 1 October 2024, all securitisations that seek Eurosystem collateral eligibility, regardless of any disclosure exemption under the SECR, are required to provide information on the underlying assets using the templates specified in the implementing technical standards adopted by the Commission under Article 7(4) of Regulation (EU) 2017/2402 (SECR) to the SRs.

34. A comprehensive assessment of the impact of the new securitisation framework necessitates a detailed examination of the development of the EU STS securitisation market. Based on STS information reported to COREP, Figure 4 shows a steady increase in issuance volumes of STS securitisations in the period 2020-2023. Notably, a rising trend in the share of the outstanding amount of STS securitisations has been observed (Figure 4.a) since the finalisation of Level 2 and Level 3 regulations governing traditional STS securitisation (2020). This upward trend continued after the introduction of the synthetic STS framework in 2021.

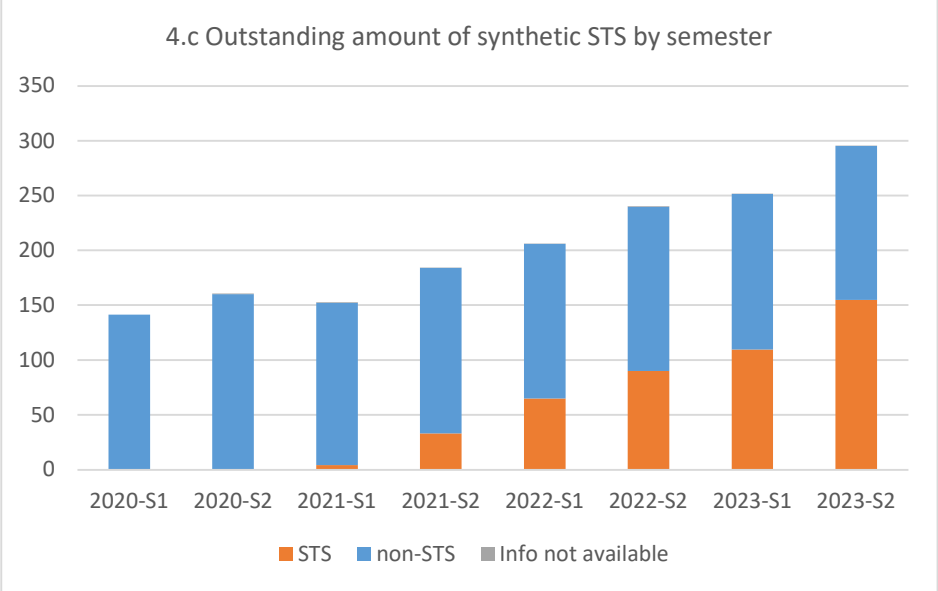
35. As displayed in Figure 4, the share of STS within the overall EU securitisation market increased from 21% in 2020 to 35% in 2023. Furthermore, in 2023, STS issuance volume surpassed those of non-STS, accounting for 55% of the total EU securitisation issuance volumes (Figure 4.b). Synthetic STS securitisations represented a significant proportion, constituting approximately 54% of the total EU STS issuance. As indicated in Figure 4.c, following the introduction of the STS framework for on-balance sheet synthetic securitisation, the share of the outstanding amount of synthetic STS securitisation increased from 18% in the second semester of 2021 to 52% in the second semester of 2023.

Figure 4: Evolution of the outstanding and issuance volumes of STS and non-STS from 2020 to 2023 (in billion EUR)





Source: COREP



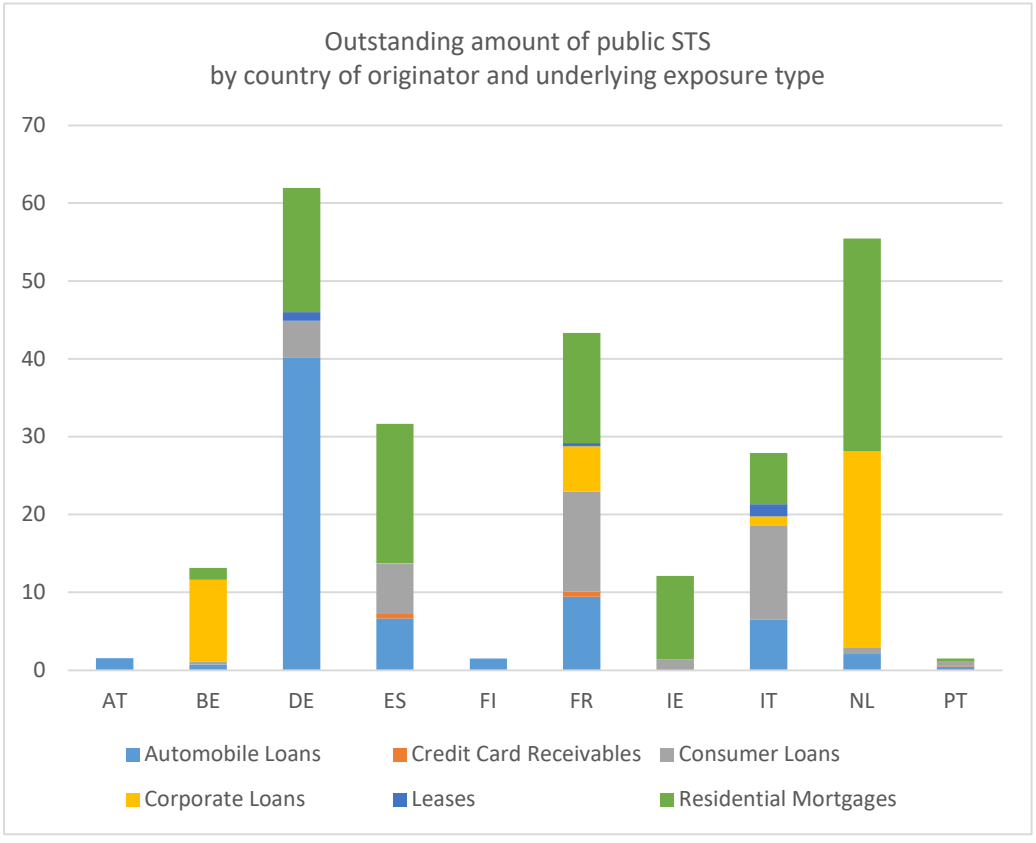
Source: COREP

36. Further analysis, based on STS notifications submitted to ESMA pursuant to Article 27 of the SECR and complemented with the information from the SRs, shows that the EU STS securitisation market remains highly concentrated in a limited number of countries. This concentration is further evidenced by the geographical location of the underlying assets (Figure

5), for which almost 90% of public STS securitisations are originated primarily in five Member States with Germany accounting for the highest share (25%). As of February 2025, considering the country of the originator, approximately EUR 62bn of public STS securitisations were originated in Germany, followed by Netherlands (EUR55bn), France (EUR43bn), Spain (EUR 31bn) and Italy (EUR 28 bn).

37. A more detailed analysis, based on the type of underlying exposure, reveals that Germany is the predominant originator of public STS securitisations backed by auto loans and leases, accounting for 58% of the total, followed by France (14%). In contrast, the Netherlands (29%) holds the highest share (29%) of outstanding public STS backed by residential mortgages, followed by Spain (19%) and Germany (17%). In the consumer STS securitisations segment, France (33%) and Italy (31%) lead the origination of public STS securitisations, whereas Netherlands dominates the corporate public STS securitisation market with 59%, followed by Belgium (25%) and France (14%).

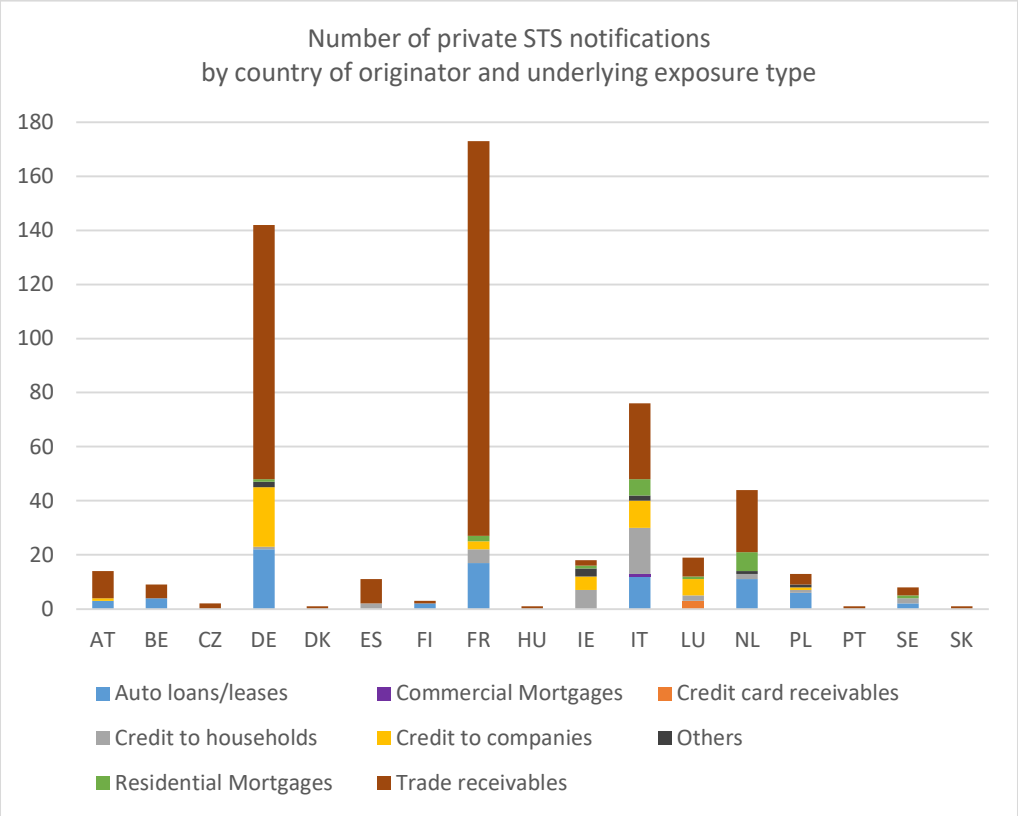
Figure 5: Outstanding of public STS issuance reported to SRs (in billion EUR) as of February 2025



Source: ESMA STS Register, SRs

38. A similar analysis was performed for private STS securitisations including ABCP and non-ABCP transactions. This analysis was based on the number of private STS notifications[22] considering the information from the ESMA STS Register with the following notable differences. The private STS securitisation market in the EU is primarily concentrated in four countries with France accounting for the highest share (32%), followed by Germany (26%), Italy (14%) and the Netherlands (8%). In terms of underlying exposure types, trade receivables represent the predominant asset class, comprising 63% of the total number of private STS notifications, followed by auto loans and leases (15%) and credit to corporates (9%).

Figure 6: Number of private STS notifications as of February 2025



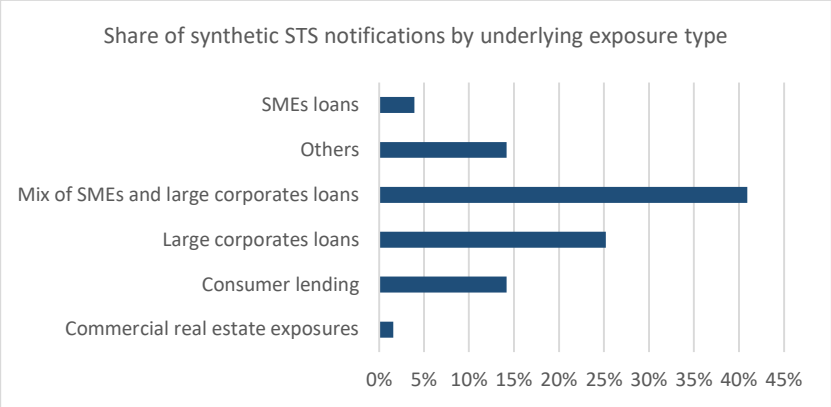
Source: ESMA STS Register

39. Focusing on synthetic STS notifications, the split by underlying exposure type is somewhat different with the mix of SME and corporate loans accounting for 41% of the total number of

[22] The information on private STS securitisations is not available through SRs therefore the analysis was performed on the number of private STS securitisations available through the ESMA STS Register.

synthetic STS notifications, followed by large corporate loans (25%) and consumer lending (14%).

Figure 7: Number of synthetic STS notifications as of February 2025



Source: ESMA STS Register

40. To summarise, in the initial years following the implementation of the SECR, a combination of factors – including prevailing market conditions (e.g. limited funding needs), the COVID-19 pandemic – hindered the growth of the securitisation market. Since the implementation of the SECR, the EU securitisation market has shown moderate growth. Even though the EU securitisation market remains smaller than it was between 2006-2008, its overall quality has improved significantly due to a series of regulatory reforms in response to the GFC. Notably, following the introduction of the STS framework for synthetic securitisations in 2021, the EU STS securitisation market has experienced more pronounced growth. The increase in synthetic securitisation in recent years suggests that securitisation is predominantly used for capital management and risk transfer purposes, rather than a primary funding mechanism. This report examines the current framework and includes recommendations aimed at fostering the EU securitisation market, including, but not limited to, traditional securitisation - in a sound and sustainable manner.

6. Scope and Definitions

6.1 Scope of application

6.1.1 The securitisation regulation (SECR)

(i) Issue

41. As stated in the first Joint Committee report (JC 2021 report), some provisions of the SECR, including due diligence, disclosure, risk retention and credit granting, may be a source of significant legal uncertainty as to whether they apply to transaction parties located outside the EU, especially in the case of mixed securitisations with both EU and non-EU parties. In its 2022 report, the EC clarified that the EU institutional investors should verify before investing in a securitisation, as part of their due diligence obligations (Article 5), that the sell-side parties of the securitisation, irrespective of their location, comply with the respective requirements, thus preventing EU institutional investors from investing in securitisations where the sell-side entities are not compliant with those requirements.

(ii) Proposal

42. The Joint Committee of ESAs, in its 2021 Opinion[23], noted the challenges regarding the application of Articles 5 to 7 and 9 of the SECR to third-country entities (sell-side or buy-side) by setting out the ESAs' opinion on the jurisdictional scope of application (JSA) of the SECR, and by inviting the EC to propose any necessary amendments to address the issues concerning the jurisdictional scope of application. In this regard, to provide further clarity and remove any ambiguity, the JC of the ESAs proposes to add a new general provision in the SECR specifying the scope of application. While, in practice, it does not change the current scope of application of the SECR, it will facilitate the reading of the Regulation and would provide further clarity on the SECR application to geographically mixed securitisations, where some but not all the sell-side entities are established in the EU. One of the main objectives is to clarify that securitisations with relevant participating EU parties (institutional investors, originators, original lenders[24], SSPEs and sponsors established in the EU) trigger the application of the SECR. In particular, the EU entities involved in such transactions should comply with the requirements of the EU securitisation framework applicable to their role.

[23] jc_2021_16_-_esas_opinion_on_jurisdictional_scope_of_application_of_the_securitisation_regulation_003.pdf

[24] With the derogation mentioned in Article 29(4) last sentence SECR.

43. More specifically, the JC of the ESAs proposes the introduction of a general provision on the JSA in Article 1 – Subject matter and scope of the SECR. This provision should clarify that the SECR applies to securitisations where at least one of the securitisation parties (sell-side or buy-side) is established in the EU. It is important to note that only the EU parties can be held liable for compliance with their respective obligations in SECR. Once an EU entity is involved, this EU entity must comply with the SECR provisions applicable to it, ensuring that it is also in the jurisdictional reach of the supervisor. To better illustrate this, the application of the SECR is triggered and the relevant SECR articles must be complied to if any of the following conditions are met:

(a) at least one of the sell-side parties is established in the EU (with buy-sides that may be established in EU and/or outside EU). The sell-side parties established in the EU have to comply with the relevant SECR Articles;

(b) at least one buy-side party is established in the EU (with sell-side parties that may be established in and/or outside EU). The EU established buy-side parties have to comply with the relevant SECR articles, which implicitly imposes certain requirements also on the sell-side parties established outside the EU such as risk retention (namely Article 6).

6.1.2 STS provisions

44. Article 18 of the SECR requires that the originator, sponsor, and SSPE involved in an STS securitisation are established in the Union. The SECR sets out requirements related STS for non-ABCP, ABCP, and on-balance-sheet (OBS) securitisation which the originators, original lenders, sponsors and SSPEs need to meet to qualify for STS. Having all relevant parties established in the Union further ensures that the relevant entities are in the jurisdictional reach of the supervisor.

45. One of the options explored by the JC of the ESAs is that, for a securitisation to qualify as STS, only the key parties in the transaction should be required to be established in the Union. Considering the STS framework, the key sell-side entities in the scope of the STS requirements, such as the originator and sponsor for non-ABCP and ABCP and the originator for OBS, would be sufficient to be established in the EU for a securitisation to be STS eligible. This approach was also taken by the UK authorities in the onshoring legislation, the UK Securitisation Regulation in 2019 (UK SR). However, it is understood that the UK is now shifting to a more flexible approach where only one sell-side entity[25], either the originator or the sponsor, is required to be established in the UK for a non-ABCP securitisation to be considered as UK STS. It may be worth noting that there could be some geographically mixed non-ABCP securitisations (where originator and/or sponsor are established in the UK while the SSPE is established in the Union) which may qualify as STS in the UK but would not qualify as STS in the EU, all the while being

[25] The Securitisation Regulations 2024 - UK Statutory Instruments - https://www.legislation.gov.uk/uksi/2024/102/regulation/9.

subject to the general requirements of both the EU and UK securitisation frameworks. This issue should be further elaborated in the context of a third country equivalence regime.

46. The following pros and cons have been identified if only the key parties (originator and sponsor for non-ABCP and ABCP, and originator for OBS) would be required to be established in the EU for securitisations to be STS eligible:

(i) Pros

- Securitisations with an SSPE established in a third country in accordance with the requirements for SSPEs under Article 4 of the SECR and an EU established originator and sponsor would bring additional cross-border securitisations in the scope of the EU STS framework facilitating investment diversification. Furthermore, the SECR does not prevent entities located in a third country from being part of a securitisation, and therefore these securitisations are already in the scope of the SECR and have to comply with the general provisions of the SECR but currently they do not qualify as STS.

(ii) Cons

- Sell-side parties are subject to certain STS requirements which would pose challenges on the ability of the designated competent authorities to effectively supervise that these requirements are met for entities established in third countries. To qualify as STS, securitisations have to meet certain STS requirements imposed on SSPEs (such as e.g., Article 20 (1)). However, for those SSPEs established in a third country, the designated Competent Authority under the SECR would have no powers to enforce compliance with the relevant STS requirements imposed on SSPEs. This lack of direct accountability of one of the sell-side parties in a securitisation (in this case the SSPE) would be inconsistent with the SECR's objective of ensuring that the transaction meets the EU STS standards.

47. Furthermore, no disadvantages have been identified for STS securitisations with an SSPE established in the EU that would require to consider the possibility of allowing STS for securitisations with SSPEs established in third countries.

6.1.3 Clarification on the meaning of 'established in the Union' in Article 18 of the SECR

48. According to the JC of the ESAs, one of the issues that would merit further clarification is the interpretation of the meaning of 'established in the Union' in Article 18 of the SECR. Further clarity is required on whether to qualify as STS the term 'established in the Union' would also include the European Economic Area (EEA) countries or be limited to the EU Member States. It is important to note that for the purposes of the EEA relevant CRR and Capital Requirements

Directive (CRD) texts, the term 'Member State' also includes the EEA countries[26]. Even though the Securitisation Regulation is a text with EEA relevance, EEA European Free Trade Association (EFTA) countries[27] would be considered as part of the Union for the purposes of the SECR only after formally incorporating the SECR. According to the latest available information[28], at the time the report was developed, the SECR was still in the incorporation process. Therefore, pending this, the term 'established in the Union' would not include the EEA countries.

6.2 Definitions

6.2.1 Definition of "Public Securitisation" vs. "Private Securitisation"

(i) Issue

49. As per Article 7(2) of the SECR, some transparency requirements do not apply to securitisations where no prospectus has to be drawn up in compliance with the Prospectus Regulation (Directive 2003/71/EC)[29]. These are colloquially known in the market and by supervisors as "private" securitisations, while "public" securitisations are defined as transactions for which a prospectus has to be published.

50. The main purpose of the distinction between "public" and "private" transactions is the mandatory disclosure of information for public securitisations via the Securitisation Repositories (SR) which provide a single and supervised source of data and necessary documents for investors and potential investors to perform their due diligence. Therefore, a key objective is to distinguish between: (1) transactions where investors have meaningful/direct contact with originators/sponsors and the ability to negotiate and receive directly from them the necessary information to perform their due diligence without the need of disclosing any commercially sensitive information to the market, (2) transactions where the disclosure package is offered on a "take it or leave it" basis.

(ii) Proposal

51. Considering the objective of the transparency requirements, there are current supervisory concerns that the existing category of public securitisations (which by omission is understood as

[26] 2013_233 Definition of term "member state" | European Banking Authority (europa.eu)

[27] The three EFTA States are Iceland, Lichtenstein, and Norway. The 27 EU Members States together with the three EFTA States (Iceland, Lichtenstein, and Norway) constitute the EEA.

[28] Factsheet - 32017R2402 | European Free Trade Association (efta.int)

[29] Directive 2003/71/EC has been repealed by Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (Text with EEA relevance).

any securitisation that is not understood as being private as per Article 7(2) of the SECR) may not have a suitable and adequate perimeter. In line with the aim of the SECR to promote transparency, the JC of the ESAs' objective is to consider introducing a "broader" definition for public securitisations, capturing as well the deals that are currently categorised - in the absence of a better delineation between public and private - as "private" but are instead "public" in substance. Securitisations should therefore be defined as "public" securitisations if they have any of the following characteristics:

(a) where a prospectus has to be drawn up in compliance with the EU Prospectus Regulation[30]; or

(b) with notes constituting securitisation positions admitted to trading in the EU regulated markets[31] and/or Multilateral Trading Facility (MTFs)[32] and/or Organised Trading Facility (OTF)[33], or/and any other trading venue in the EU; or

(c) marketed to a broad range of investors and where the relevant terms and conditions are not negotiable among the parties.

52. As regards limb c), to verify whether the securities have been marketed to a broad range of investors, it is proposed to establish a market test for EU originators/sponsors, taking the Regulation S[34] in the US as an example. This test should only aim to protect investors, be simple, and easy to implement. The EU originators/sponsors would be given a distribution compliance period (e.g., 40 days), and after the closing date, would need to run the test and demonstrate to supervisors that the securities have not been marketed to a broad range of investors. In such a case, the transaction would not be classified as a public securitisation and would therefore be exempted from the specific obligations that may be connected to such deals. Details regarding the market test and how to run it should be clarified through an L2 implementing act.

53. The new definition broadens the scope of public securitisations, as segments of the securitisation market which are currently considered private for the purposes of the SECR would fall in the scope of the public. These include CLOs and, in some circumstances, synthetic securitisations with Credit-Linked Notes (CLNs). Therefore, it is the view of the JC of the ESAs

[30] Directive 2003/71/EC referred to in SECR has been repealed by Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (Text with EEA relevance).

[31] Regulated Market means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU (MiFID).

[32] Multilateral Trading Facility or MTF means a multilateral system as defined in point (22) of Article 4(1) of Directive 2014/65/EU (MiFID).

[33] Organised Trading Facility or OT' means a system or facility in the Union as defined in point (23) of Article 4(1) of Directive 2014/65/EU (MiFID).

[34] Regulation S [17 CFR 230.901 - 230.905] Rules governing offers and sales made outside the United States without registration under the Securities Act of 1933 [SEC.gov | Rules, Regulations and Schedules

that an impact assessment by the EC is also warranted to ensure that the new definition captures only the securitisations which are "public" in substance[35].In this regard, the EC targeted consultation on the functioning of the securitisation framework[36] also addresses, among other topics, the definition of public securitisation.

54. The JC of the ESAs also assessed the possibility of enhancing the definition of private securitisations, but the bespoke nature of private securitisations would result in a relatively complex and non-standardised definition. On that note, while the JC of the ESAs does not deem necessary to "positively" define private securitisations, as laid out above, there are still some supervisory concerns related to the oversight and reporting of private securitisations that are addressed in Section 10 (Transparency framework).

6.2.2 Definition of "Securitisation"

(i) Issue

55. The current definition of securitisation in SECR has raised the following concerns amongst market participants. On one hand, there are current transactions which fall outside the scope of the current definition of securitisation in SECR that include, for example, the so-called "single tranche securitisations"[37] and credit funds, which are secured debt schemes issued by funds as an ABS investment alternative. Furthermore, there seems to be a new growing market segment in the form of "Credit funds (CRFs) collateralised debt", where the funds are closed-end loan funds that directly lend to SMEs as direct lending funds, but also invest in book loans through syndication by credit institutions. These funds are also not captured by the existing definition of securitisation.

56. On the other hand, there is an ongoing debate about whether the current definition captures transactions such as guarantees, which feature caps and floors determined at the level of a portfolio of exposures commonly known as "portfolio guarantees". As regards the latter, there is a specific mandate for the EBA in Article 506e of the CRR3 to specify the conditions that these portfolio guarantees need to meet to qualify as a securitisation, and what the regulatory treatment should be when they qualify as securitisations.

[35] As part of the impact assessment, the EC could consider how the requirement for transactions to qualify as public, based on admission to EU-regulated markets, interacts with the exclusion of securities already admitted to trading on the same market, and how the criterion of being "marketed to a broad range of investors" relates to the Prospectus Regulation's exemption for a restricted circle of investors.

[36] https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-functioning-eu-securitisation-framework-2024_en.

[37] Single tranche securitisation refers to a pass-through SPE exposure with underlying assets where the transaction does not fulfil the conditions for securitisations as defined in point (1) of Article 2 of Regulation (EU) 2017/2402.

(ii) Proposal

57. The JC of the ESAs does not see merit in changing the definition of securitisation within the SECR, as it has its origins in the prudential framework (i.e., Capital Requirements Regulation[38])) and is also aligned with international standards. Therefore, the alignment of the definition between the SECR and the CRR should be preserved. Furthermore, it is important that the definition of securitisation captures those transactions whereby the credit risk associated with an exposure or a pool of exposures is tranched. On that note, the EBA has already received a mandate according to Article 506e of the CRR3 which is expected to provide further clarity on certain aspects. However, if the EC deems necessary to revisit the definition of securitisation and the scope of application of the SECR, one possible approach would be to give a mandate similar to the mandate for portfolio guarantees in CRR3 to the JC of the ESAs, the ESAs, or to the EBA, to look at the various subsegments of the securitisation market and develop a more targeted approach to the application of the SECR. A subsegment assessment would allow for a more tailored application of the SECR requirements, which could also lead to potentially scoping out certain subsegments which were potentially not intended to be captured by the SECR, such as correlation trading, and still keeping in the scope, for prudential purposes, all securitisations under CRR and Solvency.

[38] EUR-Lex - 02013R0575-20250101 - EN - EUR-Lex

7. Due diligence rules

58. The feedback received from the targeted surveys with market participants and CAs launched in December 2023 stated that the due diligence obligations for institutional investors are overly burdensome and disproportionate compared to other comparable financial products, and they do not account for other rules which already address similar matters, such as the AIFMD. These obligations create an administrative burden on investors to demonstrate compliance both prior to holding a securitisation exposure and after. They could also create bottlenecks in the investment process, reduce investment capacity and restrict investors' responsiveness on the primary and secondary markets. Therefore, the JC of the ESAs has assessed how to streamline and refocus the due diligence requirements on the assessment of the relevant risks, all the while maintaining a high level of investor protection. It is also necessary to introduce, in a more coherent manner, the principle of proportionality in the due diligence requirements under SECR. The objective is to provide more flexibility and broaden the EU investor universe by permitting to invest more easily also outside the EU without, however, undermining their protection.

7.1 Background

59. The due diligence requirements are an essential element of the SECR, designed to ensure that investors adequately assess the risks and the creditworthiness of securitisation instruments. Previously, they were prescribed under different sectoral legislations including Directive 2011/61/EU (AIFMD), Directive 2009/138/EC (Solvency II Directive) and CRR. With the introduction of the SECR, due diligence requirements across all types of institutional investors were brought together under Article 5[39].

60. In particular, Article 5 provides that before and whilst holding a securitisation position institutional investors shall (i) verify that any originator, sponsor, original lender or SSPE involved in a securitisation transaction has complied with certain provisions of the SECR, (ii) check the risk and structural features of the transaction to get a comprehensive and thorough understanding of the securitisation position and its underlying exposures, and (iii) ensure to

[39] It should be noted that in addition to Article 5 of the SECR, sector-specific regulations continue to encompass general policies for credit approval under the CRR and the prudent investor principle under Solvency II Directive or the overarching fiduciary duty to act in the best interest of investors for all investments under AIFMD or UCITs or MMFR. In particular, CRR sets out rules regarding credit approval on publicly placed deals which vary depending on the investment strategy - for "buy and hold" investments, a comprehensive due diligence process is required, including engagement with the credit approval committee process and the preparation of detailed due diligence write-ups ; for "buy to trade" investments which involve short-term exposures, more formal credit approvals are not necessary. Instead, a simplified due diligence checklist is generally deemed sufficient.

monitor on an on-going basis the performance of the underlying portfolio and maintain records of the relevant verifications.

7.2 Issues and opinion of the JC of the ESAs

7.2.1 Adequate and proportionate diligence

(i) General concerns

61. Article 5 is generally subject to proportionality and appropriateness through Recitals (9)[40] and (33)[41] of the SECR, which make clear that the same level of diligence is not required in all cases. However, while Recital (9) specifies that the due-diligence requirements are to be proportionate, it does not clarify how proportionality should apply and based on which factors. Regarding Recital (33) which states that "investors should perform their own due diligence on investments commensurate with the risks involved", it does not mention which risks it refers to and what is meant by "commensurate" in the context of the due diligence process.

62. Apart from Article 5(4) point (a) which directly and generally embeds proportionality by clearly providing that investors shall establish "written procedures that are proportionate to the risk profile of the securitisation position", the rest of Article 5 is silent on how adequacy and proportionality could be effectively achieved.

63. This lack of guidance on how to achieve "adequate and proportionate" due-diligence may lead to unduly burdensome due-diligence processes, which may be challenging to fulfill especially for small institutional investors and/or new investors in the securitisation market.

(ii) Data and confirmations to be received.

64. Article 5(1)(e) provides that investors shall verify that, regardless of where the sell side parties are located, the information to be provided pursuant to Article 7 are made available in accordance with the frequency and modalities set out in that Article. This due diligence requirement, however, is considered by most of the EU investors to be disproportionate and too prescriptive where sell-side parties are located outside the Union.

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[40] Recital (9) under SECR specifies, inter alia, that "investments in or exposures to securitisations not only expose the investor to credit risks of the underlying loans or exposures, but the structuring process of securitisations could also lead to other risks such as agency risk, model risk, legal and operational risk, counterparty risk, servicing risk, liquidity risk and concentration risk. Therefore, it is essential that institutional investors be subject to **proportionate due-diligence requirements** ensuring that they properly assess the risks arising from all types of securitisations to the benefit of end investors. […]"

[41] Recital (33) under SECR specifies, inter alia, that "Investors should perform their own **due diligence** on investments **commensurate with the risks involved** […]."

65. Indeed, information required under Article 7(1) points (a), (e), (f) and (g) is to be provided pursuant to the related ESMA regulatory technical standards (i.e., using the ESMA templates), while the JC of the ESAs believes that investors should receive the information necessary for their risk assessment without being bound by a specific modality to receive it.

66. In this context, it should be considered that several non-EU regulatory regimes (e.g. UK, US, Canada) are substantially similar to EU requirements in terms of enabling investors to evaluate risk, perform due diligence, and, in many circumstances, reporting identical information, albeit in a different format to the prescribed Article 7 templates. Therefore, the JC of the ESAs believes that the focus should be on the substance of the information, rather than on prescribing the format in which it will be provided.

(iii) STS Deals

67. Article 5(3)(c) provides that, in the context of STS deals, institutional investors are required to verify the compliance of securitisations with the relevant STS criteria set out under SECR and to rely "to an appropriate extent" on the STS notification and on the information disclosed by the originator, sponsor and SSPE without solely or mechanistically relying on that notification or information. However, according to market participants, the lack of clarity on the definition of appropriate reliance could cause a high level of uncertainty for investors and lead to divergent due-diligence practices across investors.

68. In addition, pursuant to Article 5 all institutional investors shall verify compliance with the STS criteria regardless of their benefit from the STS status. Some market participants are wondering if proportionality could be applied to this provision and if an exception from verifying the STS criteria could be introduced for institutional investors which do not receive any advantage from it (e.g., investors who are not CRR or Solvency II investors).

69. In this respect, the JC of the ESAs believes that more proportionality should be introduced in the verification of the STS criteria which should be applied not only to specific categories of investors but to all investors holding a securitisation position in an STS deal, as better explained below.

(iv) Implementation of the DDRs on the secondary market

70. According to some market participants, taking part in secondary market trades might be unlikely for those investors who did not carry out a due diligence assessment on a primary market issue, considering that all the requirements to be met before investing are not compatible within the typical tight timing of secondary trading.

71. Therefore, the JC of the ESAs believes that more proportionality should also be introduced in relation to the timing prescribed to document certain verifications, as better explained below.

(v) Delegated investment management and due-diligence

72. Article 5(5) has also raised the following concerns among market participants:

    a. whether enforcement actions may also be taken against the delegating party; and

    b. if an institutional investor may give to a non-EU AIFM or a sub-threshold AIFM the authority to make investment management decisions that might expose it to a securitisation and instruct such entity to fulfil its due diligence obligations under Article 5 of the SECR.

73. Therefore, the JC of the ESAs believes that Article 5(5) should be fully reshaped to solve any interpretation issues and clashes with other existing regulations, as better explained below.

7.3 Proposals

74. The EC should ensure that the principle of proportionality underpins the due diligence requirements in a more comprehensive manner. This means introducing – where possible - a simplified approach which should be applied to all entities falling under the SECR definition of institutional investors regardless of (i) the nature of the transaction (i.e. public or private); and (ii) where the sell-side parties (i.e., originator, sponsor, original lender and SSPE) are located (i.e. in or outside the Union). In this way, simplified due-diligence processes with comparable outcomes should be applied in all relevant situations, ensuring a level playing field.

75. As a general principle, Article 5 should avoid cross-referring to certain Articles of the SECR (such as Articles 7 and 9) (which would gather not only the substance of such provisions, but also the modalities and the format). Instead, Article 5 should explicitly prescribe and define the minimum requirements that institutional investors must verify, assess, or analyse, where applicable. For example, with reference to Article 5(1)(e), the JC of the ESAs suggest replacing the current cross-reference to Article 7 with a reference to a list of requirements that would form the "necessary information" that institutional investors need to receive to perform a meaningful risk assessment, and which should also be substantially the same, in terms of content, of the information that would be disclosed pursuant to Article 7 of the SECR[42]. The following paragraphs provide an indication of what the information should allow investors to assess.

[42] According to the current version of Article 7 of the SECR, the minimum set of information should include at least the following. It shall be noted that this information should mirror any change that will be implemented under the revised Article 7:

76. Overall, it is recommended to focus on the substance of the information, rather than prescribing the format in which it will be provided. As a general rule, an institutional investor must, on an ongoing basis, have a comprehensive understanding of the risk characteristics of the securitisation position, whether on- or off-balance sheet, and also of the risk characteristics of the underlying assets and have as well a thorough understanding of all structural features of a securitisation transaction that would materially impact the performance of the investor's exposure to the transaction. The purpose is to make sure that investors receive on an ongoing basis necessary information and data for their risk assessment, without imposing on them the duty to verify if the respective sell-side party has complied with the relevant SECR Article.

77. In this context, institutional investors should be then required to (i) verify/analyse and assess they have access to key necessary information listed under such Article (without imposing any methodology or form); (ii) check if the information is sufficient for their risk assessment; and (iii) require and obtain the commitment from the sell-side parties to get all the necessary and materially relevant information at any times throughout the life of the transaction, should the need arise, to make an informed assessment of the investment. This should result in more proportionality than the existing Article 5 requirements, potentially lowering barriers to entry for new or smaller investors that may lack the capacity or incentive to build systems for processing information in a fixed format.

(i) information on the underlying exposures containing all materially relevant data on (i) the credit quality, performance and composition of the underlying pool; (ii) the collaterals (where the underlying exposure is secured by a guarantee, by physical or financial collateral; or where the lender may unilaterally create security over the underlying exposure without the need for any further approval from the obligor or guarantor); and (iii) on the obligors;

(ii) all relevant underlying documentation that is essential for the understanding of the transaction including, where applicable, details regarding (A) the structure of the deal, (B) the exposure characteristics, cash flows, including loss waterfall, credit enhancement and liquidity support features, (C) the institutional investors voting rights and (D) any triggers and events that could have a material impact on the performance of the securitisation position;

(iii) in case of STS securitisations, the STS notification referred to in Article 27;

(iv) investor reports containing (A) all materially relevant data on the credit quality and performance of underlying exposures, (B) information on events which trigger changes in the priority of payments or the replacement of any counterparties, and, in the case of a securitisation which is not an ABCP transaction, data on the cash flows generated by the underlying exposures and by the liabilities of the securitisation, and (C) the calculation and modality of the retention of a material net economic interest in the transaction by the originator, sponsor or original lender;

(v) any inside information relating to the securitisation that the originator, sponsor or SSPE is obliged to make public in accordance with Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on insider dealing and market manipulation;

(vi) where point (v) does not apply, any significant event such as (A) a material breach of the obligations provided for in the transaction documents, including any remedy, waiver or consent subsequently provided in relation to such a breach; (B) a change in the structural features that can materially impact the performance of the securitisation; (C) a change in the risk characteristics of the securitisation or of the underlying exposures that can materially impact the performance of the securitisation; (D) in case of STS securitisations, where the securitisation ceases to meet the STS requirements or where competent authorities have taken remedial or administrative actions; (E) any material amendment to transaction documents.

78. The sufficiency of the information received should be commensurate to the different risks' investors are exposed to, including but not limited to the correlation risk between the tranches. To define the level of risks, investors should consider, for example, (i) the type of transaction (bilaterally negotiated with a particular investor or limited number of investors vs. publicly placed[43], ABCP/non-ABCP), (ii) the seniority of the tranche to be held (i.e. senior, mezzanine, junior), (iii) the type of structural features involved, (iv) the underlying exposure type, (v) in case of STS, the presence of a confirmation (if any) provided by a supervised TPV, (vi) if they have already invested in securitisation positions issued in the context of previous similar transactions involving the same originator (the so-called "repeat deals").

79. For example, liquidity and credit risks may impact the timely and full payment due under the securitisation positions. However, with respect to a senior securitisation position, these risks are mitigated by the credit support provided by the mezzanine securitisation position (if any), the junior securitisation position and any liquidity reserve (if any). Therefore, the information to be received - for a liquidity and risk assessment - by each position holder shall reflect the different level of risk connected to the respective securitisation position. For instance, the information to be received by a mezzanine or a junior holder of a securitisation position shall correspond to the higher riskiness of such positions.

80. Furthermore, the structural features of a transaction also play an important role in the level of risks that investors are exposed to. As an example, in case of sequential amortisation of the securitisation positions, they amortise sequentially, in order of seniority, as the underlying assets mature or amortise. In such a structure, the most senior securitisation position will be fully repaid before the more junior ones. While in case of pro rata amortisation of the securitisation positions, the principal amount of each tranche is repaid pro rata to the respective outstanding balance and each securitisation position is repaid at the same rate, regardless of its seniority. Therefore, the timely and full repayment of a securitisation position may vary not only based on the seniority of such tranche. It may also vary – as per the above example – based on the amortisation structure in the priority of payments, which should thus be taken into consideration in defining the level of risk.

81. Another example is when institutional investors invest in a "repeat deal" or in a "programme", which are likely to require a very similar set of information as previously collected considering that the same investors have already carried out a complete due diligence for the purposes of a previous investment in a securitisation involving the same originator, and which is very similar to the one they are investing in. In such context, it would be acceptable for investors to receive only information relating to what is different and/or has materially changed compared to the

[43] Refer to the Section 6.2.1 - Definition of "Public Securitisation" vs. "Private Securitisation" which addresses the definition of private securitisation.

previous investment, since the rest of information has already been received and processed by them. Therefore, investing in such transactions from time to time or on an ongoing basis should require more a proportionate level of due diligence compared to investments in new transactions, asset classes, sectors or structures involving a first-time originator.

82. The JC of the ESAs recommends that the EC ensures clarity on the information that institutional investors need to have access for due diligence purposes, including on the meaning of "sufficient to the risk assessment" and "commensurate to the different risks investors are exposed to", by mandating the ESAs to develop technical standards or Guidelines that specify these terms.

83. As a part of the simplified approach, the introduction of an STS equivalence/recognition regime for third country securitisations may be necessary only where the investors in third country securitisations want to benefit from an EU preferential prudential treatment that could not be obtained by complying with the principle of EU rules. In such a case, indeed, an equivalence/recognition regime should be implemented.

84. Regarding risk retention, institutional investors are required to verify that the originator, sponsor or original lender retains on an ongoing basis a material net economic interest in accordance with Article 6 of the SECR. The JC of the ESAs considers that, in order to make sure that the used risk retention modality guarantees "skin in the game" and a proper alignment of interests between the risk retainer and the investors, the retention modality should continue to be chosen among the ones expressly allowed under SECR. A simplified approach could still be applied to the way used by the originator, sponsor, or original lender to disclose the risk retention to the institutional investors. In particular, it is not necessary to impose the disclosure according to Article 7 (i.e. using ESMA templates through the Securitisation Repositories (where applicable)), but, as mentioned above, the JC of the ESAs recommends – to this purpose - to focus on the substance of the outcome (i.e. the disclosure of the risk retention modality), rather than on prescribing a specific format in which it will be provided. This should result in more proportionality than the existing requirement under the current Article 5 even if the cross-reference to Article 6 is kept.

85. With reference to the timing, the JC of the ESAs proposes, for the due diligence to be carried out on secondary markets, that documenting the assessment and verifications (carried out before investing) should be done (instead of prior to investing) within a reasonable period of time which, in any case, shall not exceed 15 calendar days[44] after the investment. It remains understood that this additional period of time could be used only to document the due diligence

[44] It should be emphasised that any disinvestment in a particular securitisation position prior to the end of the above-mentioned period, should not be interpreted as a lack of obligation to document the assessment and verifications which have been carried out before investing.

process which shall, in any case and with no exception, be carried out before proceeding with the relevant investment. This approach is expected to bring substantial benefits for investors on secondary markets who have to cope with a very tight timeline before the investment. The investors should be able to demonstrate to their competent authorities, upon request, that they used the information received to get a comprehensive and thorough understanding of the securitisation position and its underlying exposures before investing.

86. The EC should also introduce more proportionality for STS deals. In particular, the JC of the ESAs suggests to entirely remove the requirement for investors to check that a transaction complies with the relevant STS criteria considering that originators are already required to ensure compliance with the relevant STS requirements and are sanctionable in case of breach. This would be beneficial for all investors in STS transactions, but especially for those who do not have a prudential benefit on the STS exposures they invest in. However, in order to remove this requirement for investors, it would be necessary to strengthen other supervisory or regulatory aspects. In this regard, the proposal should be supported by the effective supervision of the compliance by the originators and/or sponsors with the STS criteria[45] and/or by the involvement of a TPV in the relevant transaction which should be supervised rather than merely authorised, thereby strengthening its independence and the credibility of its certification process[46]. It remains understood that the removal of this requirement for investors should not prevent them from receiving appropriate and ongoing disclosures from the relevant reporting entity. The implications of the two options (i.e. enhancing supervision or involving supervised TPVs) are closely linked to the broader supervisory framework for securitisation and, in particular, to the co-legislators' choice to maintain the status quo or to pursue simplification, as outlined in Section 11 (Options to the supervisory framework). In addition, there can also be concerns - with respect to the second option (i.e., relying on supervised TPVs) – relating to leaving the verification of the STS criteria to private entities which, for the time being, are only two in the market with the risk of oligopoly. This latter concern further supports the need for supervision of these entities, as better outlined in Section 11 (Options to the supervisory framework). It remains understood that the two options are not mutually exclusive.

87. With reference to Article 5(5), two options were considered: (i) the full deletion of Article 5(5), letting the "delegation" topic be governed by the sectoral applicable legislation, to avoid mismatches between the different applicable regulations; and (ii) to keep the "delegation" of due diligence under Article 5 while fully recasting the provision. The JC of the ESAs supports the

[45] The STS Peer Review conducted by ESMA and published on 27 March 2025 provides recommendations for CAs to enhance the supervision of STS compliance. https://www.esma.europa.eu/sites/default/files/2025-03/ESMA42-2004696504-7945_STS_Securitisation_Peer_Review_Report.pdf

[46] For more details on the options, to improve and simplify the supervisory framework together with the relevant advantages and disadvantages, refer to Section 11 – Options for the Supervisory framework.

second option. In particular, the JC of the ESAs suggests providing that an institutional investor could give to another entity the authority to perform the due diligence process under Article 5 only if such entity is authorised to carry out the relevant activities pursuant to the applicable legislation and within the limits set out thereunder. The investor must be able to demonstrate that the authorised party is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the investor is in a position to effectively monitor the due diligence process at any time, to give at any time further instructions to the authorised party and to revoke the authorisation with immediate effect if the due diligence process is not properly carried out. The investor's responsibility to perform a proper due diligence shall not be affected by the fact that the investor has delegated the due diligence process to a third party. The JC of the ESAs considers that the ultimate responsibility for the correct and timely fulfilment of the relevant obligations under Article 5 should always lie with the investor, except in case of fraud, negligence, or misconduct of the authorised party. In such case, the latter should be liable.

88. Finally, Article 30 (1) of SECR provides that each Member State shall ensure that the relevant competent authority has the supervisory, investigatory, and sanctioning powers necessary to fulfil its duties under SECR. However, it should be noted that Article 32 does not require Member States to make sure that competent authorities can, in case of breach by investors of Article 5, apply the minimum set of sanctions clearly listed thereunder which can instead be applied for a breach of other SECR provisions (e.g. a breach of Article 6, 7, 9, 18, etc.). In addition and in contradiction to the approach taken under article 32 for breaches of Article 5, Article 5(5) provides *inter alia* that "*Member States shall ensure that, where an institutional investor is instructed […] to fulfil the obligations of another institutional investor and fails to do so, any sanction under Articles 32 […] may be imposed on the managing party and not on the institutional investor who is exposed to the securitisation*". Therefore, sanctions under Article 32 seem to be applicable in case of delegation but not where Article 5 is directly breached by the institutional investor. However, breaches should be treated in a consistent way, regardless of any delegation. Therefore, for supervisory convergence purposes and to ensure consistency in the sanctions to be applied in case of breach of Article 5, the JC of the ESAs suggests amending Article 32 to make sure that any infringement of Article 5 could be sanctioned by the competent authorities through a set of sanctions which is common and consistent to all the investors.

8. STS Framework

89. In 2019 the SECR introduced a framework for STS ABCP and non-ABCP securitisation. Following the amendments to the SECR brought by the Capital Markets Recovery Package (CMRP), a new STS framework for on-balance-sheet (OBS) securitisation was implemented in 2021. For securitisations to be designated as STS they need to meet a set of requirements set out in Chapter 4 of the SECR. Compliance with the STS OBS framework allows originators of retained senior positions in securitisations to benefit from a preferential capital treatment under certain safeguards within the CRR.

90. According to the analysis of the EU securitisation market (Section 5 – State of the EU securitisation market) since the introduction of the STS framework for on-balance-sheet securitisation the STS synthetic market has grown significantly. This shows that the STS label is a workable standard and the JC of the ESAs therefore does not see merit in revising completely the STS framework. However, the practical implementation of the STS requirements has revealed the necessity to further improve the clarity and consistency in specific requirements with some technical fixes.

91. This section highlights the main challenges related to the STS requirements that were raised by the market participants in the context of the JC survey conducted by the JC of the ESAs in December 2023[47] and the JC response to the industry feedback received. It also includes some targeted quick fixes to the STS criteria for on-balance-sheet securitisations that have been identified during the development of the EBA Guidelines on STS criteria for on-balance-sheet securitisations.

8.1 Industry feedback on the STS requirements for on-balance-sheet (OBS) securitisation

92. A general issue that was raised by the industry is related to the possibility for OBS securitisations to achieve STS compliance after the pricing/closing of the respective transaction. Based on the industry feedback to the JC of the ESAs' survey, it seems that for some STS requirements the originators may not be able to meet the timing requirements and while they could potentially be STS eligible, they have not been notified as STS before the pricing/or closing of the transaction. More specifically for those transactions there seem to be challenges with meeting the following requirements: (i) making historical performance data available to potential investors before pricing (Art. 26d(1) SECR), (ii) making a sample of underlying exposures subject

[47] For more details on the JC survey refer to Section 4.3 - Feedback from JC targeted consultation.

to external verification prior to closing (Art. 26d(2) SECR), (iii) making a cashflow model available to potential investors prior to pricing (Art. 26d(3) SECR) and (iv) making the information required by points (a) – (d) of Article 7 SECR (loan-level data, legal documentation, etc.) available to potential investors prior to pricing and final legal documentation at the latest 15 days after closing (Article 26d(5) SECR). According to the feedback received those securitisations which are STS eligible should be able to benefit from the preferential capital treatment for the retained senior tranche for the remaining tenor of the securitisation if all the STS criteria are fulfilled and the requirements under Article 270 of CRR are also met. The industry's view is that for those STS criteria that require certain information to be provided prior to pricing and/or closing of the transaction (such as transparency requirements under Article 26d SECR), it should be sufficient to demonstrate that this information is available prior to the submission of the STS notification, similar to the transitional provisions.

93. To improve the effectiveness of the STS framework for OBS the industry has suggested enhancements to a number of STS requirements. One of these is to extend the eligible counterparties in the unfunded synthetic securitisations in order to allow insurance and re-insurance companies to act as protection sellers in synthetic STS securitisations. Currently, the form of credit protection agreement requirements under paragraph 8 of Article 26e (specifically point (a) regarding the requirement that the credit protection is provided by eligible guarantors according to points (a) to (d) of Article 214(2) CRR and that these guarantors qualify for a 0% risk weight; or point c) that require the guarantee to be "funded" and so that the obligations of the investor are secured by collateral meeting the requirements of paragraph 9 and 10) limits regulated private (re)insurance companies' ability to offer credit protection on STS transactions. According to stakeholders, insurers and reinsurers can play an important role as investors in securitisation. (Re)insurance companies, typically through their credit insurance business arm, are active partners to banks in risk transfer across a range of asset classes and are a key risk protection partner. As funded investors, from the asset side of their balance-sheet, they can hold notes issued by SPVs in true-sale securitisation and/or credit-linked notes (CLN) in synthetic securitisation. From the liability side of their balance-sheet, they can also provide unfunded credit protection in the form of credit insurance policy or financial guarantees. It is important to note that the way insurers operate requires them to hold liquid assets for potential policy holders claims which would make it challenging and eventually more costly for them to provide cash collateral and thus currently they can only provide unfunded credit protection to non-STS securitisations. It is the industry's view that these regulated (re)insurance are eligible as unfunded protection providers under the STS framework.

94. In addition, according to the industry the collateral requirements set out in Article 26e (10) of the SECR should be formulated in a more flexible way. The requirement to qualify for credit

quality step 2 (CQS 2)[48] in order to hold the collateral in the form of cash on deposit with the originator can be difficult to achieve for many institutions, while the possibility to hold the collateral in the form of cash on deposit with a third-party credit institution qualifying for CQS 3 could, in many cases, be uneconomic for the originator. Moreover, based on the industry feedback, the alternative, according to Article 26e (10) subparagraph 5 to issue CLNs directly by the originator (with no collateral requirements) is less attractive in some countries due to the application of withholding tax on the interest payments made under those CLNs. In total, it is the industry' view that the described restrictive collateral requirements may exclude certain institutions from issuing STS on-balance sheet securitisations. Feedback to the EBA consultation on the GL on STS criteria had indicated that Article 26e (10) (b) of the Securitisation Regulation should, according to the industry, allow cash collateral to be provided also in the form of a guarantee or letter of credit given by a qualifying third-party credit institution. According to the feedback received, the term 'cash on deposit' and the reference to collateral in the form of 'cash held with a third-party credit institution' in Article 26e (10) (b) of the Securitisation Regulation should be read as collateral in the form of an undertaking to pay cash by a third-party credit institution. It is the respondent's view that it should not make a difference if the undertaking of the third-party credit institution which meets the rating requirements to pay cash is established as a result of a cash deposit or otherwise (e.g. under a bank guarantee or letter of credit), provided that the terms of the undertaking and its treatment in an insolvency or resolution scenario are equivalent.

95. Furthermore, other suggestions include to provide further clarity on the excess spread requirement, to simplify the verification requirement, to review the transparency requirements, to revise the estimate of initial losses applied to a transaction which are currently defined as the higher of provisions and the regulatory LGD. Finally, the consideration to amend homogeneity criteria to help smaller banks to achieve sufficient size to be able to issue STS eligible securitisation.

96. Specifically on the homogeneity requirement, the feedback to the JC of the ESAs' survey was that the current requirements as defined in the RTS on homogeneity can be quite challenging for smaller banks given that these usually apply a very similar, if not identical, underwriting process to all of these exposures. While this may also apply to larger banks, given the amount of available assets to these counterparties is such that they could still achieve a meaningful transaction size by breaking down the portfolio into homogenous sub-portfolios. However, according to the respondents, smaller banks do not have this option, as such stratification would create challenges with regards to concentrations in the portfolio. From an investor perspective

[48] According to Art. 26e(10) of the SECR, under certain conditions the CAs may waive this requirement and allow collateral in the form of cash on deposit with the originator, or one of its affiliates qualifying for CQS 3.

it is understood that it is important to start the analysis with a large portfolio, given that such portfolio would typically be reduced considering the homogeneity, granularity, and concentration requirements. As a result, many transactions from smaller banks may not qualify as STS. Based on the feedback to the JC of the ESAs' survey, in particular for portfolios with corporate exposures, the requirement in the current RTS to apply a homogeneity factor either on the type of obligor or on the jurisdiction of obligor limits the possibility for the smaller banks to achieve the necessary volumes for a meaningful transaction size.

97. Finally, general feedback from the industry has suggested to introduce proportionality in the STS requirements by removing some duplicate requirements (verification of risk retention) with specific feedback also suggesting the removal of the following specific STS requirements which seem to pose challenges to the market, such as e.g. no exposures to credit impaired obligors, at least one payment made and the audit of the portfolio before closing. More details on the requirement related to no exposures to credit impaired obligors is provided below (refer to Section 8.3 - Industry feedback on STS requirements for non-ABCP securitisation). Furthermore, it was suggested removing the ability for potential investors to request template-based loan-level reporting before closing or introducing a simplified private reporting template.

8.2 Industry feedback on STS requirements for Asset-Backed Commercial Paper (ABCP) securitisation

98. Based on the industry feedback received it seems that the ABCP market participants have been generally successful in implementing STS criteria for their transactions as sponsor or sellers. However, this is true only for STS criteria at transactions level and not at programme level. Therefore, capital charge benefits are limited to STS transactions and not STS programmes (as no ABCP programme is currently STS). Also, the capital charge benefits for an ABCP programme to be STS are so limited that the effort is disproportionate in light of the potential outcome. In the context of ABCP transaction-level requirements, a specific challenge was raised with regard to the weighted average life (WAL) requirement in Article 24(15) which is understood to be too low.

8.3 Industry feedback on STS requirements for non-ABCP securitisation

99. According to the industry feedback, the majority of the respondents raised some challenges mainly related to the following STS requirements: homogeneity (Article 20(8)), credit impaired borrowers (Article 20(11)), at least one payment made (Article 20(12)), no predominant dependence on the sale of assets (Article 20(13)), and additional criteria for STS securitisations to qualify for a differentiated capital treatment set out in Article 243 of CRR.

100. Similar to the feedback provided for OBS securitisation, regarding the homogeneity requirement, the homogeneity factor "type of obligor" which is relevant for corporate exposures

seem to pose challenges to the market. According to the respondents under the current STS framework, it is not possible to label transactions with multi-jurisdictional SME loans and other corporate loans with STS, although these are very common especially in underlying pools in synthetic transactions. As mentioned also in the relevant section on STS criteria for OBS securitisations regarding the homogeneity requirement, the current RTS and specifically the application of the homogeneity factors can be quite restrictive, especially for smaller banks.

101. As concerns the requirement pursuant to Article 20 (11), that the underlying exposures shall not include, to the best of the originator's or original lender's knowledge, at the time of selection, exposures in default within the meaning of Article 178(1) of the CRR (Regulation (EU) No 575/2013) or exposures to a credit-impaired debtor or guarantor, in line with the conditions expressed in the Article can be quite challenging according to the feedback received. It is the industry's view that, in particular, the conditions related to the guarantor need to be revised as they are excessively burdensome and in certain cases also hard to be implemented in practice, especially for credits that are seasoned or in case of e.g. SME loans where the originator has easy access to the information related to the debtor only, thus significantly reducing the number of ABS that can achieve STS compliance. Furthermore, with specific reference to transactions having a non-banking or non-financial institution as originator of the underlying exposures this criterion would be quite difficult to be implemented and/or verified as: (i) the originator's internal processes and procedures of receivables origination, administration, collection and recovery are usually driven by a) rules set by industry specific authorities and b) market practice. Therefore, based on the industry feedback, the concept of "exposure in default" may differ from the meaning of Article 178 (1) of the CRR (Regulation (EU) No 575/2013), mainly because such originators are non-financial institutions having as a main reference industry specific regulations and authorities which may differ from CRR provisions.

8.4 JC of ESAs response to the industry feedback on STS requirements

102. According to the JC of the ESAs, while it is not deemed necessary to fully revise the STS framework further enhancements to specific STS criteria could be considered. Any amendment to the STS requirements should however be carefully examined and any implications stemming from the proposed amendments should be further elaborated.

103. Regarding the industry feedback on the **possibility for OBS securitisations to achieve STS compliance after the pricing/closing of the respective transaction**, the requirements that seem to pose challenges in this case are the transparency requirements which were introduced with the objective to allow investors to perform a robust due diligence safeguarding investors protection. It is the JC's view that the information should be made available to investors before the pricing or closing of the transaction to be able to perform a proper due diligence and better assess the underlying risks in the securitisations. Based on this, no changes are deemed necessary.

104. As concerns the **STS requirement for funded credit protection**, this requirement ensures that originating banks have no counterparty credit risk associated to the investors in the synthetic transaction. Article 26e (8) of the SECR specifies the forms of credit protection agreements that are eligible for STS on-balance-sheet securitisations. Under the current framework, in order to limit the counterparty credit risk, the eligible protection providers for unfunded guarantees are restricted to those entities that are 0% risk weighted under CRR and listed in points (a) to (d) of Article 214(2) CRR. Otherwise, the guarantee needs to be funded so that the obligations of the investor are secured by 'high quality' collateral meeting the requirements of paragraphs 9 and 10 of Article 26e of the SECR.

105. The JC of the ESAs assessed the possibility of extending the eligible credit protection providers for unfunded guarantees under the STS framework to Solvency II regulated entities, namely insurance and reinsurance companies and has identified the following pros and cons.

(i) Pros

- Reduce the costs for investments of Solvency II regulated entities, namely insurers and reinsurers, in synthetic securitisations that comply with the STS requirements, hence promoting investments in less complex and more transparent securitisation market. Under the current STS framework, insurance and reinsurance companies can only participate in STS on-balance-sheet securitisations where they provide cash collateral, which is more costly. These entities can generally offer competitive fees to banks that promote the economics of SRT[49] transactions, thus promoting competitiveness in the EU. According to the CRR in case of unfunded credit protection the banks have to capitalise against the insurers and reinsurers counterparty risk. In addition, as per Article 249 of the CRR, these entities are subject to minimum rating requirements when providing credit risk mitigation to securitisation positions. In summary, the investor side of OBS securitisations will be broadened, thereby deepening, and enlarging the market.

- Insurance and reinsurance companies are regulated entities under Solvency II and are subject to capital requirements which target the 99.5 value at risk (*VaR*) over a one-year time horizon. According to the International Association of Credit Portfolio Managers (IACPM)[50], to date the credit insurance and reinsurance companies active in providing unfunded credit protection are

[49] The CRR (Articles 243 and 244) allows the originator institution of a securitisation to exclude the securitised exposures from the calculation of its risk-weighted exposures amounts, while risk weighting any retained position in the securitisation, provided that capital relief is achieved by a significant risk transfer (SRT) associated with the securitised exposures to third parties. The CRR allows both traditional and synthetic transactions to achieve SRT. In fact, achieving SRT is one of the key objectives of most synthetic transactions.

[50] IACPM-2021-Banking-Package-Have-your-Say.pdf

multi-line reinsurers with diversified business. In summary, allowing unfunded guarantees of insurance companies for STS securitisation could attract well-regulated investors.

- Offer counterparty diversification for banks to manage credit risk, thereby also managing their counterparty limits for the counterparts currently providing UFCP and to achieve additional capital relief[51] that would enable them to increase their lending capacity.

- Due diligence requirements and risk retention rules as well as the STS framework has further strengthened the legislative framework.

(ii) Cons

- Financial stability concerns about the provision of unfunded credit protection to synthetic securitisation by entities without 0% risk weight (lessons learnt from the past e.g., failure of monoline insurers – see **Box 1 - Lessons learned from the Great Financial Crisis (GFC) for insurance companies**). Insurers would have a competitive advantage over other investors that still need to provide funding for credit protection for STS securitisations which would result in most of the credit risk of synthetic transactions ending up in the insurance sector. Moreover, the economic viability of risk transfers from banks to insurers results from regulatory differences - the capital requirements for insurers providing credit protection to synthetic securitisation are on aggregate lower than on the banking side, for example because Solvency II allows for diversification effects and CRR does not. The regulatory difference will lead to misallocations and will increase the systemic risk.

- Policy holder protection concerns. Any losses that insurers incur from unfunded guarantees may impair the ability of the insurer to fulfil other insurance contracts and pay insurance benefits to policyholders.

- Allowing unfunded credit protection for STS securitisations increases the risk of originators to incur losses. When developing the current STS framework, the debate was on the prospect of originators not bearing losses and the associated reputational risk, thus limiting the STS framework to 0% RW entities and funded credit protection.

106. It is noteworthy that under the current STS framework, non-0% RW entities may be already providing credit protection in STS on-balance-sheet securitisations leveraged by banks that grant them loans to provide the necessary collateral for funded credit protection. These practices may

[51] Unless the UFCP by insurance companies will substitute the FCP provided by insurance companies.

create interconnections between banks and non-bank institutions which entail that at an aggregated level the risk is still correlated with the banking sector.

107. This report lays out the pros and cons for extending the STS label to unfunded guarantees by allowing the credit insurance and reinsurance undertakings to act as eligible credit protection providers for unfunded guarantees under the STS framework. This report does not include a recommendation. Should the EC consider exploring further the possibility of allowing unfunded credit protection to be STS eligible, it should be carefully examined with a thorough impact assessment and should be also subject to appropriate safeguards, given the associated risks including the increase of counterparty default risk, potential systemic risk and possible detriment to policyholder protection.

Box 1 - Lessons learned from the Great Financial Crisis (GFC) for insurance companies

The traditional business of monoline insurers was the insurance of municipal bonds, i.e. bonds issues by states, cities, countries and other governmental entities. In the years before the GFC monoline insurers increasingly extended their business, facilitated by regulatory changes, to the provision of unfunded guarantees for structured credit products like ABSs and CDOs. When the GFC unfolded in 2007 about a third of the exposure of monoline insurers was structured credit products.

In the GFC the value of the structured credit products deteriorated and monoline insurers incurred heavy losses on these exposures. This resulted in the downgrading and eventually in the failure of most monoline insurers, what significantly aggravated the crisis. Entities that had bought protection from monoline insurers, including banks that issued structured credit products had to face write-downs since the protection lost value when the insurers were downgraded. Investors in the products, including banks and insurers, incurred losses on their investments and an increase in regulatory capital charges. Owners of monoline insurers incurred losses on their holdings and on the capital injections they provided during the crisis. Furthermore, reinsurers of the monoline insurers incurred losses on their reinsurance.

The credit protection to structured credit products provided by monoline insurers turned problematic during the GFC in particular because this exposure did scarcely benefit from risk diversification, even in case where it was international instead of focused on the US. Moreover, monoline insurers were hit by the GFC both on the liability and on the asset side of their balance sheet because the value of their investments deteriorated in the crisis. It is worth to note that there are no indications that the traditional business model of monoline insurers would have turned problematic in the GFC if it had been the only business written.

It is one of the lessons from the GFC that the credit protection for synthetic securitisation has to be funded unless it is provided by governments or other 0% risk-weight entities. Securing the credit protection by high-quality collateral effectively ensures that in case of losses on the credit protection, even in case of a financial crisis that affects all of the credit protection, the protection provider can deliver on the protection promise and that losses are not propagated through the financial system as it was the case with monoline insurers in the GFC. Lowering this STS requirement would significantly increase these risks for financial stability.

Where unfunded credit protection is provided by an insurer, there are, in addition to financial stability concerns, also concerns about policyholder protection. The losses that insurers may incur on provided guarantees for synthetic securitisation in a financial crisis may impair the ability of the insurer to fulfil other insurance contracts and pay insurance benefits to policyholders.

108. As concerns the **industry's feedback on the collateral requirements under Article 26e (10)**, according to EBA's answer to Q&A 2015_1917, the unconditional letters of credit issued by a party different from the lending institution cannot be treated as cash assimilated instruments[52] and therefore could not qualify as funded credit protection under Article 4(1)(58) of CRR, they could only represent a form of unfunded credit protection in accordance with Article 4(1)(59) of the CRR. It is the JC of the ESAs view that under the current wording of level 1 text the letters of credit issued by a third party are not an eligible form of collateral under Article 26e (10) (b). However, the EC could further explore the possibility to extend the list of eligible collateral to other forms of collateral which are currently not permitted under Article 26e (10).

109. On the other hand, the JC of the ESAs sees merit in **removing the risk retention[53] and general transparency[54] requirements from the STS criteria which anyway have to be complied with by originators, sponsors, original lenders and SSPE, as the case may be, and should also be verified by investors in their due diligence process**. Indeed, as per Articles 6 and 7 of the SECR, the risk retention and general transparency requirements need to be met anyway for all securitisations and as per Article 5 compliance with those requirements need to be checked by investors for all securitisations[55]. Moreover, any violation of the STS specific requirements relating to transparency[56] after the origination of an STS securitisation could potentially lead to losing the STS classification with a clear impact on any preferential capital treatment for investors. Finally, this would also streamline the supervision process, given that compliance with Articles 6 and 7 of the SECR would be supervised only by the designated Competent Authority (CA) responsible for checking compliance with the general obligations of the SECR (Articles 5-9), and not also by the CA responsible for the supervision of compliance with the STS criteria, in case these are different.

[52] As per the amended definition in Article 4 (1) (60) of CRR 3 'cash assimilated instrument' means a certificate of deposit, a bond, including a covered bond, or any other non-subordinated instrument, which has been issued by a lending institution, for which that lending institution has already received full payment and which shall be unconditionally reimbursed by the institution at its nominal value.

[53] This refers to the STS requirement to satisfy the risk retention requirement in accordance with Article 6 set out in Article 21(1) for non-ABCP, Article 25(5) for ABCP and Article 26c(1) for on-balance-sheet securitisation.

[54] This refers to the STS requirement for compliance with Article 7 (Article 22(5) for non-ABCP, Article 25(6) for ABCP, Article 26d(5) for on-balance-sheet securitisation.

[55] Breaches of Articles 6 and 7 will trigger sanctions under Article 32 while breaches of Article 5 should trigger sanctions as referred to in paragraph 89 of this report.

[56] The requirements relating to transparency are set out in Article 22 for non-ABCP, and Article 26d for on-balance-sheet securitisation.

8.5 Targeted amendments to the STS criteria for on-balance-sheet securitisation

110. During the development of the Guidelines for STS criteria for OBS securitisation, for a number of STS requirements the following issues have been identified, where specific technical fixes (level 1 changes) are deemed necessary.

8.5.1 Article 26b(7) – Eligibility criteria, active portfolio management

111. The objective of this criterion in Article 26b(7) is to ensure that the selection of the underlying exposures in the securitisation is done in a manner which facilitates in a clear and consistent fashion the identification of which exposures are selected for the securitisation, and to enable the investors to assess the credit risk of the asset pool prior to their investment decisions, prohibiting the active portfolio management on a discretionary basis. For this, paragraph 7 of Article 26b includes an exhaustive list of permitted removals. Following feedback received during the public consultation, there are certain practices that would merit from further clarification in the legal text. In addition to the list of permitted removals, the following two circumstances: 1) sanctions or objectionable practices (for example sanctions imposed to an entity during the life of the transaction or fraudulent practices), and 2) amendments to the loan due to a change in the law affecting the enforceability, which are outside the control of the originator should be included. Both circumstances would have an impact on the enforceability of the underlying exposures (beyond the control of the originator) and the removal of those underlying exposures should not be considered as active portfolio management on a discretionary basis. According to the JC of the ESAs this issue merits from further clarification.

Recommendation STS #1

Article 26b(7) - The list of permitted removals of underlying exposures to be expanded to cater for sanctions and objectionable practices as well as changes in the national legal framework that would affect the enforceability of the underlying exposure.

8.5.2 Article 26c(5) – Allocation of losses and amortisation of tranches

112. The SECR specifies the allocation of losses to the holders of the securitisation position, and the application of distinct types of amortisation to be applied to the tranches. The objective of this criterion is to ensure that non-sequential amortisation should be used only in conjunction with clearly specified contractual triggers that determine the switch of the amortisation scheme to a sequential payment in the order of seniority, safeguarding the transaction from the possibility that credit enhancement is too quickly amortised as the credit quality of the transaction deteriorates, thereby exposing originators who are holding these tranches to the risk of a decreasing amount of credit enhancement.

113. Following the feedback to the consultation on the GL on STS criteria for OBS securitisation it was pointed out that the last subparagraph of Article 26c(5) of Regulation (EU) 2017/2402 lacks to account for the loss-bearing capacity of any tranches junior to the protected tranches of a securitisation and that such requirement should therefore not be applied literally to synthetic securitisations including mezzanine tranches.

114. It is the JC of the ESAs view that the last subparagraph of Article 26c(5) unfortunately effectively assumes that all losses referred to in the respective subparagraph are assigned to the protected tranche and no losses are assigned to more junior tranches. In order to address this issue, a clarification has been added to the feedback table of the Final Report on the Guidelines on STS criteria for OBS securitisations[57] that in cases where part of the losses on underlying exposures is being absorbed by more junior tranches, the loss bearing capacity of those tranches should be taken into account for the purposes of the last subparagraph of Article 26c(5).

Recommendation STS #2

- Article 26c(5) - To appropriately reflect the requirement it is proposed to replace the last subparagraph with the following wording (new part highlighted in bold and underlined):

  "*Where a credit event, as referred to in Article 26e, has occurred in relation to underlying exposures and the debt workout for those exposures has not been completed, the amount of credit protection remaining at any payment date* ***plus the amount of any retained tranches which rank junior to the tranches covered by the credit protection remaining at any payment date*** *shall be at least equivalent to the outstanding nominal amount of those underlying exposures, minus the amount of any interim payment made in relation to those underlying exposures.*"

8.5.3 Article 26e(3) - Debt workout and credit protection premiums

115. The requirement in Article 26e(3) aims to ensure the effectiveness of the credit protection agreement from the originators' perspective and at the same time provides legal certainty for the investors on the termination date to make payments by specifying the maximum extension period for the debt workout. The requirement also specifies that only contingent credit protection premiums are allowed.

116. An inconsistency between the text in the Recital and the level 1 text was identified which requires level 1 changes and thus could not be addressed in the GL on STS criteria for OBS

[57] The EBA publishes its final Guidelines on STS criteria for on-balance-sheet securitisation | European Banking Authority (europa.eu)

securitisation. To address this, the JC of the ESAs have proposed to use the wording of the recital[58] to accurately reflect the requirement.

Recommendation STS #3

- Article 26e(3) – To accurately reflect the requirement it is proposed to amend the third sub-paragraph accordingly by removing the reference to the outstanding nominal amount of the performing securitised exposures and replacing it with a new reference to the outstanding size of the tranche. The credit protection premiums to be paid under the credit protection agreement shall be structured as contingent on the outstanding size and credit risk of the protected tranche.

8.5.4 Article 26e(7) – Synthetic Excess Spread (SES)

117. The objective of the criterion in Article 26e(7) is to specify the requirements for the synthetic excess spread committed by the originator and available as credit enhancement for the investors. During the development of the GLs, the SES was identified as one of the requirements that would benefit from further clarity. It would also warrant consistency with the draft RTS on the determination of the exposure value of the SES which has not yet been adopted by the Commission. Therefore, for consistency purposes, it is proposed to re-evaluate the need for level 1 changes once the RTS has been adopted by the Commission.

118. An inconsistency has been identified in point (d) of Article 26e(7). Similar to point (c) the intent of the legislator was to set a cap (1 year expected loss) to the total amount of synthetic excess spread that the originator should commit per year. The current wording specifies that the calculation of the 1Y EL shall be clearly determined in the transaction for those originators that use the SA approach. It is therefore proposed to amend the point (d) accordingly.

Recommendation STS #4

- Article 26e(7) – To accurately reflect the requirement it is proposed replace the point (d) with the following wording (new part highlighted in bold and underlined):

"*(d) for originators not using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013,* ***the total committed amount per year shall not be higher than the one-year expected loss of the portfolio***

[58] Recital 22 of Regulation (EU) 2021/557 states that " Credit protection premiums should depend only on the outstanding size and credit risk of the protected tranche".

for that year, *the calculation of the one-year expected loss of the underlying portfolio shall be clearly determined in the transaction documentation*"

9. Risk Retention Rules

9.1 Background

119. To ensure a proper alignment of interests between sell-side parties and the institutional investor in the transaction, thus mitigating the risk of moral hazard in securitisations, the SECR requires the originator, sponsor or the original lender to retain on an ongoing basis a material net economic interest in the securitisation commonly known as risk retention[59] . Article 6 of the SECR is an evolution of the requirements which were already in place in the previously applicable legal framework specified in the CRR and the no longer in force EBA RTS on the retention of net economic interest supplementing CRR on these aspects, published in 2014[60] . In April 2022, the EBA published the final draft RTS[61] specifying in greater detail the risk retention requirements for originators, sponsors, original lenders, and servicers pursuant to Article 6(7) of the SECR as amended by the CMRP[62]. These RTS contain new provisions specifying the technical requirements under Article 6 of the SECR, amongst others, relating to the circumstances where an entity shall (i) not be established nor operate according to the 'sole purpose test' whereby it is prohibited for an originator to solely establish or operate securitisation exposures (Article 6(1) second paragraph SECR); (ii) not follow an adverse selection of assets (Article 6(2) SECR); or (iii) apply redefined requirements for the change of retainer.

119. According to feedback from the JC of the ESAs' survey launched in December 2023, the implementation of risk retention requirements would benefit from further clarity in relation to the term 'predominant source of revenue' used in Article 2(7) of the RTS on risk retention which stems from the interpretation of the term 'sole purpose' in Article 6(2) second paragraph SECR, in particular in the context of Collateralised Loan Obligation (CLO) securitisations.

9.2 Issue

[59] In accordance with Article 6(1) SECR, in the case of traditional NPE securitisations, the servicer may also hold the risk retention provided he meets specified criteria.

[60] Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lender and originator institutions relating to exposures to transferred credit risk.

[61] Final Draft RTS on Risk Retention in securitisation.pdf

[62] Commission Delegated Regulation (EU) 2023/2175 of 7 July 2023 on supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying in greater detail the risk retention requirements for originators, sponsors, original lenders, and servicers (europa.eu) (OJ L 347, 28.12.2017, p. 35).

120. CLO securitisations are products established by various debt management sponsors with the aim to gain a broad exposure to the corporate credit markets by acquiring existing corporate loans from original bank lenders upon origination. These transactions generally intend to comply with risk retention using a third party origination vehicle[63] . Based on feedback from CAs at the JC of the ESAs' survey, there are currently discussions as to whether these 3rd party origination vehicles would qualify as eligible risk retainers for the purposes of Article 6(1) SECR and whether they meet the criteria set out in Article 2(7) of the RTS on risk retention. Whereas the 3rd party origination vehicle meets the definition of originator in Article 2(3)(b) of the SECR[64] , as the entity purchases 3rd party exposures on its own account and then securitises them, supervisors are of the view that this model would not be in line with the original intention behind the sole purpose requirement of the SECR as further specified in the RTS on risk retention given that the entity's revenues would be or are predominantly derived from the securitised assets or assets held on balance sheet that are subsequently securitised. However, it is acknowledged that the use of the term 'predominant' in Article 2(7) of the RTS gives room for interpretation and its original intention could be thus further clarified.

121. In addition, supervisory concerns also relate to the fact that the 3rd party origination CLO vehicle, which is understood to be widely used in the European CLO market, may not meet the objective of ensuring economic alignment between the sell-side and buy-side parties of a securitisation transaction given that the retention is funded by 3rd party investors. The financing of risk retention by third party investors in the context of CLOs and whether it ensures a proper risk alignment was also discussed in the FSB consultation report on the evaluation on the effect of the G20 reforms on securitisation[65] published on 2 July 2024. The consultation ended on 2 September 2024 and the final report[66] was published on 22 January 2025.

9.3 Proposal

9.3.1 Interpretation of the term 'predominant source of revenue'

122. Acknowledging the current interpretation issues pertaining to the disparities in the practical implementation of the level 1 term "sole purpose test" combined with the RTS term 'predominant' [whereby no applicable threshold has been specified], the JC of the ESAs deems necessary to provide further clarification on the legislative intent of the term predominant. It is

[63] These third party origination vehicles are typically SPVs or similar structures. They are predominantly funded by third party investors who wish to gain exposure to a diversified pool of CLO risk retention notes. These entities first purchase the corporate loans on balance sheet before securitising these into the CLO. The vast majority of the SPV's revenues are derived from the risk retention notes.

[64] I.e.: "an entity which: (…) purchases a third party's exposures on its own account and then securitises them."

[65] Evaluation of the Effects of the G20 Financial Regulatory Reforms on Securitisation: Consultation report

[66] Evaluation of the Effects of the G20 Financial Regulatory Reforms on Securitisation: Final report

important to consider the co-legislators' intent behind the 'sole purpose' requirement in Article 6(1) of the SECR to better understand the subsequent use of 'predominant source of revenue' in Article 2(7) of the RTS on risk retention. The aim of the sole purpose requirement according to the Commission's proposal for the EU securitisation framework in 2015[67] (see COM (2015) 472 final 2015/0226 (COD) dated 30.9.2015) was to *"take into account the EBA recommendation to close a potential loophole in the implementation of the risk retention regime whereby the requirements could be circumvented by an extensive interpretation of the originator definition''*. Therefore, according to the Commission's proposal, an entity established for the sole purpose of securitising exposures without a broader business model could not be considered as an originator for the purposes of risk retention, highlighting also the need for the entity retaining the economic interest to have the capacity to meet a payment obligation from resources other than the exposures being securitised". During the development of the RTS on risk retention, a principles-based approach was taken, reflecting the original intention of the Commission, when assessing whether an entity has been established or operates for the sole purpose of securitising exposures considering not only its strategy and its capacity to meet payment obligations in line with a broader business model looking at the sources of income and whether these come from other sources than securitisations and exposures to be securitised but also the experience of the members of the management body and its corporate governance. It is important to note that the entity's revenues should not be predominantly derived from the assets retained and assets held on balance sheet that are subsequently securitised. This is also specified in Delegated Commission Regulation (EU) 2023/2175[68] which states that *"…. the entity **does not rely on the exposures to be securitised, on any interests retained** or proposed to be retained in accordance with Article 6 of Regulation (EU) 2017/2402, or on any corresponding income from such exposures and interests, as its **sole or predominant source of revenue**"*. As clarified in the EBA final report on the draft RTS on risk retention published in 2022, for the sole purpose test consideration should be given to the income rather than the composition of the balance sheet as the income better reflects the business model of the retainer.

123. **Against this background, the term 'predominant' used in these RTS should be understood as corresponding to a threshold of more than 50% (>50%)**. According to the RTS, this means that the entity's revenues should correspond to no more than 50% on the exposures to be securitised, risk retained assets or proposed to be retained in accordance with Article 6 of the SECR, or any corresponding income from such exposures and risk retained assets. This interpretation is also consistent with the guidance provided in the GL on STS criteria for non-

[67] eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015PC0472

[68] Commission Delegated Regulation (EU) 2023/2175 of 7 July 2023 on supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying in greater detail the risk retention requirements for originators, sponsors, original lenders, and servicers (europa.eu)

ABCP[69] used for the interpretation of the term predominant in the context of a different requirement, namely the predominant dependence on the sale of the assets. It is supervisors' view that going forward, any new issuance should apply this interpretation, which should also be used by the supervisors when assessing whether an entity has been established or operates for the sole purpose of securitising exposures. In light of the feedback received, the word predominant associated with the level 1 'sole purpose' requirement might be interpreted differently from one CLO securitisation to another. **It is therefore suggested that the EC explores a more precise definition of the term 'sole purpose' in the level 1 which would allow for a better identification of those CLO securitisation which comply with the intent behind the use of the word predominant under the EBA RTS.** However, careful consideration is needed to further assess how in between the issuance of this Report and any potential amendment to the level 1 text or potential revision of the RTS, future CLO securitisation issuances applying the JC of the ESAs interpretation ensure a level playing field.

124. Based on its mandate under Article 44, first paragraph, point (d) SECR whereby the report published under this mandate should aim to identify initial inconsistencies and challenges that occurred in the first years of implementation of the SECR and which may affect the overall efficiency and soundness of the new securitisation regime, as well as, recognising the previous lack of clarity leading to different interpretations from one CLO securitisation to another, the JC of the ESAs would like to invite the EC to confirm this interpretation and if needed to consider some legislative adjustments to clarify the term 'sole purpose' in the Level 1 text as part of the European Commission's upcoming review of the securitisation framework in the context of the Capital Markets Union. Alternatively, if deemed necessary a potential revision of the RTS on risk retention could be triggered by the EBA with the aim to further clarify the meaning of the term 'predominant'.

9.3.2 Sponsor definition

125. Acknowledging the specificities of the CLO securitisations and the current challenges with the originator in the case of the 3rd party origination vehicle, to act as eligible retainer under Article 6(1), the JC of the ESAs would also recommend that the EC to explore further the option of broadening the definition of 'sponsor', which currently only applies to credit institutions and investment firms. The current definition of sponsor in the SECR limits the eligible retainers to EU and non-EU credit institutions and EU investments firms and thus consider broadening the definition of 'sponsor' would allow for a wider catchment of regulated entity types to act as eligible retainers. This would not only allow the CLO manager to act as eligible risk retainers but will also address the supervisory concerns that the current model of the 3rd party origination

[69] Guidelines on STS criteria for non-ABCP securitisation.pdf

vehicle does not meet the objective of ensuring economic alignment between the sell-side and buy-side parties of a securitisation transaction, by providing a way to hold the risk retention via the CLO manager. Similar to other proposed amendments to the SECR, it is the JC of the ESAs view, that broadening the type of entities included in the sponsor definition should be carefully examined and should be subject to an impact assessment. It should be avoided that entities without a broader business model become available holders of risk retention ("empty shells"). Therefore, additional safeguards may be considered, equivalent to the existing requirements for originators to be eligible retainers under the sole purpose test.

9.4 Additional feedback from the industry on risk retention – Investors perspective

126. In addition to the aforementioned issue, feedback from investors has indicated that the 5% risk retention does not always provide any meaningful alignment of interest between the investors and originators of securitisations and it was therefore proposed to increase the risk retention to 15-20% especially for STS OBS securitisation. Based on the feedback, this is especially relevant for synthetic transactions and asset classes which are characterised by more concentrated portfolios, where loan selection by originators is less programmatic. According to the investors, a higher level of retention would incentivise the originator to continue to run its loan life cycle process as if no credit risk hedge were in place. It is understood that this would safeguard against any potential opportunistic behaviour or the return of the excesses of originate to distribute business models. Finally, it's the investors' view that this would also encourage more investors to participate in the market as it would reduce the perception of conflicts of interest arising from originators that retain all servicing of the assets.

127. The JC of the ESAs supports to maintain the 5% minimum risk retention requirement for STS on-balance-sheet securitisation(synthetic) in the regulation as a starting point for the risk retention. Differentiated levels of risk retention among the various types of securitisations (traditional, synthetic STS and non-STS) would increase complexity in the framework. The 5% minimum requirement in SECR does not preclude the possibility of establishing a higher risk retention level through contractual agreements between the securitisation parties. It is the JC of the ESAs view that investors should be able to assess whether the 5% risk retention ensures a proper alignment of interests and where that is not the case, agree higher risk retention that would ensure that alignment of interests which was one of the lessons learnt from the GFC and cannot be disregarded.

9.5 The definition of sponsor in ABCP transactions or other securitisations that purchase exposures from third-party entities.

9.5.1 Background

128. The provisions of the SECR and its associated delegated regulations offer no definitive guidance on whether the sponsor of an ABCP programme is also automatically the sponsor of the ABCP transactions funded by the ABCP programme.

129. The way the provisions of the SECR interact with each other may indicate that, in the context of the STS requirements for ABCP securitisations, the use of the term "sponsor" at the transaction and programme levels refers to the same credit institution: As per article 24(20)(d) SECR, the transaction documentation of an ABCP transaction must clearly specify "how the sponsor [of the transaction] meets the requirements of article 25(3)" whereas the latter specifically applies to the sponsor of the associated ABCP programme.

130. The same logic seems to underpin article 5(2) SECR which provides a derogation from paragraph 1 for fully-supported ABCP transactions. Read in conjunction with the definitions of the terms "fully supported ABCP programme" and "fully supported ABCP transaction" provided by article 2(21) and 2(22) SECR respectively, this strongly suggests that the same credit institution is fulfilling the role of sponsor at both transaction and programme levels.

131. In the same direction, article 4(d) CDR 2023/2175 (the risk retention RTS) provides that the risk retention modality described in article 6(3)(a) SECR may be fulfilled in the context of an ABCP transaction through the provision of a liquidity facility at programme level provided that the liquidity facility covers 100% of the share of the credit risk of the securitised exposures of the securitisation transaction that is funded by the ABCP programme and "the liquidity facility is provided by the originator, sponsor or original lender in the securitisation transaction."

132. As far as transparency is concerned, Article 25 (6) of the SECR states that the sponsor at programme level in STS ABCP securitisations shall be responsible for compliance with Article 7 at the ABCP programme and for making available to potential investors upon request the information of the securitisation positions transferred to the ABCP programme as envisaged by art. 7(1) (a) and (b) to (e) (information on the securitisation position and the underlying receivables or credit claims on a monthly basis).

133. However, an analysis of current market practice and interpretation shows that the sponsor of an ABCP programme is not automatically seen as the sponsor of the ABCP transactions funded by the ABCP programme. The term sponsor is seldom used in ABCP transaction documentation and when it was used it was solely included in the documentation to allow the reporting credit institutions to opt-in as either the article-6 risk retainers, the article-7 reporting entities or to enable them to submit the STS notifications for the securitisations.

9.5.2 Issue

134. Credit institutions or investment firms acting as sponsors of securitisations shall comply with the transparency requirements laid out in article 7 of Regulation (EU) 2017/2402 (SECR) and have the option to act as risk retainers to fulfil the risk retention requirement laid out in article 6 SECR.

135. While the term sponsor is widely used in the documentation of ABCP programmes, it is seldom used in the documentation of ABCP transactions, creating a situation where competent authorities are left to infer from the other roles played by credit institutions or investment firms (e.g., as arrangers, administrative agents, account, and liquidity banks) whether they qualify as sponsors per article 2(5) SECR and are hence liable for compliance with article 7 SECR. The uncertainty as regards the definition of sponsor can also impact structures where institutions extend CLO warehouse facilities or refinance underlying exposures originated by non-financial corporates directly from their balance sheet rather than relying on an ABCP conduit that they sponsor.

136. As a result, two opposite situations may present themselves to competent authorities, requiring further clarification:

    1. securitisations where credit institutions or investment firms are not identified as sponsors in the transaction documentation but nevertheless wish to fulfil the risk-retention and transparency requirements in this capacity;

    2. securitisations where credit institutions or investment firms are not identified as sponsors and thus do not consider themselves to be in scope of articles 6 and 7 SECR. This latter situation applies more specifically to ABCP transactions funded by ABCP programmes directly supported by credit institutions.

9.5.3 Proposal

137. It is proposed to clarify in Level 1 who plays the role of the sponsor in a securitisation transaction. In addition to the definition of sponsor contained in the SECR art. 2(5) the JC proposes to clarify that a credit institution or investment firm is considered sponsor if any of these conditions are met:

a) is defined in the transaction documentation as fulfilling the role of sponsor at transaction level; or

b) is in the context of an ABCP transaction (i.e., the transfer of a securitisation position to an ABCP programme) defined in the documentation of the corresponding ABCP programme as sponsor at programme level and either:

1. performs the risk retention in the context of an ABCP transaction through the provision in an ABCP programme of a liquidity facility that meets the conditions set out in article 4(d) or article 7(1)(b) of the Commission Delegated Regulation (EU) 2023/2175, or

2. no other involved party is designated in the context of the ABCP transaction documentation as the reporting entity in charge of fulfilling the information requirements pursuant to points (a), (b), (d), (e), (f) and (g) of article 7(1) SECR.

138. In the absence of such supporting evidence, the credit institution or investment firm should not be considered the sponsor of the transaction.

139. This reading of the SECR, which is closer to the interpretation taken by many credit institutions considers that, in situations where the sponsor at programme level does not comply with the risk retention and transparency requirements, originators or original lenders, which are often non-financial institutions, should comply with the risk retention requirements and originators with the transparency requirements. In terms of supervision of articles 6 and 7, the supervision of these requirements would be more spread out between banking and market supervisors.

10. Transparency framework

10.1 Background

140. Compared to other asset classes, such as covered bonds, securitisation transactions have attracted particular attention from regulators and co-legislators regarding the transparency of their underlying assets. Therefore, various initiatives were introduced, including the European Central Bank's (ECB) ABS loan-level reporting initiative in 2009, the transparency requirements in Article 7 of the SECR and ESMA's reporting templates, which came into effect in 2019.

141. The primary objective in establishing a comprehensive transparency framework for securitisation is to provide investors with information to assess the risks of the transactions they invest in. The framework aims to capture changes in the performance of the underlying asset pool, which depends on its composition and its level of diversification. Moreover, pool-level analysis is essential for understanding dynamics, as many securitisation pools are not static over time.

142. While transparency, along with provisions such as risk retention and due diligence, remains one of the cornerstones of the SECR, there have been calls to adapt the transparency framework without entirely questioning its foundation. As the framework matures, the JC of the ESAs recognises the opportunity to reflect on what has been achieved. While the current framework has successfully increased transparency, feedback from stakeholders indicates that it has also become overly burdensome, placing a substantial strain on sell-side parties (originators, sponsors and SSPEs).

143. Various initiatives to gather stakeholder feedback, including the EC's October 2022 report on the functioning of the SECR, the JC May 2021 report under Article 44 of the SECR[70] and ESMA's Feedback Statement relating to the consultation on the Securitisation Disclosure Templates of December 2024[71], have identified key areas for improvement in the transparency framework under Article 7 of the SECR. The following focusses on enhancing proportionality in the transparency requirements and improving the usefulness of the disclosed data for proper due diligence and risk assessment.

[70] https://eba.europa.eu/sites/default/files/document_library/Publications/Reports/2021/1001427/JC%202021%2031%20%28JC%20Report%20on%20the%20implementation%20and%20functioning%20of%20the%20Securitisation%20Regulation%29%20%281%29.pdf

[71] ESMA12-2121844265-3972_-_Feedback_statement_Securitisation_disclosure_templates.pdf

10.2 Issues

144. While the current framework has improved transparency, the information required to be disclosed is often described as 'excessive', as stated by most respondents to the EC 2022 public consultation and JC targeted consultation on the review of the SECR, or with too many redundancies leading to potential data quality issues[72] in reporting.

145. The main areas for improvement pointed out by market participants regarding the transparency framework under SECR include:

- Loan-level data (LLD) is seen as useful for non-granular pools and certain asset classes but is less valuable for other types of pools;
- the data requested does not always align with investors' needs. As a result, many investors continue to rely on bilateral arrangements established before SECR to perform their due diligence, adding reporting burden;
- requirements for private securitisations have been criticised as neither proportionate nor fit for purpose. Likewise, industry stakeholders argue that transparency templates should be designed separately between public and private securitisations;
- the strict reporting requirements make transactions less attractive and more costly to be established in the EU, compared to issuing covered bonds transactions;
- The market also remains concentrated in a few jurisdictions, with reporting rules creating barriers to entry for small and medium-sized originators and sponsors, particularly in Member States where the securitisation ecosystem is still developing;
- the fragmented reporting landscape creates administrative burden for potential originators, sponsors and SSPEs.

146. In summary, it appears that the current disclosure requirements, combined with other requirements deemed not fit for purpose, have contributed to discouraging potential investors and originators from engaging in transactions they might have otherwise considered. The JC of the ESAs recognises the value of simplifying and streamlining reporting requirements, as this could make securitisation transactions more attractive and efficient and help reduce overall transaction costs.

[72] https://www.tsi-kompakt.de/en/2024/03/critical-review-of-the-impracticable-reporting-requirements-for-securitisations-in-the-eu/

147. The following paragraphs outline potential changes to the transparency framework in the Level 1 and 2 that could be implemented as part of the revision of the SECR.

10.3 Options to revise the transparency framework.

148. In relation to transparency requirements, the EC's consultation explores several options for defining the overall scope of information to be disclosed under Article 7, presenting three alternative approaches:

- Option 1: Streamline the current disclosure templates for public securitisations and introduce a simplified template for private securitisations[73]. This option also seeks feedback on imposing mandatory reporting of private transactions to securitisation repositories (SRs), with the data remaining non-public.
- Option 2: Adopt a principles-based disclosure framework for the benefit of investors, partly removing the need for prescriptive templates.
- Option 3: Retain the existing regime under Article 7 without introducing any changes.

149. This report evaluates these proposals. Based on the previous considerations and the need to revise the current framework, the JC of the ESAs does not consider Option 3 – i.e. keeping the status quo - as an appropriate way forward; instead, it provides concrete recommendations related to the preferred option. After carefully weighing the advantages and disadvantages, as outlined in the relevant sections below, the JC of the ESAs offers its opinion on the preferred course of action.

150. The JC of the ESAs recommends that the EC undertake a review of the disclosure framework based on Option 1. This approach would introduce greater proportionality into the transparency requirements while ensuring that the overall level of market transparency is not diminished.

10.3.1 Option 1 – Streamline the current disclosure templates for public securitisations and introduce a simplified template for private securitisations.

(i) Introducing targeted revision of Article *7*

151. The standardisation of data and the ability to compare transactions within the same asset class have improved. However, the securitisation market remains divided into distinct segments: (i) public ABS, (ii) private ABCP and non-ABCP transactions, (iii) synthetic securitisations, and (iv) CLOs. This segmentation is likely to keep evolving, influenced by demand and supply dynamics

[73] ESMA has already initiated work on reviewing the templates for private securitisations through a consultation launched on 13 February 2025, available at: https://www.esma.europa.eu/sites/default/files/2025-02/ESMA12-2121844265-4462_-_Consultation_Paper_on_Private_Securitisation.pdf

in the market. Therefore, a balanced approach must be taken to improve standardisation and comparability while accommodating the market's evolving segmentation. This necessitates introducing greater flexibility within the transparency framework, with specific details to be addressed through Level 2 instruments.

152. A possible first step could be to revise Article 7(1)(b) to specify more clearly which underlying documentation should be required depending on the type of securitisation transaction. For instance, public true sale securitisations (or public ABS) typically rely on final offering documents or a prospectus, while not all the documentation listed under this article applies to private ABCP and non-ABCP transactions, or synthetic securitisations. These transactions involve distinct documentation tailored to their unique features and risk profiles, which differ significantly from those of public true sale securitisations. Therefore, to improve proportionality, the Level 1 text could specify a list of common underlying documents for all the segments, while segment-specific documents would be detailed in "information modules" within Level 2 RTS.

(ii) Reviewing the reporting templates

153. As previously noted, the feedback received from a substantial number of ESMA templates[74] users[75] is that they are not fit for purpose[76]. Furthermore, the current reporting systems lack cohesion and consistency [77].
154. The ESMA securitisation templates separate data into two categories: transaction-level information and collateral-level information. To enhance consistency and simplify disclosure templates for public securitisations, it is proposed to streamline and rationalise both categories.

1) Transaction-level information

155. The first objective is to harmonise and simplify transaction-level information by significantly reducing the number of data fields and removing duplication or inconsistencies[78]. Currently, the number of fields varies widely, ranging from 181 fields for commercial real estate (CRE) to 47 for credit card[79]. To address this, it is proposed to streamline the reporting templates by focusing

[74] Commission Delegated Regulation (EU) 2020/1224 and Commission Implementing Regulation (EU) 2020/1225.

[75] https://www.esma.europa.eu/sites/default/files/2024-12/ESMA12-2121844265-3972_-_Feedback_statement_Securitisation_disclosure_templates.pdf

[76] In total, around 700 attributes are collected on a loan-by-loan (except for ABCP transactions).

[77] EDW_ED_GAP_Analysis_3.0_SAMPLE-METHODOLOGY.pdf

[78] The transaction level information contains information about obligors, originators, collaterals and swaps (for some asset pools). This design can involve consistency issues such as the reference data (demographics, etc.) reported for a same counterparty which may diverge for different underlying exposures (for more information refer to the Journal of Financial Compliance Volume 7 Number 2 accessible here: https://eurodw.eu/wp-content/uploads/A_critical_analysis_of_the_securitisation_reporting__1702576359-1.pdf).

[79] 84 for RMBS, auto loans, and leasing, 66 for esoteric securitisations, 101 for corporate, and 69 for consumer securitisations.

on common denominators – sections with common information - that effectively cover all asset and transaction types, also with the aim of further increasing standardisation and simplification, without disregarding certain underlying assets (such as CRE) that necessitate specific data fields.

2) Asset-class sections

156. An additional step is to set up "Asset-class Section" that includes both the "asset-class-specific information" (currently reported through 'collateral-level information') and the relevant transaction-level information section, provided it is essential for investors to accurately assess securitisation exposures.

157. This step aims to enhance overall coherence across the asset classes and thereby significantly reduce the number of reporting fields. This process also aims to tailor collateral-level information to align more closely with the characteristics of each relevant underlying asset class, including at transaction level. This step could also be further refined using ESMA's field-by-field review conducted in January 2023 and the feedback received in response to ESMA's consultation on the revision of the securitisation disclosure framework.

3) The use of stratified (aggregated) data

158. The loan-level disclosure (LLD) in securitisation transactions is crucial for due diligence and risk assessment for certain asset classes. The current transparency requirements mandate detailed disclosure of securitisation transactions for all non-ABCP asset classes, covering details on the obligor, loan characteristics, and collateral at a loan-level granularity.

159. This report acknowledges the importance of proportionality in disclosure and due diligence requirements. The requirement for LLD imposed by Article 7(1) of the SECR ensures transparency and detailed information for investors, however the disclosure can be cumbersome and with limited added value for specific asset classes, particularly those that are (a) revolving in nature, (b) highly granular, or (c) have short-term maturity. The high costs of producing reports do not justify the added benefits for investors, as this data is rarely used for risk assessment purposes.

160. Considering the above, the JC of the ESAs considers that it would be worth for the EC to leverage on the responses received to ESMA's consultation on the revision of the securitisation disclosure framework and consider transitioning away from LLD for certain asset classes. This aims at simplifying and alleviating the disclosure burden on sell-side parties.

161. Specifically, the JC of the ESAs recommends transitioning from LLD to stratified data requirements for asset classes which are (a) revolving in nature, (b) highly granular, or (c) of short-term maturity. Examples include credit card receivables.

162. To implement this proposal, the JC of the ESAs suggests amending Article 7 of the SECR to clarify that the level of granularity in information should be tailored to the characteristics of each asset class. This amendment would provide greater flexibility and facilitate the introduction of stratified information for the asset classes within the relevant technical standards. Secondly, given the challenges in defining the underlying assets suitable for stratified (aggregated) reporting, a broader approach incorporating additional factors is recommended. This approach should specifically allow the reporting of stratified data, including minimum data points, based on criteria such as asset pool granularity and concentration thresholds. These parameters should be defined through Level 2 or Level 3 instruments. This method would enable the provision of stratified data without relying on a fixed list of eligible underlying assets, recognising that compliance may vary across transactions depending on the specific characteristics of the asset pool. Moreover, extending the scope of the reporting obligation to SRs to private transactions will ensure closer monitoring, an easier and complete access to data, more effective and efficient supervision.

163. Finally, further consideration should be given to whether, in addition to LLD, stratified data for all asset classes could also be made available to investors, considering their varying risk exposures, such as tranche seniority and structural features. This is particularly relevant for developing secondary markets for senior tranches and expanding the investor base. Providing stratified data could streamline due diligence for senior tranche investors, who may not require loan-level data and can instead rely on aggregated information for risk assessment.

(iii) Pros

- Streamlining reporting fields aligns with the EC's objective of reducing reporting burdens by 25%[80], while preserving essential policy goals. This approach maintains a robust transparency framework, ensuring investors continue to have access to high-quality information. Additionally, it alleviates compliance burdens for originators and sponsors, particularly benefiting potential new entrants to the market. At the same time, established originators can capitalise on prior investments and existing systems, making the transition more seamless. Furthermore, the streamlined approach enhances the ability of both supervisors and market participants to monitor financial stability risks without imposing additional reporting requirements.

(iv) Cons

[80] Factsheet_CWP_Burdens_10.pdf

- This approach could result in a longer implementation timeline compared to simply refining reporting templates for public transactions.

10.3.2 Option 2 - Introduce principles-based disclosure for the benefit of investors.

164. An alternative approach, which was not ultimately adopted by the JC of the ESAs, but outlined here for informational purposes, would be to shift some responsibility back to investors, empowering them to make informed decisions without reducing the quality or availability of key information. The goal is to maintain the same level of transparency while at the same time introduce greater flexibility, allowing market participants to choose the most efficient way to meet their obligation.

165. The primary aim of the transparency requirements under Article 7 was to introduce a set of information which would help investors in assessing securitisation transactions without over-relying on third parties. This should have allowed investors to act as prudent investors and do their due diligence.

166. From the interaction with buy-side market representatives and competent authorities, it appears that many buy-side parties still rely on customised information directly provided by the sell-side parties for due-diligence purposes and do not use the securitisation data reported to and made available by SRs. Similarly, the use of SR data by CAs is overall quite limited to date, particularly due to the complexity of the data set currently included in the securitisation templates, which appears overly detailed for the supervisors' needs. The result is a framework that imposes undue burdens on sell-side participants compared to the use of such information, often resulting in a significant barrier to entry.

167. Having considered the above, Option 2 aims at maintaining transparency while reducing the compliance burden on sell-side parties and addressing the different objectives of investors.

168. This proposal introduces a shift from the current prescriptive templates mandated under Article 2 of ESMA transparency RTS[81] towards a more flexible approach. Under the new framework, sell-side parties would be required to disclose information in two distinct streams:

    a) a dedicated stream of mandatory information disclosed to SRs, with the purpose of providing a level of information sufficient to verify the compliance of securitisation transactions with relevant SECR requirements using pre-defined templates;

[81] Commission Delegated Regulation (EU) 2020/1224.

b) a separate stream offering investors a relevant pre-defined set of minimum information to meet due-diligence requirements, free from the constraints of a specific format.

(i) Information disclosure to SRs

169. A set of revised, simplified templates could be designed, aimed primarily at assessing compliance of securitisation transactions with SECR requirements. These templates would be especially valuable for supervisory authorities' risk monitoring activities. They would include key data to ensure compliance with Article 6 (risk-retention requirements), Article 7 (transparency requirements) and Article 8 (ban on re-securitisation). This approach would guarantee that market participants receive comprehensive, standardised information, enhancing comparability and supporting supervisors in their oversight activities.

170. The disclosure mechanism would remain largely unchanged from the current framework. Sell-side entities - for both public and private operations - would have to submit the required information using the revised templates to an SR, which would then make the data available to market participants. Investors, supervisors, and other users, who wish to access the template-based data would be able to register with the SR and obtain the necessary information.

171. The role of SRs would be central, continuing to act as a repository for data on all public securitisation transactions, widening their scope to private securitisations, thereby enabling supervisors to carry out their risk-monitoring responsibilities effectively.

(ii) Information disclosure to investors

172. Sell-side parties would be required to provide a pre-defined set of minimum information to investors, without the need to follow a specific format or channel. Investors should receive the information necessary for their risk assessment without being bound by a specific modality to receive it; the focus should be the substance of the information, rather than prescribing the format in which it will be provided. As for the type and content of the information, the proposal envisages the same categories of information currently provided through the existing disclosure templates, i.e. underlying exposure and collateral information needed to support due diligence activities.

173. The macro-categories relevant to the respective asset classes should be outlined in the Article 7. However, no specific template or format would be mandated, leaving it up to the relevant transaction parties to agree on the most suitable way to present the information.

174. The issuance of specific Level 3 Guidelines should be considered to ensure better compliance with transparency requirements, if needed. This approach would allow for the delivery of relevant data in a more flexible manner. The emphasis shifts from prescriptive template-based

disclosure to ensuring the content of disclosures meets investor expectations for due diligence and risk evaluation.

175. The proposed change does not aim to reduce the quality or quantity of information available to investors but rather to address the challenges and costs associated with the current disclosure regime.

176. Investors would continue to have the flexibility to request more detailed information if needed for effective risk assessment, ensuring that the framework supports investor confidence without compromising transparency.

(iii) Pros

- The proposed changes may result in a significant reduction in disclosure efforts for sell-side entities by substantially decreasing the volume of information required to be reported to securitisation repositories (SRs). Buy-side entities would benefit by relying on established relationships with sell-side parties without the need for technical expertise or methodologies tied to specific data formats. Similarly, supervisors would gain access to more tailored information that is better aligned with their specific monitoring objectives, improving the overall efficiency of oversight.

(iv) Cons

- On the downside, the reduced amount of information submitted to SRs could result in less standardised data being available to the market, which would no longer be subject to validation checks. Buy side parties may need to engage in bilateral negotiations with each sell side party, potentially increasing transaction costs. This reduction in standardisation may also hinder the comparability of transactions across the market, potentially limiting transparency and impairing broader market analysis.

10.4 Additional measures to improve the functioning of the disclosure framework.

10.4.1 Introducing disclosure exemptions for certain securitisations

(i) Intragroup Exemption

1) Issue

177. Intragroup securitisations play an important role in the efficient management of liquidity and capital, serving as an alternative funding source within corporate groups. These transactions enable parent companies and their subsidiaries to centralise risk management functions, improve asset-liability matching, and reduce funding costs through economies of scale.

178. Under the current transparency framework, securitisation transactions not involving third-party investors are subject to the same disclosure requirements as other transactions. This imposes unnecessary operational burden on corporate groups without positively impacting market transparency or investor protection.

179. An exemption for intragroup transactions from the disclosure requirements under Article 7 would align with other reporting regimes that already allow for certain exemptions for such transactions. Since these transactions are typically confined within the group and do not involve external investors, their relevance to the disclosure framework of the Securitisation Regulation is limited. Providing such an exemption would not diminish the overall transparency and objectives of the Regulation, as these intragroup transactions are not significant for its primary purpose of ensuring robust disclosure.

180. Moreover, this approach would be aligned with broader EU regulatory frameworks that recognise the lower risk associated with intragroup transactions and aim to reduce regulatory burden on market participants, thereby avoiding unnecessary administrative costs. By adopting such amendments, the SECR would offer a balanced approach that supports the operational needs of corporate groups while maintaining appropriate regulatory oversight.

2) Proposal

181. To address this issue, one possible approach to explore carefully is the possibility of granting exemption for intragroup securitisation transactions from disclosure to SRs. This exemption could be modelled after Article 3 of EMIR and would apply to transactions within the same corporate group where no third-party investors are involved.

182. Under this proposal, the SECR would need to introduce a definition for intragroup transactions. An intragroup transaction for the purposes of this exemption could be defined as a securitisation transaction between entities that are part of the same group, provided that both entities are

included in the same consolidation perimeter and are subject to appropriate centralised risk evaluation, measurement, and control procedures.

183. The disclosure exemption should be applicable to the extent that the position in the securitisation remains within group entities, and it no longer applies if the transaction is resold to a third-party (outside the group) investor. This exemption should be limited to the reporting obligations for the purpose of compliance with the transparency requirements under SECR.

184. Entities intending to apply the exemption should be required to notify their competent authorities of their intention. The exemption would be valid unless the competent authority objects to the fulfilment of the conditions within a specified period.

185. In any case, while considering this solution, the JC of the ESAs expresses the view that, transparency regarding intragroup transfer of risk is important, both for prudential reasons and for assessing the interconnectedness of the sectors. Therefore, the JC of the ESAs recommends the EC to consider a balanced approach between reducing the overall reporting burden and ensuring effective supervision . Finally, the JC of the ESAs is of the view that, from a supervisory perspective, applying the exemption to intragroup transactions between a bank and an insurance or a reinsurance undertaking does not appear to be appropriate.

(ii) Lowering barriers to entry for small to middle-sized reporting entities

1) Issue

186. Currently, most of the originators, sponsors and SSPEs active in the European securitisation market are large banks. In general, small to medium-sized banks tend to avoid securitisations due to the high implementation costs, including the IT and compliance costs required to adhere to the current disclosure requirements.

2) Proposal

187. To reduce barriers to entry for new originators and sponsors in the securitisation market, several solutions can be explored. One suggestion is to clarify the conditions under which originators, sponsors, and SSPEs can delegate their reporting obligations to third parties.

188. Delegating reporting or disclosure to third-party entities is a well-established practice for SRs as well as in other European reporting frameworks. It offers potential benefits to originators, sponsors, and SSPEs, such as access to specialised expertise, improved service quality, and cost reductions through economies of scale. Additionally, this approach could enhance the quality of data reported to registered SRs.

189. At the same time, delegating the disclosure requirements to a third party may introduce risks. To mitigate these, the JC of the ESAs believes that ultimate responsibility for fulfilling the relevant obligations under Article 7 should remain with the originator, sponsor, and SSPE, except in cases of fraud, negligence, or misconduct by the delegated entity. In such cases, the third party should be held liable.

190. The originator, sponsor, or SSPE should keep monitoring the reporting process at all times, providing instructions to the delegated entity as needed, and revoke any service-level agreements in place immediately if the reporting process under Article 7 is not properly executed.

191. Finally, the JC of the ESAs considered the possibility of introducing an exemption for certain securitisations below a defined materiality threshold. However, after assessing the pros and cons—especially in relation to the regulatory threshold and the goal of encouraging larger transactions to attract institutional investors—the JC of the ESAs ultimately decided not to support this option.

10.4.2 Increasing the usability of data

(i) No Data options

1) Issue

192. ESMA templates allow originators and sponsors to use 'No Data' (ND) options to indicate data unavailability or non-applicability. Compared to ECB LLD templates, ESMA templates offer a significantly higher number of ND options[82]. As also evidenced in the responses to ESMA's Consultation Paper on disclosure templates[83], it is apparent that the ND options are useful for originators to provide the necessary flexibility for originators and sponsors when data is not available or applicable.

2) Proposal

193. Based on ESMA's assessment of the feedback to the CP, it is proposed to review the ND options as follows:

[82] As an example, 17 fields of the CMBS underlying exposure template are mandatory in all cases, whereas 174 can be declared as non-applicable (158 in the previous version) and 75 non-available (formerly 65).

[83] ESMA12-2121844265-3972 - Feedback statement Securitisation disclosure templates.pdf

- Conduct a comprehensive review of the ND framework, including data completeness scores, thresholds, and specific fields, considering the feedback against a one-size-fits-all approach, which cannot be applied to the diverse securitisation submarkets and/or underlying assets.
- Consider the removal of ND options for specific fields essential for risk analysis.

194. Overall, the JC believes that implementing the above amendments to the ND option framework is feasible, balancing flexibility for originators/sponsors with the need for complete data for investors.

(ii) Mandatory disclosure of Private Securitisation to Securitisation Repositories

1) Issue

195. Private securitisation deals under the current framework pose challenges in terms of transparency and supervisory oversight. Supervisors have highlighted the absence of a central and standardised disclosure mechanism for private securitisations, making it difficult to comprehensively analyse the size, trends, and dynamics of the market comprehensively. Additionally, taking into consideration the fragmented supervisory responsibilities within the SECR, the lack of mandatory disclosure requirements creates information asymmetry, as the absence of a SR in the disclosure process of private deals can create disparity in the ease of access and data quality with respect of public ones.

2) Proposal

196. It is recommended that the disclosure of both public and private securitisation under Article 7 be made available through a securitisation repository. This ensures consistent disclosure requirements across all securitisations. To facilitate this, Article 7(2) of the SECR would need to be revised to remove the exemptions for private securitisations from reporting through SRs.

197. Making information for private securitisations available via a securitisation repository would improve the usability of data for all stakeholders, allowing easier access and ability to query information in a structured manner. Additionally, submitting data to a securitisation repository would centralise information within a few sources, specifically ESMA-registered securitisation repositories, rather than through multiple channels and formats. This would help competent authorities in supervising the information more effectively.

198. The market would benefit from better data quality and standardised formats across both public and private securitisations. In some cases, it might be more cost-effective than setting up dedicated reporting channels to multiple investors and competent authorities.

199. For the sake of clarity, and in line with the other proposals in this report, third-country securitisations would not be subject to this requirement.

(iii) Format for dissemination of SR data

1) Issue

200. The current disclosure framework requires the designated reporting entity (either the originator, SSPE, or sponsor of the securitisation) to submit public securitisation data to a registered securitisation repository (SR) in extensible markup language (XML) format (as outlined in Article 5 of Commission Delegated Regulation (EU) No 2020/1225) on a quarterly basis (or monthly for ABCP). At the same time, SRs are required to disseminate such data in the same format.

2) Proposal

201. In order to improve the use of securitisation information also by less sophisticated users, the JC of the ESAs sees value in assessing the possibility for SRs to disseminate data in a way that facilitates its consumption by different types of users. In this context, SRs could be requested to make securitisation data available in multiple formats, to ensure that they are easily accessible and usable for investors with different degrees of data analysis capabilities. Drawing on examples from other disclosure regimes, a requirement could be introduced mandating that SRs disseminate data both in the format prescribed for input data (in order to ensure machine-readability for advanced data users), and an additional, more accessible format (e.g. CSV) to ensure ease of use for less advanced data users.

(iv) Enabling Competent Authorities to monitor the securitisation market effectively

1) Issue

202. Another priority is ensuring that designated competent authorities (CAs), the ESAs and ESRB can effectively monitor securitisation markets, including from a financial stability perspective. This task encompasses oversight of the securitisation markets through dedicated reports, compliance with Article 7 of the SECR for originators, sponsors and SSPEs, as well as monitoring the private securitisation market and non-bank financial institutions (NBFIs) active in securitisation.

2) Proposal

203. Therefore, the work of CAs should be made more efficient through dedicated reports computed by the registered SRs covering both the private and public markets. These reports should however not require the creation of additional reporting templates or impose additional burden on originators or sponsors. Instead, they should leverage existing data (similar to investor reports) to produce such reports. These tools could include, for example, historical series and country-focused updates, along with information on active and inactive transactions, which

could be automated with notifications issued when transactions become inactive due to outdated information. To ensure the standardisation and comparability of such reports, Article 17(2) of the SECR should be reviewed to provide the legal basis for the SRs to make available such information.

204. Finally, to enhance comparability across private securitisations, a complementary proposal would be to develop an automated supervisory report to monitor the private securitisation market. This report could leverage performance and risk indicators at an aggregated level, based on the private templates mentioned earlier. Making such a report available to all potential users would ensure broader access to insights, as monitoring private markets is relevant to all market participants.

(v) Reducing fragmentation of the reporting requirements

205. Another key objective should be to streamline, integrate reporting requirements and improve data sharing across various sectoral legislation or authorities to reduce areas of duplication and inconsistencies. Currently, reporting for securitisation transactions is fragmented across multiple regulators—such as the EBA, ECB, and ESMA—each with distinct templates and requirements. This fragmentation creates overlapping obligations, increasing complexity and compliance costs for market participants. Each regulator uses distinct templates, such as those for SRT reporting, ECB notifications, SFDR reporting, EBA's COREP templates for capital requirements, ESMA STS notification templates, the ECB's Balance Sheet Items (BSI) and AnaCredit datasets.

206. In order to achieve this in the field of securitisation it is worth taking into account the previous work of the EC related to the broad topic of supervisory reporting in the financial industry. In 2019, the EC published the report on Fitness Check of EU Supervisory Reporting Requirements[84] that included a comprehensive assessment of the efficiency of supervisory reporting. The report concluded that despite the overall value added of reporting obligations there existed numerous inefficiencies, inconsistencies and duplications that resulted in high compliance cost for market participants. Subsequently, the EC adopted the Strategy on supervisory data in EU financial services that aimed at ensuring accuracy, consistency, and timeliness of supervisory data, while minimising the reporting burden.

207. Following this work, and as a result of new and revised reporting regimes, authorities have been giving careful consideration at the existing reporting setups across subsectors of the financial industry to determine their overall efficiency. These exercises aim at allowing authorities not

[84] Commission staff working document - Fitness check of EU supervisory reporting requirements

only to reduce duplicative reporting and related reporting burdens for reporting entities, but also to provide stability to templates, definitions, and the overall reporting requirements.

208. Any such exercise in the field of securitisation should consider the importance of an efficient sharing and reuse of data as well by relevant competent authorities. It should also aim at improving data quality, lowering compliance burdens, and enhancing the efficiency and attractiveness of securitisation products. Overall, the JC of the ESAs believes that the EC should consider developing an EU-wide, integrated reporting framework to achieve a more coherent regulatory environment and ultimately enhance the appeal of securitisation products in the market.

10.5 Conclusion

209. The proposed amendments aim to refine the SECR to better align with market dynamics and regulatory objectives. These proposals seek to enhance transparency, reduce unnecessary burdens, and promote the efficient functioning of the securitisation market within the EU. Adopting these measures will support a balanced regulatory approach that meets the needs of market participants while ensuring robust investor protection and market integrity.

210. The JC of the ESAs assessed several options for introducing greater proportionality into the transparency framework including (i) Option 1: streamlining the reporting templates together with targeted revisions of Article 7 of the SECR and (ii) Option 2: introducing partially principles-based disclosure for the benefit of investors without a prescribed template in some areas. After weighing the pros and cons, the JC of the ESAs concluded that any efforts to enhance proportionality should focus on streamlining the existing framework, which is mainly considered adequate for investors and supervisors to better assess the quality of the assets underlying transactions.

211. Finally, maintaining a certain level of transparency and standardisation, even in a streamlined form, will help improve pricing mechanisms in the primary and secondary markets over the long term. Transparency provides essential signals regarding the quality of the underlying assets, which are critical for effective market functioning. Ensuring a high level of data standardisation can also contribute to the development of more standardised products at the Union level. Such products could facilitate operations involving underlying assets from different Member States.

11. Options for the supervisory framework

11.1 Background

212. The European supervisory framework for securitisation operates within a "hybrid" system, involving both decentralised (i.e. national) and centralised (i.e. European) supervision and standard setting. In this setup, Competent Authorities (CAs) hold primary supervisory powers over both buy-side and sell-side entities involved in securitisation, as well as over Third-Party Verifiers (TPVs)'s authorisation. This is supplemented by (i) the centralised oversight by the Single Supervision Mechanism (SSM) of Systemic Institutions' compliance with the Significant Risk Transfer (SRT) rules and the general SECR requirements (Articles 5-9 SECR being due diligence, risk retention, transparency, prohibition of resecuritisation, and credit-granting); (ii) supervisory convergence and standard-setting responsibilities assigned to the European Supervisory Authorities (ESAs) and (iii) the supervision by ESMA of the securitisation repositories (SRs)[85].

213. To date, there are 48 distinct CAs overseeing securitisation transactions and related sell-side parties (originators, sponsors, SSPEs, and original lenders) and buy-side parties (institutional investors). For sell-side parties, the SECR distinguishes between the CAs responsible for sponsors and those responsible for originators, original lenders, and SSPEs. Where sectoral regulation does not apply, a dedicated CA must be designated[86]. Additionally, the supervisory framework includes provisions for STS third-party verifiers (TPVs), who[87] are authorised at the national level and provide their services across the EU.

214. Article 36 of the SECR establishes a framework to ensure close cooperation among CAs and the ESAs, with the specific modalities outlined in an RTS on cooperation[88]. The ESAs primarily act as standard setters, with ESMA having mediation and supervisory convergence powers concerning the STS framework and EBA responsible for the STS Guidelines for traditional and synthetic securitisations. Pursuant to Article 36 of the SECR, a specific securitisation committee (joint

[85] As of today, there are two SRs supervised by ESMA (European DataWarehouse GmbH and SecRep B.V.)(esma_register_secr.xlsx)

[86] All but one Members States have designated the competent authorities under Article 29 of the SECR (ESMA33-128-777 List of designated Competent Authorities under the Securitisation Regulation)

[87] Article 28(1) of the SECR provides that a third-party verifier ("TPV") may be authorised by a CA to assess the compliance of securitisations with the STS criteria. As of today, only two TPVs have been authorised to verify STS compliance: Prime Collateralised Securities (PCS) EU sas (PCS) authorised by the French Autorite des marches Financiers (AMF) and STS Verification Internal (SVI) Gmbh authorised by the German Federal Financial Supervisory Authority (BaFin).

[88] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1415

committee securitisation committee, hereafter the "JCSC") has been established within the framework of the JC. Since its inception, the JCSC has published reports, opinions and Q&As.

11.2 Issues

215. Securitisation transactions involve both buy-side and sell-side parties across the EU and outside the EU. It is therefore common to see transactions where originators, sponsors, SSPEs and original lenders are based in different jurisdictions including in non-EU countries. Meanwhile, the EU securitisation market is currently concentrated in a small number of EU countries. In other Members States, securitisation parties and their respective CAs operate within markets that are still developing.

216. Overall, the current supervisory framework exhibits the following features:

1) While it aims to ensure thorough oversight, the current framework may pose significant challenges for securitisation transactions and related sell-side parties due to the significant costs associated with reporting and engaging with multiple supervisors, each with varying approaches, objectives and supervisory tools. For instance:

- originators and sponsors are required to notify both ESMA and CAs of securitisations meeting the STS requirements;
- reporting entities (originators, sponsors and SSPEs) are required to report transactions templates to SRs while private securitisations are reported at the discretion of reporting entities;
- Significant Institutions (SIs) originating securitisations and seeking Significant Risk Transfer (SRT) approval are expected to notify the SSM at least three months in advance of the expected transaction date. Additionally, SIs are invited to complete notification templates towards the SSM at origination and upon significant events to fulfil obligations under Articles 6 to 8 of the SECR;
- on the statistical side, sell-side parties are required to report securitisation data to the European Central Bank (ECB) through national banks under various frameworks, including: The Balance Sheet Items (BSI) Regulation, COREP, the Analytical Credit Dataset (AnaCredit), the Securities Holdings Statistics (SHS), which captures ABS asset positions as part of debt securities holdings;
- SECR empowers CAs to collect and aggregate necessary data, including on private securitisations and non-bank entities. However, ensuring comprehensive, timely and consistent data collection across the EU remains a significant challenge.

2) Although incentives for cooperation exist, and despite the EU securitisation market largely consisting of transactions involving domestic players, CAs do not consistently cooperate on common supervisory issues regarding cross border transactions, including in certain cases across CAs within the same Member State. This can lead to legal and compliance uncertainties, lack of predictability and coherence of the European supervisory framework. Likewise, these coordination challenges, delayed responsiveness, and potential supervisory blind spots underscore the need for greater consistency across regulatory bodies. Ensuring alignment in both substance and timing is essential to achieve effective implementation and prevent divergent supervisory outcomes.

3) Another challenge in supervisory matters stems from the hierarchy established by the SECR, which positions originators as the central entities among all sell-side parties. Originators are referenced in all the requirements under SECR, which leads to a greater emphasis on the originators from CAs compared to the CAs supervising sponsors, original lenders, and SSPEs. This emphasis may not be correct in the context of the structure of a transaction, particularly when the sell-side parties are established in multiple jurisdictions.

4) It is also worth noting that while Article 27 of SECR requires only the originator and sponsor to jointly notify compliance with the STS criteria (only the sponsor in the case of ABCP transaction) to ESMA and to the relevant CAs, the CAs of the SSPEs are not systematically notified, even if this information is required to be disclosed pursuant to Article 7 of SECR. However, the SECR also states that SSPEs may be held responsible in the event of a breach of notification rules or STS criteria, highlighting the need for clarification on which CAs should be involved in such case.

5) Similarly, it may be noted that while the SRT process established by some CAs expects ex ante supervisory engagement from the banks before origination to provide greater predictability in capital relief outcomes, in contrast, the STS notification is made available and notified to ESMA before pricing and supervised ex post by the relevant CAs. After origination, this could potentially lead to misalignment in the timing of SRT and STS evaluations and to coordination challenges.

6) CAs also face challenges in mobilising sufficient resources to fulfil their supervisory duties which could be challenging as it may hinder ability to respond promptly if securitisation markets become active again.

7) Similarly, a preliminary assessment of the supervision of originator, sponsor and SSPE compliance with the STS criteria highlights significant divergent supervisory practices among CAs.

217. Based on the above considerations, the JC of the ESAs examined potential developments in the supervision framework. These include enhancing the framework by prioritising greater convergence in supervisory practices or shifting to a more centralised supervision in anticipation of market evolution and an increase in cross-border transactions.

11.3 Options

218. The JC of the ESAs has considered two potential approaches:

- *Status quo* - with a stronger emphasis on promoting supervisory convergence (Option 1); or
- Assigning direct supervisory mandates to a new joint supervisory structure (Option 2).

11.3.1 Option 1 - Status quo - with further emphasis on promoting supervisory convergence.

219. The JC of the ESAs initially underscored the importance of building upon the existing work undertaken within both the JC of the ESAs and the SSM securitisation hub (See **Box 2 – SSM Securitisation Hub**), as foundational pillars for enhancing supervisory convergence. In this context, the successful experience of the SSM securitisation hub - developed with the support of CAs to assist the ECB in supervising significant institutions' (SIs) compliance with Articles 6 to 8 SECR – serves as a notable example of effective coordination in the oversight of securitisation transactions. This framework has demonstrated its efficacy and should be preserved, with consideration to its potential application in other supervisory areas where appropriate.

220. Consequently, it is proposed to make a more systematic use of the supervisory convergence tools – such as Q&As, opinions and statements – for addressing cross-cutting issues of general interest. These tools are designed to facilitate the effective application of new or amended rules, respond to evolving market conditions, and support the implementation of common high-level supervisory standards. The overarching objective is to ensure high quality and comparable regulatory and supervisor outcomes across CAs. Furthermore, in its supervisory convergence work, the JC of the ESAs aims to foster enhanced cooperation on data collection and sharing among the CAs and the ESAs, promote information sharing at the EU level, and develop analytics frameworks.

Box 2 - SSM Securitisation Hub

The operational model and supervisory approach of the SSM securitisation Hub were established in 2021 by a dedicated SSM Task Force, chaired by the ECB and approved by the SSM Supervisory Board. The SSM Securitisation Hub supports the ECB in overseeing compliance with Articles 6 to 8 of the SECR for all securitisation transactions originated or sponsored by SIs. It brings together staff from volunteer NCAs (4) and the ECB, with day-to-day operations coordinated by a leading NCA on a rotating basis (ACPR until 03/2024 and Banca d'Italia from 04/2024). The ECB provides the Hub's IT infrastructure (CASPER

platform) and oversees its operations, while NCA staff remain based in their home countries and access the shared IT infrastructure remotely, without needing to relocate to Frankfurt.

The Hub has been operating with a workforce of 7.5 to 8.5 Full-Time Equivalents, comprising approximately 20 staff who share their securitisation supervisory duties with other responsibilities. Since its launch in April 2022, the Hub has supervised over 500 securitisation transactions from SSM SIs, covering a range of transaction types including ABCPs, synthetic, and traditional securitisations. By enabling the ECB to supervise new competencies within a risk-based framework, the Hub has facilitated the pooling of scarce resources from various jurisdictions, fostering the development of securitisation expertise and market knowledge in a single team for the benefit of the entire SSM.

221. The JC of the ESAs acknowledges that maintaining the status quo may nonetheless necessitate regulatory adjustments, particularly in more active securitisation markets where enhanced cooperation among CAs and additional resources from the ESAs are required to support supervisory convergence.

222. A primary concern in this regard is the necessity of maintaining close cooperation with the SSM securitisation hub, which is already tasked with overseeing compliance with Articles 6-8 of the SECR. The JC of the ESAs further underscores the importance of preserving its current structure, along with its respective sub-committee, as a key forum for deliberating policy issues. Additionally, the JC of the ESAs highlights the inherent complexities of decision-making in this context, particularly given that direct supervisory or sanctioning powers remain within the remit of CAs, barring any changes to Level 1 text.

223. This considered, the JC of the ESAs explored options involving simplified centralised model carried out at the level of the JC of the ESAs.

11.3.2 Option 2 – Joint Securitisation Supervision[89]

224. An alternative approach could involve transitioning towards a supervision model with legal responsibility centralised at the level of the JC of the ESAs. The key motivations for adopting a more centralised supervision model include the simplification of supervisory processes and the

[89] The JC of the ESAs initially explored several supervisory models including a scenario where a supervisory securitisation committee, similar to the one for central counterparties (CCPs), would be established to oversee certain responsibilities. While the JC of the ESAs acknowledged the potential benefits of consolidating supervisory resources, it concluded that the approach would introduce more drawbacks and uncertainties. Key concerns included the need for keeping close cooperation with the SSM securitisation hub, already responsible for overseeing compliance with Articles 6-8 of the SECR. The JC of the ESAs also emphasized the importance of preserving the current JCSC as a forum for addressing policy issues. Furthermore, the JC of the ESAs highlighted the complexity of decision-making, particularly given that direct supervisory or sanctioning powers will likely remain the prerogative of competent authorities (CAs), barring any changes to Level 1 text.

potential to achieve economies of scale. Such a model would enable operating under a unified framework, reducing redundancies and leading to unified monitoring across the Union.

225. The shift towards centralised supervision would entail the legal transfer of supervisory responsibilities from CAs to the ESAs, thereby eliminating duplication of efforts and fostering potential synergies through a more cohesive oversight mechanism. This transition would involve the establishment of a joint securitisation supervision (JSS) framework, designed to consolidate resources and expertise across CAs. The new structure would assume full responsibility for executing supervisory duties independently, with its activities funded through proportionate supervisory fees levied on supervised entities. Additionally, voluntary secondments from CAs could further support this framework.

226. The JSS would be responsible for overseeing compliance with the STS requirements and, where relevant for streamlining the supervisory framework, the provisions under Articles from 6 to 9 of the SECR. This oversight would be particularly focused on entities falling under Article 29(4) of the SECR, specifically those established in the Union but not covered by existing legislative acts. Such entities could potentially include NBFIs; however, a more precise assessment would be required to determine which entities would fall within the scope of the JSS[90]. However, any proposed amendments to the existing supervisory framework would require consideration and decision by the co-legislator. Should the EC decide to pursue this direction, the JC of the ESAs considers that its primarily focus should be on the sell-side. Expanding oversight to institutional investors – who operate under distinct risk management frameworks, with compliance ensured by NCAs - would demand substantial resources, particularly given that these investors may invest outside the EU.

227. The JSS would be entrusted with direct supervisory mandates, thereby relieving CAs of the corresponding supervisory duties on the STS requirements and TPV supervision, where introduced under the SECR. Furthermore, subject to further assessment and co-legislative decision, the JSS's mandate could extend to additional SECR requirements. These areas would likely encompass a significant portion of supervisory duties, including executing and enforcing supervisory decisions.

228. The JSS should operate within a dedicated governance framework that ensures both operational efficiency and the avoidance of unnecessary complexity. At the same time, it must remain agile and responsive to market developments. While the JSS would be responsible for implementing and running the agreed supervisory framework, the JCSC would exercise oversight and control function of the JSS's supervisory activities. This structure will grant all ESAs and CAs an oversight

[90] Refer to section 7 – Due Diligence rules.

and control role over the JSS's supervisory activities. This framework would function under a fee-based supervision model, or human resource contributions by CAs and the ECB or a combination of both. Additionally, to prevent regulatory duplication and avoid excessive compliance costs that could undermine market competitiveness – particularly given the Saving and Investment Union's (SIU) objective of fostering capital market development - CAs' supervisory duties, as set out under Article 30 of the SECR, would be reviewed accordingly[91]

229. Another approach could involve granting direct supervisory mandates to each of the ESAs, thereby assigning them oversight responsibilities for STS compliance, TPVs, and Articles 6 to 9 of the SECR where deemed beneficial for streamlining the supervisory framework. Under this model, the ESAs would finance their supervisory activities through a fee-based funding mechanism.

1) Pros

- The JSS model has the potential to enhance supervisory coherence by bridging the gap between market and prudential supervision. It also seeks to address the weaknesses of the current supervisory framework, thereby promoting greater consistency and effectiveness in supervision across the EU.

- The JSS model could also provide the industry with potential economies of scale by mitigating duplicative oversight through an integrated and simplified supervisory approach.

- A fee-based supervision model would ensure the availability of adequate resources to support these supervisory efforts.

- The transfer of responsibilities from CAs to the ESAs could be implemented gradually. One possible approach would involve shifting specific provisions of the SECR to the JSS or to individual ESAs, while retaining the supervision of due diligence rules under the existing framework.

2) Cons

- While this approach may be well-suited in the context of brand-new supervisory framework or entities which were not yet supervised, its applicability to securitisation remains uncertain. Given that CAs and ESAs already possess the experience and expertise in this domain, a

[91] An alternative approach could involve allowing CAs to engage directly within the proposed JSS particularly when securitisation activity within their respective jurisdictions is of significant volume. The JSS could then be further supported by joint examination teams – ensuring a balanced participation of staff members from the ESAs and from the relevant CAs.

complete reshuffling of supervisory mandates may yield limited benefits. Instead, a more pragmatic approach would focus on optimising the utilisation of the existing resources.

- The proposed scope – being solely limited to SECR provisions – does not seem adequate for improving the current division between market supervisors and banking/insurance supervisors. This approach also leaves open questions regarding the integration of CAs within the new framework, particularly in relation to resource allocation to the JSS, while recognising the diversity of existing supervisory models, which may adhere to either an integrated or a distinct supervisory structure.

- Transitioning to such a regime would be both costly and resource-intensive, potentially necessitating significant reorganisation measures within CAs.

- Although the introduction of supervisory fees may be necessary, it would be essential to ensure their proportionality to prevent placing an excessive burden on sell-side entities.

- Finally, the transition costs associated with establishing the new supervisory model and dismantling the current structure should be carefully evaluated to ensure a cost-effective and efficient transition.

230. The JC of the ESAs, however, acknowledges that transitioning towards a centralised supervision extends beyond the scope of its mandate as such a shift falls exclusively within the competence of the co-legislators. This is particularly relevant given its potential implications at both national and European levels.

11.4 TPV supervision

231. Third-Party Verifiers STS verifiers (hereafter the "TPVs") play a critical role in ensuring compliance with the STS criteria for originators and investors. As outlined in the due diligence section, the JC of the ESAs considers that greater proportionality can be introduced into the due diligence rules for investors. However, this is contingent upon enhanced supervision for originators and sponsors and/or TPVs, ensuring that these entities are not only authorised but also subject to appropriate ongoing supervision.

232. Since the implementation of the SECR, TPVs have assumed an increasingly significant role. At present, the majority of public true sale securitisations designated as meeting the STS criteria are certified by TPVs. These entities also serve as key supervisory tools for CAs[92], which often

[92] For further information, refer to the ESMA report on STS peer review available at : https://www.esma.europa.eu/sites/default/files/2025-03/ESMA42-2004696504-7945_STS_Securitisation_Peer_Review_Report.pdf.

rely on them to assess the compliance of the STS transactions by delegating the interpretation of the STS criteria at transaction level.

1) Issues

233. Currently, only two TPVs operate within the EU. Although these TPVs provide services across the EU, their authorisations are granted at the national level by two respective CAs. While it has been clarified that national authorisation does not limit the validity of their certifications at the Union level, TPVs have effectively become cross-border entities. Both sell-side and buy side market participants rely on them for independent certification of the compliance of designated STS securitisations with each of the STS criteria.

234. This situation raises questions regarding the appropriate level of supervision for TPVs compliance. Given their pivotal role in assessing STS compliance, there is a risk that supervisors, sell-side and investors may become overly reliant on TPV certification rather than conducting independent and direct supervision and verification of STS transactions accordingly[93]. A key challenge lies is ensuring that supervisors can effectively oversee TPV's conflict of interest with sell-side parties which operate beyond the jurisdiction of the Member State in which the TPV is authorised.

2) Proposals

235. It is proposed that the EC considers reviewing the current supervisory framework for TPVs to simplify and align it with the cross-border nature of their activities. Additionally, the framework should address potential conflicts of interest arising at EU level in relation to the certification of STS criteria. This approach would offer the advantage of a harmonised registration process, strengthening the European dimension of STS criteria and the associated supervision.

236. The revised supervisory framework for TPVs would be based on proportionate requirements, for example drawing upon the model used for external verifiers under the EU Green Bond Standard (GBS) Regulation[94]. While the role of TPVs is not identical to that of external verifiers, their functions share significant similarities. Accordingly, the proposed approach would ensure that TPV supervision remains commensurate with their size and turnover. Furthermore, regulatory provisions should establish mechanisms for ongoing supervision, the imposition of administrative penalties and corrective measures in case of identified breaches. As a result, CAs

[93] Refer to ESMA Peer Review report on STS Supervision which is available here: xxx

[94] This includes (1) fit and proper requirements for senior management and relevant analytical resources (2) management of conflicts of interest (3) knowledge and experience of analysts.

should be relieved of specific supervisory duties outlined in Article 28 of the SECR to avoid regulatory duplication.

3) Pros

- A harmonised approach for TPVs would introduce a unified supervisory process across the Union. It has the potential to improve the standardisation and quality of both the STS criteria and the certification methods used by TPVs.
- Additionally, transitioning from one-time authorisation model to an on-going supervisory regime - calibrated to the associated risks– would strengthen regulatory effectiveness and lead to cost savings in STS supervision across the EU.
- The harmonised approach would enhance transparency for originators, sponsors, and investors regarding both compliance with the STS criteria and the TPVs certification methods.
- Additional resource demands which might be needed to undertake TPV supervision could be partially offset by synergies with the supervision of external reviewers under the EU Green Bond Standards (GBS) Regulation.

4) Cons

- The implementation of this framework would necessitate additional – albeit limited - resources for the ESAs to undertake TPV supervision.
- The legislative process to grant the ESAs the required supervisory powers would be time-intensive.
- The introduction of supervisory fees would be necessary, requiring careful calibration to ensure they remain proportionate to TPVs' turnover.
- Moreover, the current system, consisting of two operational TPVs, is up and running and, the certification process has been successfully established.