JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

17 May 2021

JC 2021 31

JOINT COMMITTEE REPORT ON THE IMPLEMENTATION AND FUNCTIONING OF THE SECURITISATION REGULATION (ARTICLE 44)

Final report

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Acronyms

ABCP	Asset-Backed Commercial Paper
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive
CMBS	Commercial Mortgage Backed Security
CPFF	Corporate Paper Funding Facility
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
HQLA	High Quality Liquid Assets
IORPs	Institution for Occupational Retirement Provision
ITS	Implementing Technical Standards
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
UCITS	Undertakings for Collective Investment in Transferable Securities

1. Executive Summary

1. This report aims to identify the status of the application of the Securitisation Regulation (Regulation (EU) 2017/2402[1]) (SECR) as well as some initial inconsistencies and challenges that occurred in the first years of implementation of the SECR and which may affect the overall efficiency and consistency of the new securitisation regime. Based on evidence collected from market participants and competent authorities, the report also identifies possible solutions, recommendations and key messages to address them. However, it should be noted that, due to the late adoption of the level 2 implementing measures, the report is based on a limited experience with regards to the status of application of the SECR.

2. In accordance with the mandate provided in Article 44 of the SECR, the analysis focuses on the implementation of the general requirements applicable to all securitisations, including the risk retention, due-diligence and transparency requirements as well as on the specific requirements related to simple, transparent and standardised (STS) securitisations. The report also includes further analysis to cover material risks and new vulnerabilities that may have materialised as well as other considerations on the functioning of the SECR. The outcome of this report may trigger some legislative adjustments in the SECR as part of the European Commission's review of the functioning of the SECR[2] and of the Capital Markets Union[3].

3. While the recommendations included in the report are meant to provide guidance to the European Commission in the context of the review of the level 1 text of the SECR, further actions could also be considered by the Joint Committee of the European Supervisory Authorities (JC of ESAs), the ESAs and the competent authorities to further enhance the supervision and the well-functioning of the existing requirements in the SECR.

4. The JC of ESAs have identified several issues in relation to the content of the level 1 text that could be considered by the European Commission:

   i. *Due-diligence and risk retention requirements:* No amendments of the level 1 text, beyond the recommendations provided in the JC of ESAs' Opinion on the jurisdictional scope[4], are deemed necessary at this stage as no further inadequacies of the existing framework have been noted. Further effort should however be done by the relevant competent authorities to improve the effectiveness of the supervision of these two requirements.

   ii. *Transparency requirements:* The European Commission should clarify the transparency requirements in the level 1 text in relation to:

[1] Link
[2] As per Article 46 of the SECR
[3] As per action 6 of the new action plan on Capital Market Union of the European Commission: "In order to scale-up the securitisation market in the EU, by Q4 2021 the Commission will carry out a comprehensive review of the EU securitisation framework for both simple transparent and standardised (STS) and non-STS securitisation." Link
[4] Link

- *The definition of private securitisations.* The current definition of private securitisations is considered too far reaching on its associated disclosure requirements. Considering the SECR objectives of access of information and investor protection, a more precise legal definition for private securitisations should be specified in the level 1 text to clearly identify those private securitisations that should comply with the disclosure requirements.

- *Reporting to a securitisation repository for private securitisations***.** The European Commission should specify in the level 1 text that, in the case of private securitisations that are required to comply with the disclosure requirements of the SECR, reporting entities should also make this information available by means of a securitisation repository. Given the trend in increasing issuances of private securitisations and from a data quality perspective, this approach will ensure that the data submission to a securitisation repository for private securitisations is complete, consistent and subject to validation rules. From a supervisory perspective, this will also facilitate the supervision of the information for competent authorities.

iii. *STS framework*: Despite the difficulties raised by some stakeholders regarding the complexity of the STS framework, the STS label has been adopted by market participants and it seems now to have become the norm to issue STS securitisation for eligible STS transactions. Some adjustments are however considered necessary to improve the overall efficiency of the STS framework:

- *STS criteria for non-ABCPs.* Most of the challenges raised by the stakeholders are due to limitations that were prescribed deliberately by the SECR or could be solved by providing further guidance regarding the interpretation of the STS criteria. Therefore, no amendments in the STS criteria for non-ABCPs are deemed appropriate at this stage. However, as more STS issuances are executed and the STS market reaches a stable pace, further analysis should be performed to determine whether the STS criteria could be simplified without reducing the quality of the standards.

- *STS criteria for ABCPs*. As expected, the existing requirements[5] have proven to be particularly difficult for sponsors to meet and the business need for an STS label at programme level has been rather limited. Therefore, in order to further facilitate the use of the STS label at programme level, the legislator may consider introducing some targeted adjustments to the STS criteria for ABCP programmes when the business case for an STS label at programme level becomes more evident.

- *Cooperation between competent authorities.* Currently, there is no procedure with respect to the cooperation between competent authorities in the case when an STS securitisation transaction involves entities in multiple jurisdictions. Given the challenges identified in this regard, the European Commission should consider publishing the RTS on cooperation between competent authorities and the ESAs without further delay.

[5] Articles 26(1) and 26(2) of the SECR

- *Third-party verifiers (TPVs)*. The European Commission is recommended to emphasise in the level 1 text that, whilst TPVs may verify the compliance of a securitisation with the STS criteria at issuance, securitising parties are under an ongoing obligation to check compliance with the STS requirements throughout the lifetime of the securitisation. This requirement will further highlight that securitising parties should not solely rely on a TPV's assessment at issuance and will ensure institutional investors can fulfil their due-diligence obligations under SECR.

- *Prudential treatment.* Finally, it should be noted that the well-functioning of the STS framework is not only dependent on the efficiency of the STS label *per se* but it also relates to i) the attractiveness of STS securitisations vis-à-vis other funding instruments and ii) the adequacy of its regulatory treatment. Against this background, the European Commission is invited to investigate whether the overall regulatory treatment of STS securitisations is commensurate with its risks profile in order to ensure that the STS framework remains safe, sound but also reasonably attractive for market participants.

5. The JC of ESAs has also identified several actions that could be considered, within its mandate or the ESAs' mandate, to further support the supervision and the well implementation of the SECR. In particular:

i. It is proposed that the JC of the ESAs:

- Issue guidelines on due-diligence to specify how proportionality could be achieved and how investors are expected to perform due-diligence at loan-level.
- Develop a common EU best practices supervisory guide on due-diligence for national supervisors.
- Investigate the relevance of (i) a common EU approach to the ongoing supervision of authorisation conditions for TPVs and (ii) potential alternatives to the current STS supervisory framework, in particular for those jurisdictions with limited STS securitisation issuances.

ii. The EBA should also consider the relevance of complementing its Guidelines on the STS criteria to cover new practical aspects arising from the implementation of the regulation and;

iii. ESMA should further explore how to improve supervisory convergence of the transparency requirements and promote data quality.

2. Introduction

2.1. Background

6. The new securitisation framework came into force in January 2018 and became applicable on 1 January 2019. This framework consists of two regulations:

   i. **The Securitisation Regulation (Reg. EU 2017/2402)** (SECR) which is a product regulation on securitisation that includes general rules on securitisation such as on risk retention, transparency, credit granting and due diligences for investors. It also incorporates the STS criteria for traditional securitisations. This regulation is the first ever product regulation in the EU, that has established a harmonised cross-sectoral regulatory framework which is applicable to all market participants such as banks, insurers, hedge funds, pension funds, and also to both the originators and investors.

   ii. **The Capital Requirements Regulation (Amendments to CRR Reg. EU 2017/2401)** on securitisation (Chapter 5 of the CRR) covers the prudential framework for credit institutions and investment firms including how they should calculate their capital requirements on their securitisation exposures.

7. The new framework has been a fundamental reform for the whole EU securitisation market:

   i. The SECR has introduced the concept of STS securitisations, setting out the detailed criteria that a traditional transaction must satisfy in order to label itself as STS. Amendments have been also made to the CRR to introduce a preferential capital regime for positions held in STS securitisations by credit institutions and investment firms.

   ii. Furthermore, with the introduction of the new quality label 'STS', new parties have entered into the market, notably, third party verifiers (TPVs) of STS (which check that originators comply with all the STS criteria and provide STS certificates) and securitisation repositories (which gather all the data and documentation on transactions to ensure that all the information is centralised, accessible and transparent for investors).

   iii. On the supervisory side things have changed as well. At national level, Member States have to designate competent authorities for the specific supervision of the STS criteria and for the authorisation of the TPVs[6]. Competent Authorities also have to cooperate closely with the European Supervisory Authorities (ESAs) and a specific Securitisation Committee under the umbrella of the Joint Committee (JC) of the ESAs has been created. In this regard, the ESAs and the Joint Committee Securitisation Committee (JCSC) have an important role in regulating and monitoring the market in order to ensure cross-sectoral consistency.

[6] As of the date of this report not all Member States have designated a competent authority for the specific supervision of the STS criteria and for the authorisation of the TPVs

8. With the coming into force of the new securitisation regulations (level 1 regulation), the ESAs received 28 regulatory mandates to deliver, including technical standards, guidelines and reports (otherwise known as level 2 or level 3 regulation), either separately or in cooperation with other ESAs. Certain technical standards have been crucial to ensure the well-functioning of the securitisation market and for a smooth implementation of STS. These include, the new and updated risk retention rules, the Guidelines on the interpretation of the STS criteria for ABCP and non-ABCP securitisations, the technical standards on the definition of homogeneity as well as the technical standards on the disclosure requirements and the registration and operation standards for securitisation repositories. All these key mandates have now been delivered (see Table 1).

Table 1: Level 2 and 3 securitisation regulations

Leading ESA	Type	Topic	Submission to COM / Finalisation	Publication OJ and enter into force
ESMA	RTS	STS notification - information	July 2018	September 2020
ESMA	ITS	STS notification - template	July 2018	September 2020
EBA	RTS	Homogeneity	July 2018	November 2019
EBA	RTS	Risk retention	July 2018	Pending
ESMA	RTS	Third party verification agents	July 2018	June 2019
ESMA	RTS	Disclosures - information	August 2018 (revised January 2019)	September 2020
ESMA	ITS	Disclosures - templates	August 2018 (revised January 2019)	September 2020
ESMA	RTS	Securitisation repository – operational standards	November 2018	September 2020
ESMA	RTS	Securitisation repository – registration	November 2018	September 2020
ESMA	RTS	Securitisation repository – format application	November 2018	September 2020
ESMA	Delegated Act	Securitisation repository fees	November 2018	December 2020
ESMA	RTS	Supervisory cooperation	January 2019	Pending
EBA	Guidelines	Non-ABCP STS criteria	May 2019	N/A
EBA	Guidelines	ABCP STS criteria	May 2019	N/A

2.2. ESAs' Joint Committee Mandate

9. Although the SECR has only been applicable since 1 January 2019, Article 44 of the SECR requires that the JC of ESAs delivers a first report on the implementation and the functioning of the SECR by January 2021. This report aims 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. The outcome of this report may trigger some legislative adjustments in the SECR

as part of the European Commission's review on the functioning of the SECR (as per Article 46 of the SECR) and of the Capital Markets Union[7].

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

    (a) the implementation of the STS requirements as provided for in Articles 18 to 27;

    (b) an assessment of the actions that competent authorities have undertaken on material risks and new vulnerabilities that may have materialised and on the actions of market participants to further standardise securitisation documentation;

    (c) 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 competent authorities to have a sufficient overview of the market to fulfil their respective mandates;

    (d) the requirements provided for in Article 6, including compliance therewith by market participants and the modalities for retaining risk pursuant to Article 6(3).

2.3. Content of the Report

11. The JCSC produced two surveys to collect evidence from stakeholders on the implementation and the functioning of the SECR:

    a) The first survey was addressed to competent authorities to seek feedback from a supervisory perspective on the functioning of the SECR. The survey included 29 questions covering the main areas within the scope of Article 44 of the SECR:
        - Implementation of the STS requirements;
        - Material risks;
        - Functioning of the due-diligence requirements and the transparency requirements;
        - Risk retention requirements;
        - Areas for further improvement in the SECR.

        21 responses were provided by competent authorities.

    b) The second survey was addressed to market participants to gather stakeholders' view on the opportunities and challenges attached to the implementation of the SECR. The survey included 16 questions covering four areas:
        - Use of the STS label;
        - Implementation of the STS requirements as provided for in Articles 18 to 27 of SECR;
        - Development of the STS securitisations market;

[7] Capital Market Union: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:590:FIN
Action 6 CMU "In order to scale-up the securitisation market in the EU, by Q4 2021 the Commission will carry out a comprehensive review of the EU securitisation framework for both simple transparent and standardised (STS) and non-STS securitisation."

- Liquidity of STS securitisations.

31 responses were provided from a wide range of stakeholders (see Table 2).

Table 2. Participation to the market survey

Originator	13
Investor	7
Sponsor	5
All roles	1
Other including (trade associations, Third-party verifiers and Law firms):	5
Total	**31**

12. 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 the requirements listed therein. It also identifies possible solutions and recommendations to address them. While some of these recommendations are meant to provide guidance to the European Commission in the context of the review of the level 1 text of the SECR, others should be considered by competent authorities and the ESAs as a way to further enhance the implementation and functioning of the SECR within the current framework.

13. The report includes 6 chapters which follows the content of the mandate given to the JC of ESAs under Article 44 of the SECR. Chapters 3-5 cover the general requirements applicable to all securitisations while chapter 6 focuses on the specific requirements attached to STS securitisations. The report also includes two further chapters to cover material risk and new vulnerabilities (as per point b of Article 44 of the SECR) and other considerations on the functioning of the SECR.

- Chapter 3: The functioning of the due-diligence requirements;
- Chapter 4: The risk retention requirements;
- Chapter 5: The functioning of the transparency requirements;
- Chapter 6: The framework for STS securitisations;
- Chapter 7: Material risks;
- Chapter 8: Other considerations on the functioning of the Securitisation Regulation.

14. Accordingly, it should be noted that the present report does not directly investigate subject matters related to the prudential treatment of securitisations prescribed by the CRR and Solvency 2, as these fall outside the mandate provided for in Article 44 of the SECR. With regard to CRR, this analysis will be part of a separate work that will be performed by the European Commission pursuant to Article 519a of the CRR.

3 Due-diligence requirements

3.1 Due-diligence requirements as per Article 5 of the SECR

15. Article 5 of the SECR sets out detailed due diligence requirements that institutional investors must meet before and whilst holding an exposure to a securitisation. These requirements are meant to ensure that investors reach a well-informed judgment on the value and the risks associated with the securitisation exposures, without heavy reliance on external credit ratings.

16. Article 5 of the SECR replaces the provisions on due diligence that were previously prescribed in different sectoral legislations including the Alternative Investment Funds Management Directive (AIFMD), the Solvency II Directive and the CRR. The current framework has been largely built on these rules. However, due diligence requirements are now harmonised across all different types of investors including banks, investment firms, insurers, AIFMs, UCITS management companies and institutions for occupational retirement provision (IORPs).

17. The due diligence requirements laid down in Article 5 of the SECR can be broken down into two main categories:

    i. Prior to investing in a securitisation position, the investor must verify the compliance with credit granting standards, EU risk retention requirements and, where applicable, the transparency requirements provided in Article 7 of the SECR. The investor should also carry out a due diligence assessment that considers risk characteristics, material structural features and, if applicable, compliance with the criteria for STS securitisations.

    ii. After making an investment in a securitisation transaction, the investor should establish written procedures in order to monitor on an ongoing basis the performance of the securitisation position and of the underlying exposures. It should regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures. It should also have in place an appropriate governance framework that identifies the risks associated with securitisation investments and ensures that senior management are informed on how these risks are managed.

18. Compared with previous rules, Article 5 of the SECR has also introduced several additional requirements with which investors had to comply with since 1 January 2019. The main new features involved:

    i. Checking other parties' obligations with regard to disclosures (Articles 5(1)(d) of the SECR) and STS notifications (Article 5(3)(c) of the SECR);

    ii. Introducing a differentiated due-diligence treatment for investments in ABCP conduits with the focus on the sponsor of the conduit (Articles 5(2), 5(3) last paragraph, 5(4)(b)(c)(f) of the SECR); and

    iii. Allowing the institutional investor to delegate to another third-party the fulfilment of its due-diligence requirements (only where that third party is itself an institutional investor and

makes investment decisions on behalf of the principal institutional investor) (Article 5(5) of the SECR).

3.2 Implementation of Article 5 of SECR

19. The main concerns raised by the implementation of Article 5 of the SECR relate to the jurisdictional scope of application of the due diligence requirements and, in a lesser extent, to the lack of guidance with regards to the implementation of a 'proportionate' due diligence and of due diligence obligations at loan level.

a) Jurisdictional scope of application of due diligence requirements[8]

20. Some provisions in Article 5 of the SECR are a source of significant legal uncertainty as to whether they apply to transaction parties located outside the EU. In particular, there is an important ambiguity on the interpretation of the provisions related to the type of institutional investors in the scope of the SECR and to the verification of compliance with the disclosure obligations:

    i. The SECR is imprecise on the application of the SECR to non-EU AIFMs. The uncertainties arise from the broad definition of "institutional investor" in Article 2(12)(d) of the SECR which i) is unclear as to whether due-diligence requirements applies to the whole non-EU AIFM even when the marketing activities in the EU are very limited and ii) does not specify how these requirements could be supervised and enforced against non-EU AIFMs.

    ii. The SECR is also ambiguous as to whether the obligation to verify compliance with the disclosure and reporting requirements should apply when the relevant parties are located outside the EU. Indeed, Article 5(1)(e) of the SECR requires institutional investors to verify that "the originator, sponsor or SSPE has, where applicable, made available the information required by Article 7". However, the words "where applicable" are imprecise as to whether it should be understood as a limit to the scope of the Article 5(1)(e)[9] or as stating that not all the elements of Article 7 are applicable although verification of compliance with some part of Article 7 is required.

21. The ESAs' Opinion to the Commission addresses the jurisdictional scope of application of a securitisation transaction with a third country party on either the "sell side" (i.e. the securitisation's originator, original lender, sponsor and special purpose entity issuer (the "SSPE")) and/or the "buy side" (i.e. the institutional investors). As highlighted in the ESAs' Opinion, the uncertainty on the jurisdictional scope goes beyond the sole level 1 provisions on due-diligence and is detrimental to the overall efficiency of the securitisation framework.

[8] For further details can be found in the ESAs' Opinion to the Commission on the scope of application of the securitisation regulation (Link)

[9] i.e. verification of compliance with the disclosure requirements is not applicable when the originator, sponsor or SSPE to parties is not located in the EU, hence not directly subject to the EU disclosure requirements.

b) Adequate and proportionate diligence

22. Several provisions of Article 5 of the SECR refer to the idea that the diligence obligations should be adequate and can be applied on a "proportionate basis", however the text is silent on how adequacy and proportionality could be effectively achieved. For example:

    i. According to Article 5(1)(e) of the SECR, prior to investing in a securitisation position, an institutional investor needs to verify that the relevant entities make available the information required under the disclosure requirements. However, the provision does not specify the extent of institutional reliance investors may place on this information and is also silent as to whether the investor has to go beyond checking these disclosures.

    ii. Similarly, Article 5(3)(c) of the SECR states that investors may place "appropriate reliance" on the STS notification and related information disclosed by the originator "without solely or mechanistically relying on that notification or information". However, the legal text does not stipulate what should be regarded to be appropriate reliance and it does not provide guidance on how much additional analysis and data might be needed. This issue is particularly relevant for certain unregulated investors which do not have a prudential benefit on the STS exposures they invest in.

    iii. Pursuant to Article 5(4)(a) of the SECR, institutional investors must also establish written procedures that are 'proportionate' to the risk profile of the securitisation in order to monitor, on an ongoing basis, compliance with the due-diligence requirements. However, the legal text does not stipulate what should be regarded to be proportionate and, in particular, it does not specify the level of risk above (/below) which written procedures should be strengthened (/could be relaxed).

23. 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 fulfil especially for small institutional investors and/or new investors in the securitisation market.

c) Due-diligence assessments at loan level

24. Article 5 of the SECR does not explicitly require that the data analysis (that the investor should perform as part of its due-diligence assessment[10]) be made at loan level. Such a requirement could be implicitly deducted from the fact that the investors are requested to access the information disclosed by the originator, sponsor or SPPE according to Article 7 of the SECR, which includes templates of loan-level data on the underlying exposures. However, the level 1 text is unclear as to whether the due-diligence data assessment should also be done at loan level if:

[10] As part of their due diligence obligations, investors are required i) to perform, prior to holding a securitisation position, an assessment of the risks involved in the securitisation exposure and ii) to establish written procedures to monitor, on an ongoing basis the performance of the securitisation position and of the underlying exposures

i. the investor uses additional data to complement the data collected according to Article 7 of the SECR;

ii. the originator, sponsor or SSPE is not located in the EU, hence is not directly subject to the requirements laid out in Article 7 of the SECR;

iii. the institutional investor can be entitled to rely on portfolio level data as part of its ongoing monitoring of the performance of the securitisation position, in the case where the securitisation exposures is not deemed risky as laid down in Article 5(4)(a) of the SECR.

25. In addition, there is little guidance in the legal text on how to perform due-diligence taking into account loan-level information. For example, Article 5 of the SECR is silent on the type of metrics and methodology that can be used by institutional investors to assess the risk profile of the securitisation exposures prior to holding them pursuant to Article 5(3)(c) of the SECR.

26. Due-diligence at loan-level is essential to ensure that the investors have an accurate understanding of the value and of the risk associated with the securitisation exposures. Current uncertainties and lack of guidance concerning the implementation of the due-diligence requirement at loan-level may lead to divergent due-diligence practices across EU investors. They may also create entrance barriers to new investors in the securitisation market due to the perceived complexity for satisfying the due-diligence requirements.

3.3 Supervision of the due-diligence requirements

27. Competent authorities are responsible for supervising compliance of investors with due-diligence requirements (Article 29 (1) of the SECR). In particular:

i. As per point (e) of Article 5(4) of the SECR, the institutional investor should be able to demonstrate to its competent authority, if requested, that it has comprehensive understanding of the securitisation position and its underlying exposures, and that it has implemented written procedures for the risk management of the securitisation position.

ii. As per Article 5(5) of the SECR, Member States shall ensure that, in the case when the institutional investor has delegated to a managing party the fulfilment of its due-diligence requirements, any failure to comply with due-diligence requirements should trigger sanctions to the managing party and not to the principal investor in the securitisation position.

28. However, according to the survey circulated to competent authorities (see paragraph 11), the supervision of the new due-diligence requirements has been limited so far due to:

i. The recent implementation of the regulation;

ii. The limited number of securitisation issuances in some jurisdictions;

iii. The absence of specific supervisory framework/guidance to assess the new due-diligence requirements for securitisations (i.e. only a few competent authorities mentioned that their

internal book of supervision has been amended to account for the new due-diligence requirements in securitisation);

iv. The lack of resources to undertake supervisory reviews (i.e. most of the resources of the competent authorities on securitisations have been mostly focusing on contributing to the recent development of the regulatory standards on securitisation).

29. Therefore, there is little evidence on how due-diligence requirements have been implemented so far, and there are no indications that the due-diligence requirements prescribed by Article 5 of the SECR, are not fully adequate to protect EU investors in securitisation exposures. There is also no identified case of incompliance with the due-diligence requirements. However, it could be expected that further supervisory actions on due-diligence will be undertaken in the upcoming years when i) more investors are expected to enter the securitisation market and ii) more securitisation supervisory capacity will be gained by competent authorities.

3.4 Recommendations and key messages – Due-diligence

30. In light of the review of the functioning and of the implementation of the due-diligence requirements prescribed by Article 5 of the SECR, the JC of ESAs is of the view that the following recommendations and key messages should be considered:

- The European Commission should specify in the level 1 text or by providing interpretative guidance, the jurisdictional scope of application of the SECR and of the related due-diligence requirements. These specifications should follow the proposals made by the JC of the ESAs in its Opinion on the jurisdictional scope of application of the SECR.

- No further changes in the level 1 text are deemed necessary at this stage as no inadequacies of the new regulatory framework on due diligence have been identified so far. However, there are several areas where regulatory guidance to market participants would be helpful. Guidance would be especially useful i) to specify how adequacy and proportionality could be achieved in the context of due-diligence in particular for STS transactions and ii) to stipulate in greater details how investors are expected to perform due-diligence at loan-level. Such guidance should be provided by the JC of ESAs through technical standards or guidelines.

- Further effort should be done by the relevant competent authorities to improve the effectiveness of the supervision of the due-diligence requirements. As part of the mandate of the JC laid down in Article 36(2) of the SECR, competent authorities should be further invited to share experiences and best practices concerning the supervision of the due-diligence requirements. In addition, the competent authorities through the JC of ESAs should consider developing a common EU best practices supervisory guide on due-diligence for national supervisors. Such a guide could use as a starting point the

recommendations on best practices highlighted in the EBA report on securitisation, risk retention and disclosure published in 2016[11] .

[11] Link

4 Risk retention requirements

4.1 Risk retention requirements as per Article 6 of SECR

31. Risk retention obligations require the originator, sponsor or the original lenders to retain on an ongoing basis a material net economic interest in the securitisation. The purpose of this requirement is to ensure a proper alignment of interests between those parties and the institutional investor in the transaction, thus mitigating the risk of moral hazard in securitisations[12].

32. Risk retention requirements were first introduced in the EU in the Capital Requirements Directive (CRD) II to securitisations issued after 31 December 2011. They were then refined in the CRR under Articles 405 and 406 and further specified by the EBA in the RTS on the retention of net economic interest published in 2014[13].

33. The risk retention rules prescribed by Article 6 of the SECR constitute an update of the requirements, which were already in place. Most of the provisions have stayed the same such as the minimum retention level of 5% and the modalities of retention, including the five options to achieve risk retention, which are listed in Article 6(3) of the SECR. However, compared to the previous framework, the new rules:

    i. Have become cross-sectoral;

    ii. Are directly applicable to the originator (which is called the direct approach) and do not solely rely on an indirect approach whereby the investor needs to do due-diligence to ensure that the originator keeps at least 5% of interest in the transaction (Article 6(1) of the SECR);

    iii. Have introduced a new provision, 'the so called sole purpose test', whereby an entity should not be permitted to be an originator for purposes of the risk retention requirement if it has been established or operates for the sole purpose of securitising exposures[14] (Article 6(1) of the SECR);

[12] The 2007 financial crisis showed that the securitisation markets were affected by is called 'misaligned incentives' or 'conflicts of interest'. These terms refer to situations where certain participants in the securitisation have incentives to engage in behaviour which, while pursuing their own interests, may be detrimental to other participants in the securitisation transaction.

[13] 2014 EBA final draft RTS on retention of net economic interest and other requirements relating to exposures to transferred credit risk (Articles 405, 406, 408 and 409) of Regulation (EU) No 575/2013 (Link)

[14] This follows a recommendation by the EBA in its reports of December 2014 (relating to the CRR) which identified a "loophole" in the definition of "originator", whereby an originator SSPE could be established solely for the purpose of meeting the risk retention requirements, and could purchase a third party's exposures and securitise them within one day, which while it met the legal definition of "originator" would not be within the spirit of the risk retention requirements.

iv. Have prohibited adverse selection of assets to prevent originators from taking advantage of the fact that they could hold more information than investors on the assets (Article 6(2) of the SECR)[15]; and

v. Are requiring the ESRB to monitor the securitisation market in order to prevent systemic risks and, if needed, to provide warnings and issue recommendations for remedial actions, including in relation to modifying the risk retention levels (Article 31 of the SECR).

34. In accordance with Article 6(7) the SECR, the EBA has produced final draft RTS[16], which specified in greater detail the risk retention requirements including the modalities of retaining risk, the measurement of the level of retention, the prohibition of hedging or selling the retained interest and the conditions for retention on a consolidated basis. The adoption of these RTS by the European Commission is still pending.

4.2 Implementation of risk retention requirements

35. The main concerns raised by the implementation of Article 6 of the SECR relate to the jurisdictional scope of application of the risk retention requirements and the legal uncertainties caused by the delays in the adoption of the final RTS on risk retention.

a) Jurisdictional scope of application

36. Article 6 of the SECR does not specify the jurisdictional scope of the 'direct' obligation of originators, sponsors or original lenders to comply with the risk retention requirements. In particular, it does not stipulate whether the risk retention requirements should apply to parties established in the EU only or whether the retainer could also be located in a third country.

37. In line with the ESAs' Opinion to the Commission on the jurisdictional scope of application of the Securitisation Regulation, where one or more of the securitisation's originator, original lender or sponsor are located in a third country, the party or parties among them located in the EU should be the sole responsible for retaining the net economic interest in the transaction.

38. As highlighted in the ESAs' Opinion the lack of clarity in the level 1 is currently detrimental to the overall efficiency of the securitisation framework and may hamper the well-functioning of the EU securitisation market (see ESAs' Opinion to the Commission on the jurisdictional scope of application of the Securitisation Regulation)[17].

[15] Securitised assets should not be chosen such that they perform significantly worse than "comparable assets held on the balance sheet of the originator" over the life of the transaction (to a maximum of 4 years). Sanctions apply if they are and this is the intention of the originator

[16] 2018, EBA draft RTS specifying the requirements for originators, sponsors and original lenders relating to risk retention pursuant to Article 6(7) of Regulation (EU) 2017/2402 (Link)

[17] Link

b) Pending adoption of the RTS on risk retention

39. The final draft RTS on risk retention were published by the EBA in July 2018 and were expected to have been adopted by now. However, their approval by the European Commission is still awaited. The delays in the adoption of the RTS has led to some market concerns as to whether the new risk retention rules are fully operational.

40. While the transitional provisions of the SECR specify that the RTS applicable to the CRR should be followed until the new RTS on risk retention comes into force, these pose several challenges:

    i. There are new provisions, such as the definition of a sole purpose originator and the adverse selection of assets requirements that were not addressed in the RTS made under the CRR. As a result, the uncertainty on the final content of the RTS affects market participants' overall understanding of how the new risk retention rules fully work.

    ii. The risk retention arrangements are meant to be put in place once and for the life of the transaction. Therefore, in the case the final RTS is more stringent, it is possible that the transactions issued since 1 January 2019 would need to be unwound following the adoption of the standards. Such risk may lead to market participants postponing the issuances of new transactions until the final RTS come into force.

41. However, according to the data collected through the market survey, it seems that the information provided in the level 1 text alone have been sufficient for plain vanilla securitisations to comply with the new risk retention requirements with a relatively high level of confidence and that only the more complex securitisation transactions may have been affected by the delays in the adoption of the RTS. As mentioned in paragraph 33, this is due to fact that the new requirements on risk retention have preserved, in large part, the substance of the previous framework and that many of the new rules such as the prohibition on the sole purpose originator retaining, were already followed by the market through existing informal guidance.

42. Finally, it should also be noted that the EU Capital Markets Recovery Package, which entered into force in April 2021, has introduced changes to the risk retention requirements set out in Article 6 of the SECR by i) introducing a net regime for NPL securitisations and ii) considering the impact of any fees that may be used to reduce the effective material net economic interest. Accordingly, the EBA has been provided with a renewed mandate to deliver, six months after the entry into force of that regulation, updated RTS on risk retention. The latter will specify the net regime for NPL securitisations which may reduce the effective material net economic interest if certain fees are present and, therefore, may introduce more stringent risk retention rules.

4.3 Supervision of risk retention

43. Competent authorities are responsible for supervising compliance of originators, SSPEs, and original lenders with the risk retention requirements (Article 29(2) of the SECR). In particular, they shall review the processes and mechanisms to correctly measure and retain the material net economic interest on an ongoing basis (Article 29(2) of the SECR). Member States shall also lay down rules

establishing appropriate administrative sanctions, in the case of negligence or intentional infringement and remedial measures, if an originator, sponsor or original lender has failed to meet the risk retention requirements (Article 32(1) of the SECR).

44. According to the market survey circulated to competent authorities, the supervision of the new risk retention requirements has been limited so far due for the same reasons as those mentioned in the supervision of due-diligence requirements (see paragraph 28) and the data collected on this occasion are very scarce. The outcome of the survey to competent authorities however shows that there is a large variety of risk retention modalities used in EU securitisations but in most cases, risk retention is achieved through the retention of the first loss tranches as specified in Article 6(3)(d) and the retainer is often the originator. No cases of non-compliance with the risk retention requirements and adverse selection of assets have been identified so far.

45. Therefore, and similar to the due-diligence requirements, there are no indications that the requirements prescribed by Article 6 of the SECR are not fully adequate to ensure a proper alignment of interest between the transaction parties and to tackle moral hazard risk. Further analysis will however be made available by the ESRB as part of its macro-prudential report on securitisation which should be delivered for the first time in 2021 according to Article 31 of SECR.

4.4 Recommendations and key messages – Risk retention

46. In light of the review of the functioning and of the implementation of the risk retention requirements prescribed by Article 6 of the SECR, the JC of ESAs is of the view that that the following recommendations and key messages should be considered:

- The European Commission should specify in the level 1 text or by providing interpretative guidance, the scope of application of the risk retention requirements. These specifications should follow the proposals made by the JC of ESAs in its Opinion on the jurisdictional scope of application of the SECR.

- No further changes in the level 1 text are deemed necessary as no inadequacies of the new regulatory framework on risk retention have been identified so far. It is rather essential to avoid unnecessary amendments to the new requirements to ensure maximum legal stability to market participants, but also to facilitate national supervisors getting acquainted with the new rules in order to develop and implement sound and adequate securitisation supervisory processes.

- Delays in the adoption of the new RTS on risk retention have affected market participants' confidence in the effectivity of the new risk retention regime. Although risk retention is complex and important to get right, it is also pressing that the final standards come into force. As part of the recent adoption of the EU Capital Market Recovery Package, the EBA has been provided with a renewed mandate to deliver, six months after the entry into force of that regulation, updated RTS on risk retention (that will replace the final draft RTS published in 2018). Against this background, it is essential that the Commission closely

follows the development of these updated RTS to facilitate and accelerate the final adoption process.

- Further efforts should be done by the relevant competent authorities to improve the effectiveness of the supervision of the risk retention requirements. As part of the mandate of the JC laid down in Article 36(2) of the SECR, competent authorities should be further invited to share experiences and best practices concerning the supervision of the risk retention requirements and to regularly report on the measures taken to ensure compliance with the risk retention requirements.

5 Transparency requirements

5.1 Background to the transparency requirements

47. Article 7 of the SECR requires that the originator, sponsor and SSPE of a securitisation make available the information outlined in Article 7(1) of the SECR to, among others, investors, competent authorities referred to in Article 29 of the SECR and upon request to potential investors. In accordance with Article 7(2) of the SECR the originator, sponsor and SSPE must designate amongst themselves a "reporting entity" to fulfil the transparency requirements.

48. The RTS specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE (the disclosure RTS) and the ITS with regards to the format and standardised templates for making available the information and details of a securitisation by the originator, sponsor and SSPE (the disclosure ITS) were published in the official journal of the EU on 3 September 2020 and entered into force on 23 September 2020. As of 23 September 2020, pursuant to Article 43(8) of the SECR, the transitional provision allowing for the use of the CRA 3 reporting templates ceased to apply.

49. For public securitisations, in accordance with Article 7(2) of the SECR, reporting entities must make available the information for a securitisation transaction to a securitisation repository. Until at least one securitisation repository has been registered by ESMA, information that should be made available by reporting entities to securitisation repositories must instead be made available via a website that meets certain conditions, as outlined in the fourth sub-paragraph of Article 7(2) of the SECR. Securitisation repositories are supervised by ESMA and required to undertake data quality, consistency, and completeness checks on reported information. They also act as efficient intermediaries between user institutions and reporting entities. Hence securitisation repositories are a centralised and efficient tool to oversee compliance with Articles 7 for the market.

50. The SECR mandated ESMA to develop draft RTS to specify the information that the originator, sponsor and SSPE should provide in order to comply with their obligations, which apply to both public and private securitisation. However, whereas the SECR information related to a public securitisation to be made available by means of a securitisation repository, the SECR does not specify how (i.e. the operational manner in which) reporting should be performed for private securitisations. Furthermore, ESMA was not mandated to specify this aspect. Absent any instructions or guidance provided by competent authorities, reporting entities are thus free to make use of any arrangements that meet the conditions of the Regulation[18]. For the avoidance of doubt, the Regulation does not prevent the reporting entity of a private securitisation to solicit the services of securitisation repositories to fulfil their disclosure requirements. From a cost-benefit analysis, this might be the best way forward and would promote single and uniform access of (potential) investors and competent authorities.

[18] See ESMA's Q5.1.4 of Q&A document on Securitisation Topics available at: esma33-128-563_questions_and_answers_on_securitisation.pdf

51. This section of the report focusses on the functioning and supervision of the transparency requirements for public and private securitisations, as well as the challenges associated with the transparency requirements and possible ways to address them.

5.2 Supervision of the transparency requirements (for both public and private securitisations)

52. In accordance with Article 29 of the SECR, competent authorities are responsible for the supervision of the compliance of the transparency requirements.

53. The results of the survey to competent authorities indicates that the supervision of the transparency requirements is performed in different ways across competent authorities and different supervisory tools have been developed, ranging from interviews with reporting entities to manual and automated compliance checks.

54. It is, however, important to stress that survey responses were sent to ESMA before or just after the entry into force of the reporting templates developed by ESMA. During this period, the interim so-called CRA 3 reporting templates were applicable pursuant to Article 43(8) of the SECR and effective supervision of compliance with these templates was challenging due to persistent uncertainty about the duration of the applicability of the interim templates. Both reporting entities and supervisory authorities expected the interim period to be very short. However, the disclosure ITS and RTS were ultimately only published more than 20 months after the entry into force of the SECR and delayed by more than two years after ESMA submitted the draft technical standards on disclosure[19] to the European Commission. Furthermore, the delay was unaccompanied by any public communication about the reasons for, or expected length of, the delay in adoption. This uncertainty created challenges for the planning, sequencing and implementation of the IT investments necessary to carry out reporting as well as supervision of the reported data.

55. For the above reasons, experience to date on supervision of this requirement are likely not very representative of the functioning of the regime going forward.

5.3 Challenges related to the transparency requirements

56. The results of the survey to competent authorities indicate that competent authorities have received several queries from originators, sponsors and SSPEs on compliance with the transparency requirements. Furthermore, ESMA has published over 170 Q&As on how the ESMA reporting templates should be completed, highlighting the complexity of the transparency regime.

57. The results of the market survey suggest a concern among reporting entities about the quantity and complexity of data to report, especially among less sophisticated issuers. However, as no securitisation repository is yet registered with ESMA, for public securitisations there is not yet a

[19] Final Report: Technical standards on disclosure requirements under the Securitisation Regulation https://www.esma.europa.eu/sites/default/files/library/esma33-128-474_final_report_securitisation_disclosure_technical_standards.pdf

central point of information and so it is still too early to draw conclusions about the fitness of the disclosure templates.

58. One important challenge to the supervision of Article 7 of the SECR is the necessary coordination among the numerous competent authorities involved. The fragmentation of supervisory responsibility also creates challenges around the building of critical centres of expertise and experience. In order to ensure successful implementation of the new transparency regime, it is important that these challenges are taken into account in the way ESMA and national supervisors of reporting entities coordinate their work.

5.4 Recommendations and key messages – Transparency requirements

59. In light of the review of the functioning and the implementation of the transparency requirements, the JC of the ESAs is of the view that the following recommendations and key messages should be considered:

Enhance convergence and coordination

- Given the different approaches to supervision across competent authorities and the lack of experience with the supervision of the transparency requirements in some jurisdictions it is recommended to ensure supervisory convergence and coordination amongst competent authorities. Following the registration and commencement of supervision of securitisation repositories by ESMA, ESMA will also be able to cooperate with the relevant competent authorities on promoting supervisory convergence and data quality.

- One such way of enhancing supervisory convergence and coordination is via a forum, subgroup or a data quality task force established by ESMA.

Monitor the performance of the new disclosure templates to ensure they convey the necessary information to be able to perform due-diligence

- While the new reporting templates build on pre-existing reporting regimes, they do introduce several new elements which reporting entities will need to adapt to in terms of information frequency and format. At this stage, however, it is still too early to begin evaluating their performance. Since this reporting regime requires important IT investments it is important to allow reporting entities, users and supervisors to adapt to the templates before making radical changes. However, with the right amount of experience, it is important to continue to re-calibrate the templates to ensure they respond to the needs of investors and supervisors. For this reason, ESMA has already started recording elements of potential improvements. For example, it may be useful to develop a new reporting template specifically for trade receivables which have several properties distinguishing them from other underlying exposure types.

5.5 Private securitisations

60. Private securitisations are those securitisations referred to in the third subparagraph of Article 7(2) of the SECR, namely a securitisation where no prospectus has to be drawn up in compliance with Directive 2003/71/EC.

61. Private and/or bilateral transactions represent an important segment of both the STS and non-STS EU market. They may provide working capital facilities to business enterprise (e.g. by buying short term trade receivables) and financing those investments by issuing commercial paper, likewise, ABCP programmes are used to finance short term assets and revolving pools of assets where the aggregate outstanding amount changes over time, as the amount of funding can easily be adjusted to accommodate changes in the underlying assets or the originators' funding needs. As regards the private STS non-ABCP securitisations notified to ESMA in 2020 (24), most of the assets used as collateral were auto loans and leases and to the lesser extent, consumer loans and residential mortgages.

62. The JC does not have the number or volumes of all private transactions in the securitisation market. However, as outlined in Section 6.1.1 STS Issuances of this report, ESMA has identified a rise in the numbers of private STS securitisations since March 2020.

63. The next section of the report focuses on some of the challenges identified with respect to the functioning and supervision of the transparency requirements for private securitisations and possible ways to address them.

5.5.1 Challenges related to the transparency requirements for private securitisations

64. Article 7 of the SECR defines private securitisations as those where no obligation arises under the EU Prospectus Regulation to publish a prospectus. ABCP transactions, ABCP programmes and more generally common private financing arrangements are therefore characterised as private. Relevant transactions may be structured as underlying transactions in respect of ABCP conduits (i.e. underlying asset purchases and other transactions funded by ABCP programmes, funded directly or on originating bank's balance sheets or as other standalone arrangements).

65. Some market respondents pointed out that the current definition for private securitisations and the associated transparency requirements seem to be far-reaching The definition of private securitisations by the simple absence of a prospectus covers a broad range of situations, some of them might not need to pursue the goals of access to the information and investor protection and consequently might not need to be subject to Article 7 of the SECR. Certain subcategories of private securitisations could be identified distinguishing at least between:

    a. private and bilateral securitisations. This situation refers to cases where investors are typically only one or more institutional investors/sophisticated professionals.

    b. private and supported transactions. These refer to transactions for those which the private securitisation is supported by the sponsoring institution.

c. private and intra-group transactions. These relate to situations for which the only investor is the originator or sponsor, or a related or consolidated entity coming from the same group and consequently, concerns with respect to investor access to all necessary information does not seem to arise

66. On this basis, some respondents raised the question whether a narrower definition for private securitisations should be provided to limit the scope of the reporting requirements by for example, including an exemption of the transparency requirements under Article 7(1) and (2) of the SECR to some private securitisation transactions in particular, considering the SECR objectives of access of information and investor protection (i.e. to ensure that investors have the ability to make an informed assessment of the creditworthiness of the relevant transaction) . For example, private and intragroup transactions where the risk remains within the group.

67. However, the exclusion of some private securitisations from the disclosure requirements should be carefully considered and the risk of regulatory arbitrage should be avoided as much as possible, particularly if it would undermine the possibility for a private securitisation to become a public transaction accessible to a broader range of investors. Furthermore, the exclusion of the transparency requirements for some private securitisations can result in a dual STS framework, with securitisations that would still be governed by the disclosure requirements whereas others would be exempted, which cannot be done under the current STS requirements. To avoid such an automatic unavailability to reach the STS label, consideration should also be given to introduce flexibility with a voluntary opt-in approach to comply with the transparency requirements and be able to reach the STS status.

68. On the other hand, from the competent authorities' perspective, the results of the survey indicates that, in some cases, it is difficult for supervisory authorities to become aware of the issuance of private securitisations if they are not notified and even when competent authorities are notified, it is difficult to access the information relating to a private securitisation, since it is not made available via a securitisation repository. Securitisation data which is reported via a securitisation repository is subject to a comprehensive set of validation checks and automated monitoring set out in the ESMA disclosure and Securitisation Repository technical standards. This ensures that compliance with a number of basic requirements related to consistency and completeness of the data is verified automatically, consistently and immediately. Data submissions which do not comply with these basic requirements are rejected automatically and information about the incomplete or inconsistent elements is provided immediately to the reporting entity. Finally, monitoring of several performance indicators such as timeliness of reports as well as information about the use of "no-data options" is computed automatically. Without the securitisation repository as an intermediary, the competent authority, investors and other users of private securitisation data cannot benefit from this basic level of data quality assurance and monitoring. In practice this leaves the competent authority in a very difficult dilemma:

i. **The competent authority could replicate the IT capabilities of a securitisation repository to be able to process and undertake all the necessary data quality checks automatically**. This would be extremely inefficient and expensive given the number of competent authorities involved. It would also most certainly result in inconsistent application of checks across competent authorities. Finally, competent authorities which decide to pool

resources and delegate the creation of a single public portal (i.e. a public securitisation repository) to a third party would in effect simply create an entity which duplicates the work already carried out by the securitisation repositories supervised by ESMA. To date, no competent authority has indicated an intention to pursue this option.

ii. **The competent authority could undertake no data quality checks or a limited set of checks**. This could have a negative impact on data quality for private securitisations. It furthermore creates important legal uncertainty for reporting entities of private securitisations as they do not get an immediate confirmation that their report meets the minimum requirements of completeness and consistency which is made available to the reporting entities by securitisation repositories. Instead they might risk finding that their report was not compliant with the requirements long after submission as a part of a random check by a competent authority or indeed following data validation undertaken by an investor.

69. While the disclosure RTS/ITS only entered into force on 23 September 2020, for some private securitisations that were already reporting using the ESMA reporting templates, there is already evidence indicating that in some cases competent authorities were not informed and in other cases, the templates were not correctly reported. Furthermore, there is uncertainty in the market on the reporting requirements for private securitisations, in particular when there are different competent authorities to whom the information under Article 7(1) of the SECR should be made available. Given the increase in issuance of private securitisations, this situation could become more problematic in the future.

70. Finally, the application of the reporting requirements under Article 7(2) of the SECR to private securitisations can also be justified from an investor protection standpoint, especially, as explained above, in the case of those private securitisations with (potential) third-party investors (for example, "private and bilateral securitisations" where investors are typically only one or more institutional investors/sophisticated professionals or "private and supported securitisations"). Therefore, such sub segments of private securitisations may also have the necessary characteristics to qualify as a transferable security for which the investor protection concern may be considered, unlike other private securitisations (for example private and intra-group transactions) for which the investor protection issue does not arise in the same terms.

5.5.2 Recommendations and key messages – Private securitisations

71. In light of the review of the functioning and the implementation of the transparency requirements, the JC of ESAs is of the view that the following recommendations and key messages should be considered:

Definition of private securitisations

- The current definition for private securitisations might be considered far too reaching on its associated disclosure requirements as it covers varied situations from one private securitisation to another. It is therefore suggested that the European Commission explores a more precise definition for private securitisations as those securitisation where no

obligation arises under the EU Prospectus Regulation to publish a prospectus but also considering the SECR objectives of access of information and investor protection to ensure that investors have the ability to make an informed assessment of the creditworthiness of the relevant transaction.

- A more precise definition in the level 1 text would allow for a better identification of those private securitisations for which compliance with the disclosure requirements under Article 7(1) – disclosure templates – and 7(2) – reporting to an SR – of the SECR would apply. For example, private securitisations not involving third party investors could be exempted from the obligation to comply with the disclosure templates as well as the report to a securitisation repository.

- However, careful consideration is needed to further assess how these exemptions could promote regulatory arbitrage and the unavailability to reach the STS label.

Reporting to a securitisation repository for private securitisations

- Given the trend in increasing issuance of private securitisations and to ensure consistent reporting requirements across all securitisations it is recommended that clarification should be provided by the European Commission in the level 1 text that reporting entities should also make the information under Article 7(1) of the SECR available by means of a securitisation repository.

- Making the information for private securitisations available by means of a securitisation repository will allow competent authorities to be able to access and query the information in an easier and more structured way. Furthermore, submission of the information to a securitisation repository concentrates the information via a small number of sources i.e. only within ESMA registered securitisation repositories, rather than via multiple channels and forms. This will help facilitate the supervision of the information for competent authorities.

- It will also ensure that completeness and consistency checks are carried out on data made available for private securitisation by securitisation repositories. This would be a more cost-efficient way of ensuring compliance with Article 9(1) of the disclosure RTS and would contribute to a high and consistent data quality across both public and private securitisations. Furthermore, it provides the reporting entity of a private securitisation with the legal certainty that its report meets the minimum standards for completeness and consistency set out in this provision.

- This may even in some cases be cheaper than setting up dedicated reporting channels to several investors and competent authorities.

6 STS Framework

72. The SECR has introduced the concept of STS securitisations. In order for a securitisation to be designated as an STS securitisation it must comply with the requirements that apply to all European securitisations including the due-diligence, risk retention and transparency requirements. In addition, it should meet all the STS criteria listed in chapter 4 of the SECR. Compliance with the STS framework allows investors in these securitisations to benefit from lower capital treatment.

6.1 Development of the STS market

73. This section describes how the STS market has been developing so far, including the numbers of STS issuances since 1 January 2019 and the use of the STS label, and outlines what are the main drivers and impediments to the developments of the STS market, using both ESMA data and the outcome of the market survey.

6.1.1 STS Issuances[20]

74. Pursuant to Article 27(1) of the SECR, originators and sponsors are required to notify ESMA when a securitisation meets the requirements of Articles 19 to 22 or Articles 23 to 26 of the SECR.

75. Pursuant to Article 27(5) of the SECR, ESMA maintains on its official website [21] a list of all securitisations notified by originators and sponsors as meeting the requirements of Articles 19 to 22 or Articles 23 to 26 of the SECR. Furthermore, the information is updated when the securitisations are no longer considered to be STS following a decision by competent authorities or a notification to ESMA by the originator or sponsor.

76. At the end of 2020, the total number of STS notifications received to ESMA amounted to 429. As shown in Figure 1, 286 STS securitisations were notified to ESMA in 2020 compared to 143 STS notifications which were notified to ESMA in 2019.

77. In 2020, the STS notifications included 72 public securitisations compared to 214 private securitisations. This reverses the upward trend observed since the inception of the STS framework in 2019 during which 104 public securitisations and 39 private securitisations were notified to ESMA. This trend is not peculiar to the STS market but reflects a general decrease in securitisation issuance of public securitisations from EUR 90 bn in 2019 to EUR 75 bn in 2020 (including STS and non-STS securitisations) as a direct result of the pandemic crisis on the securitisation market generally.

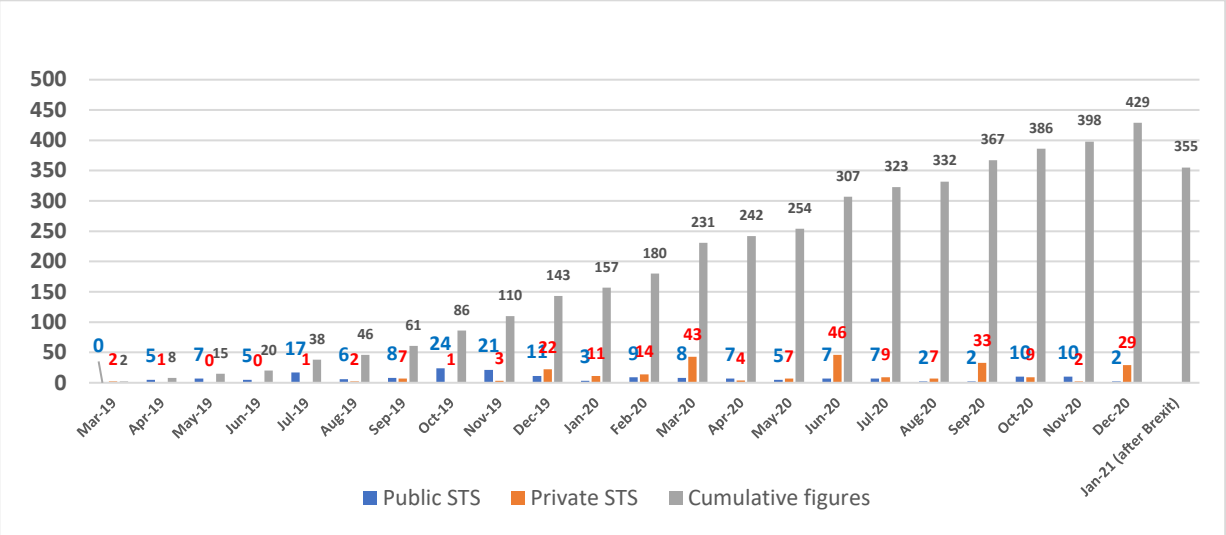
78. As outlined in Figure 2, in Q1 2020 there has been a significant increase in the numbers of private STS securitisations notified to ESMA which can be attributed both to the end of the grace period

[20] Please note that in this section, the focus is on the numbers of securitisation transactions rather than volume of issuance.

[21] Link

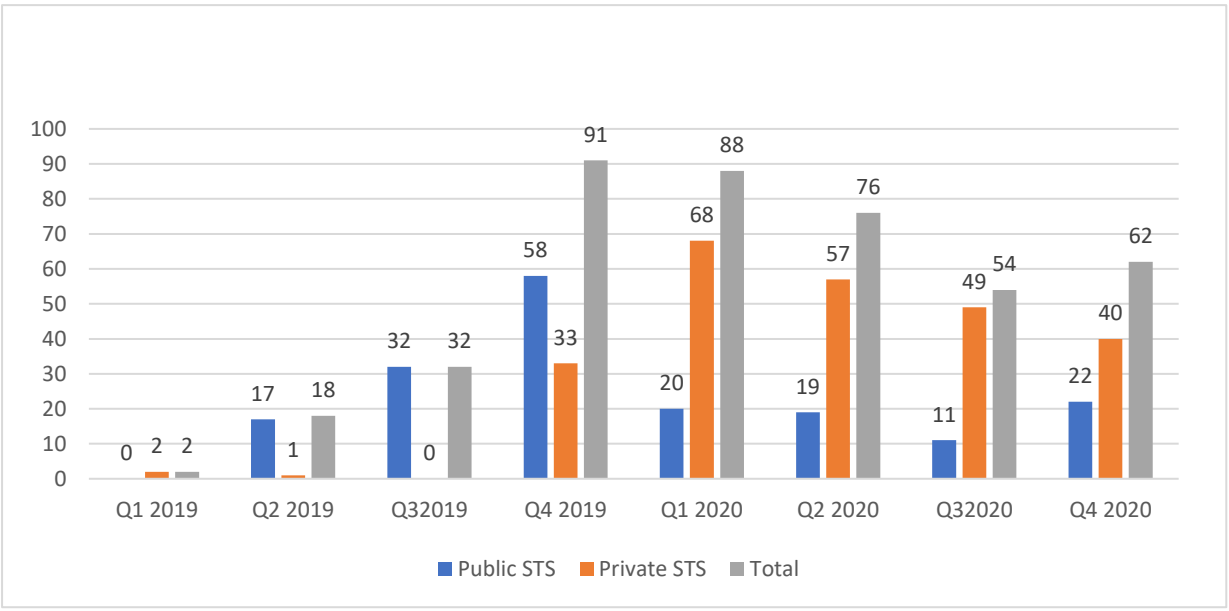
applicable for ABCP transactions and the Covid-19 crisis in March 2020 and continuing during Q2 2020.

Figure 1 : Evolution of the STS notifications 1 January 2019 / 31 December 2020



Source: ESMA

Figure 2 : Quarterly evolutions of the STS notifications (Q1 2019 to Q4 2020)

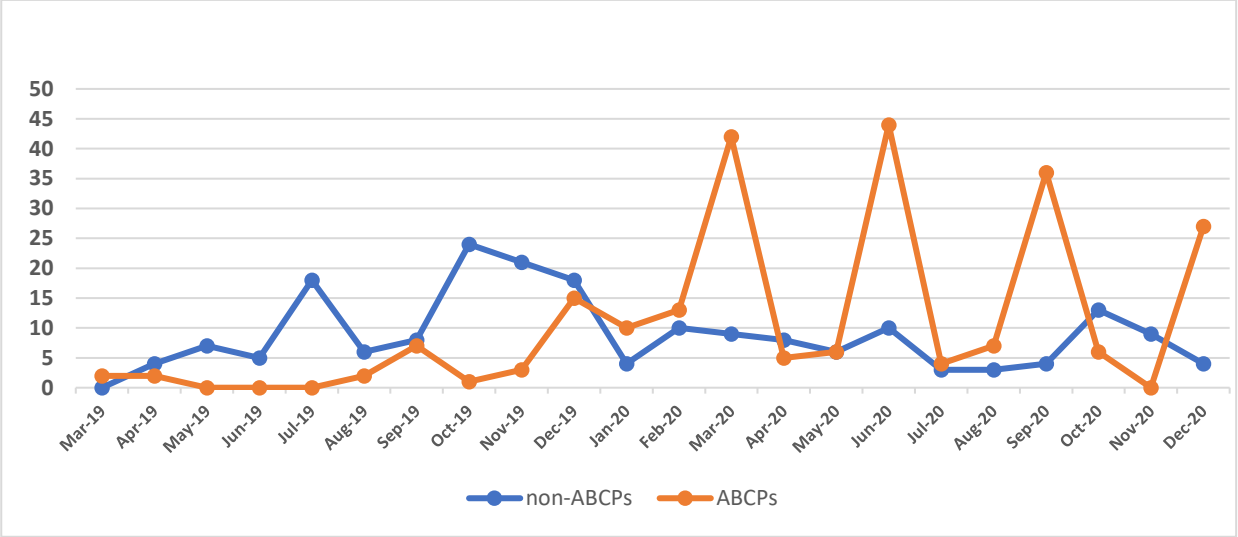


Source: ESMA

79. The increase in notifications of private STS securitisations lies primarily with the increase in the numbers of private STS ABCP transactions which grew significantly in Q2-Q3 (see Figure 3) with significant peaks in March, June and September 2020. Hence, 199 private STS ABCP transactions were notified to ESMA in 2020 compared to 30 private STS ABCP transactions in 2019. In addition, it should be noted that the number of private STS non-ABCP securitisations has risen from 9 to 24 between 2019 and 2020.

80. In contrast, the number of public STS non-ABCP securitisations notified to ESMA declined significantly from 113 in 2019 to 87 in 2020, a fall of 30%. Over the course of 2020, securitisation parties issuing STS securitisations were continuing to utilise private markets (including ABCP) – some 69% of securitisation transactions designated as STS in Q2 2020 were private ABCP transactions, following 88% in Q1 2020 and only 27% over the entire year of 2019.

Figure 3 : Non-ABCPs versus ABCPs (1 January – 31 December 2020)



Source: ESMA

81. Several factors seem to have contributed to the increase in 2020 of private STS ABCP transactions notified to ESMA, including:

- Difficult liquidity conditions in the public securitisation/bond markets which began with the onset of the COVID-19 pandemic which has prompted issuers to use private securitisations;
- Different to non-ABCP transactions, ABCP transactions usually go on for many years with annual or bi-annual amendments reflecting changing circumstances (i.e. rechargeable ABCP transactions);
- The small number of ABCP transactions in 2019 may reflect the fact that conduit sponsors had been granted a one-year grace period before having to apply the new capital requirements to their conduit liquidity facilities. This meant that STS benefits only started for sponsors on 1 January 2020 rather than 1 January 2019.

Asset-classes and jurisdictions

82. The asset-classes breakdown in 2019 and 2020 reflects the changes observed in the composition of the STS notifications. This is evident in Figure 4 and Figure 5, which display the increase of auto loans and trade receivables which at the end of 2020 accounted for 68% (up from 49%) of the assets backing the securitisations notified to ESMA. By contrast, the proportion of the assets backed by residential mortgages declined from 36% in 2019 to 18% in 2020, as a direct consequence of the decrease of notifications of public non-ABCP securitisations (from 104 in 2019 to 72 in 2020).

Figure 4 : Assets breakdown (Dec. 19)

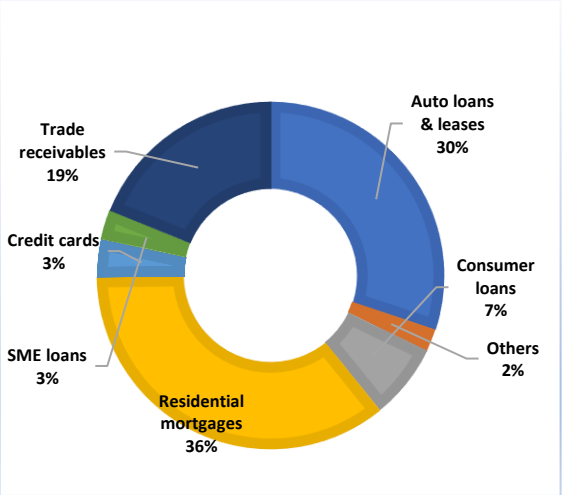
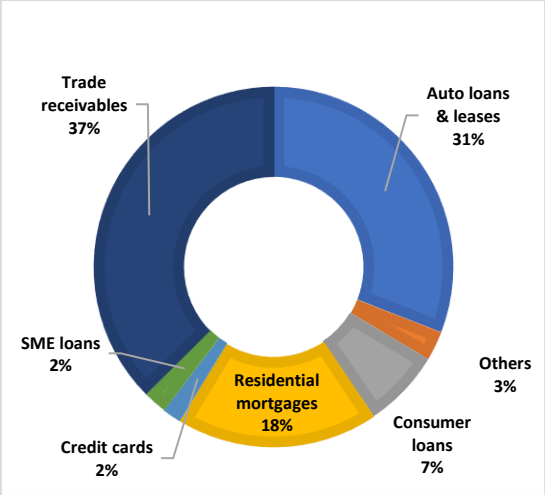


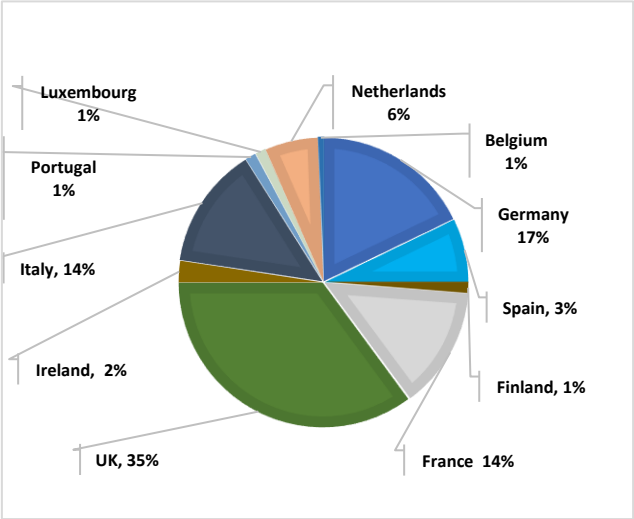
Figure 5 : Assets breakdown (Dec. 20)



Source: ESMA

83. According to Figure 6 regarding the geographical breakdown of public securitisations designed as STS to ESMA, with 35%, the UK is the biggest user of STS designation in 2020, followed by Germany (17%), Italy and France (14% in each case), Netherlands (6%) and Spain (3%) and Ireland (2%). Finally, one last group of countries including Luxembourg, Portugal, Finland and Belgium accounted for less than 2% for each of them.

Figure 6 : Breakdown per countries (176 public deals)



Source: ESMA

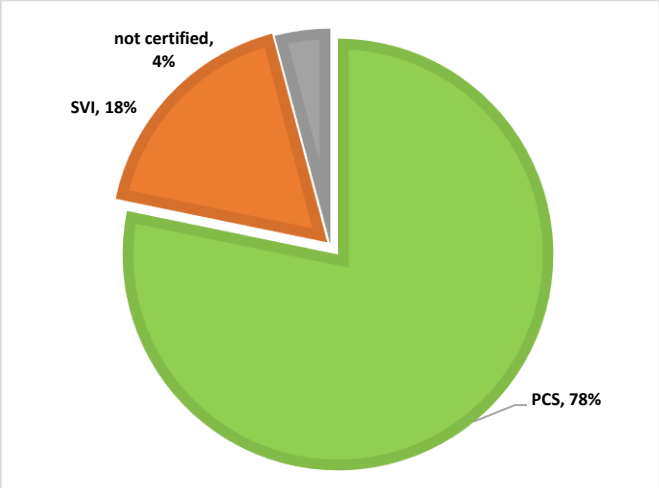
The role of Third Parties Verifiers (TPVs)[22]

84. Another important fact that emerges from the STS notifications in 2019-2020 concerns the role played by the Third Parties Verifiers (TPVs) for public STS securitisations. As indicated in Figure 7,

[22] The information contained in this section only relates to public securitisations as the information on the use of TPVs in private securitisations is confidential.

almost all (96%) public STS securitisations (169 transactions out of a total of 176) are certified by one of the two authorised TPVs in the EU[23].

Figure 7 : Public deals (certified vs non-certified (as of 31 Dec, 2020



Source: ESMA

85. Finally, it should be noted that ESMA has not yet to date received any STS notification for an ABCP programme.

Impact of Brexit on EU STS securitisations

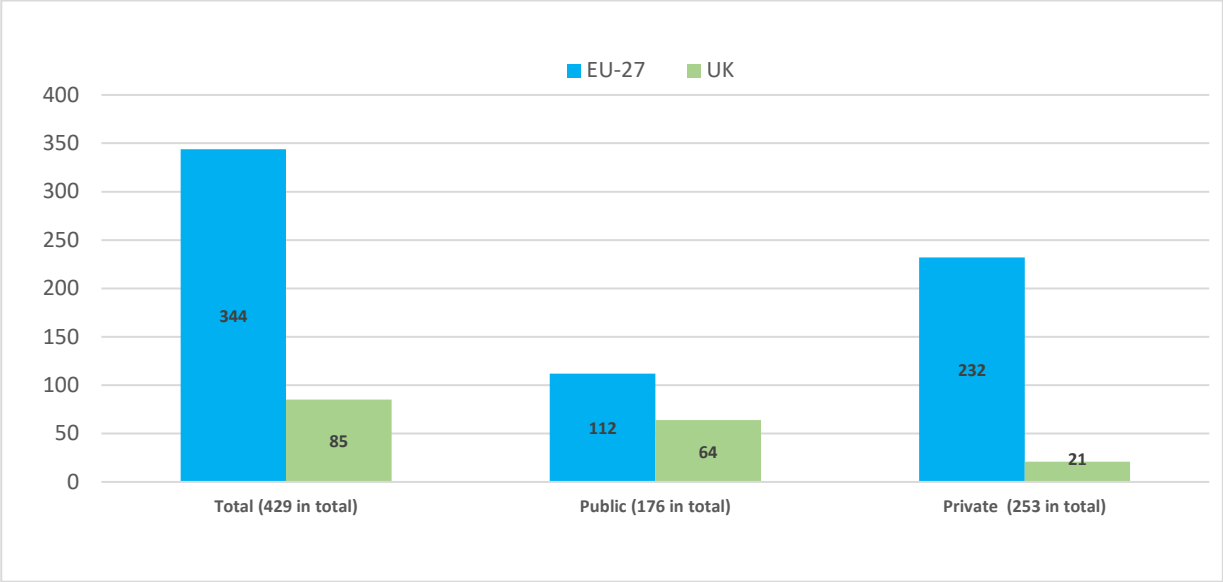
86. Following the end of the transition period on 31 December 2020, UK securitisation transactions designated as STS no longer comply with the STS requirements stipulated under Article 18 of the SECR for which all of each of the originator, sponsor and SSPE involved in a securitisation considered STS must be established in the Union. After Brexit, EU based investors will no longer be allowed to treat those transactions as EU STS securitisations and will have to apply to them the higher capital requirements mandated by the CRR (for banks) or Solvency II (for insurers) for non-STS transactions[24].

87. As a result of this, UK STS securitisations designated as STS prior to 1 January 2021 have been removed from ESMA's STS notifications register. As a result, as shown in Figure 8, the overall amount of EU STS securitisations decreased by 85. At the end of December 2020, the total number of STS securitisations notified amounted to 429 against 355 in the beginning of January 2021.

Figure 8 : Impact – Public STS deals (31 Dec 2020)

23 Prime Collateralised Securities (PCS) and STS Verification International GmbH (SVI) have been respectively authorised by the French AMF and the German BaFin. Their authorisations apply across the Union.

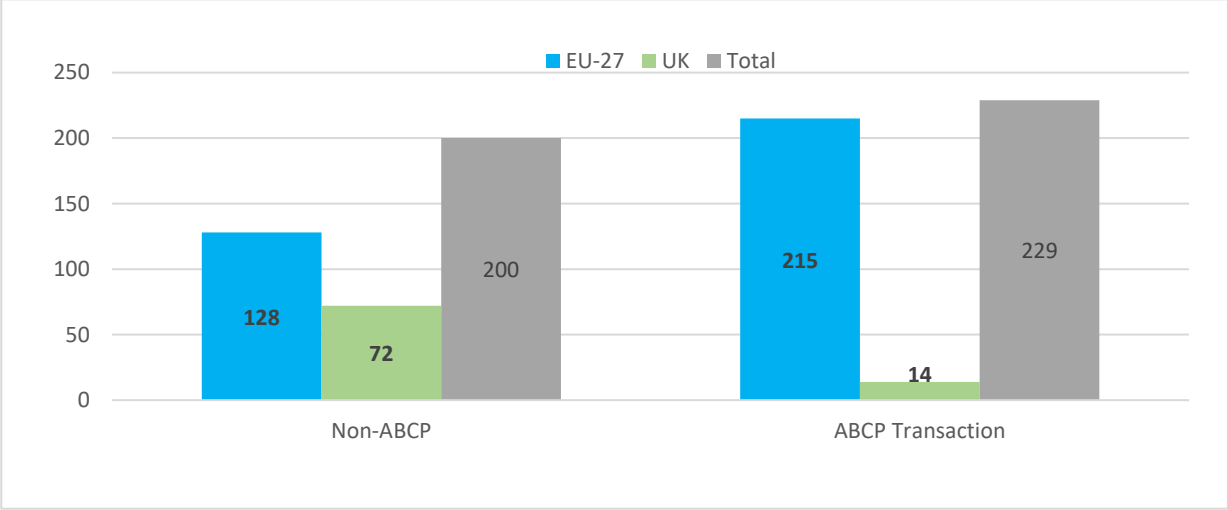
24 For more detailed information please refer to the joint committee statement published on 7 December 2020 which is available at: https://www.esma.europa.eu/press-news/esma-news/esas-highlight-change-in-status-simple-transparent-and-standardised-sts



Source: ESMA

88. Therefore, Brexit had a significant impact in particular on the public non-ABCP securitisations, as the number of non ABCP STS securitisations decreased from 200 to 128 (see Figure 9). It is noteworthy that most of the public UK STS notifications notified to ESMA are made of Residential Mortgages Backed Securities (RMBS).

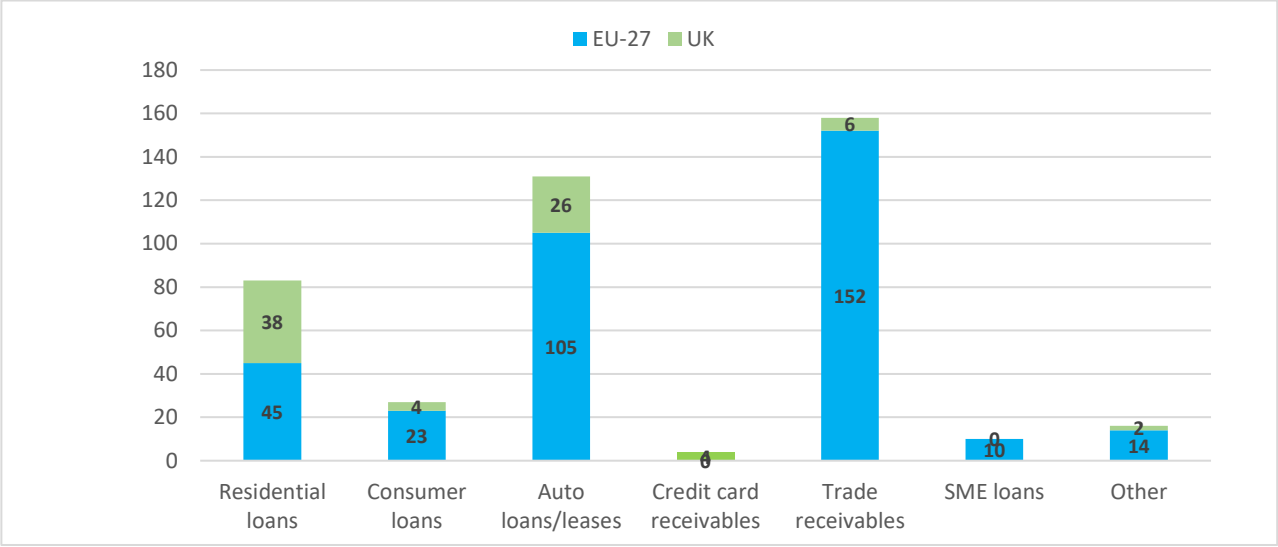
Figure 9 : Impact non ABCPs vs. ABCP transactions (31 Dec. 2020)



Source: ESMA

89. Concerning the underlying assets backing the securitisation transactions, indeed, the greatest impact concerns RMBS, as the number of RMBS decreased from 83 to 45, most of which are public non-ABCP securitisations. The other important impact is the auto-loans/leases which has decreased from 131 to 105 (see Figure 10 below).

Figure 10 : Impact – Underlying assets



Source: ESMA

6.1.2 Use of the STS label according to market participants

90. The present section analyses the outcome of the survey circulated to a representative sample of market participants in the EU securitisation industry. This assessment, which has gathered the views of a wide spectrum of stakeholders including originators, sponsors, investors but also third parties such as TPVs and trade associations (see paragraph 11), is meant to identify the perceived benefits and limitations in entering the STS securitisation market, from an industry perspective.

a. <u>Benefit of the STS label</u>

91. A majority of the respondents to the survey (17) have already originated, issued or invested in an STS compliant securitisation or is planning to do so. Most of these respondents who already originated, issued or invested in STS securitisations have engaged in STS transactions that were in the form of term/non-ABCP securitisations and had residential mortgages or auto loans as underlying assets (see Table 3). These results are in line with the general trends observed in the STS market whereby auto loans and RMBS STS respectively stand for 30% and 36% of the overall STS transactions in 2019 (see paragraph 82 on STS issuances and Figure 4), against 31% and 18% in 2020 (see Figure 5)

Table 3 : Type of STS securitisations originated, sponsored, issued or invested by the respondents

	Count
Term securitisation :	14
ABCP conduit :	5
Both :	1
RMBS :	10
Auto loans :	7
Credit cards :	0
Consumers loans other	3
Other assets (please specify):	7
including SME loans	3
trade receivables	3
Unspecified	1

Source: JC of ESAs – Market survey

92. As shown in Table 4, there are several factors that drive market participants' decision to look for an STS label. All these factors are however considered as unequally relevant, as illustrated by the different "relevance score" provided to each of these factors by the respondents to the survey:

Table 4 : Benefit associated with the STS label –Results Market Survey

	Count	Score*
Standardisation for market participants	29	3.1
Increased volume	22	2.5
Increased liquidity	23	2.8
Wider investor base	24	3.4
Better pricing	26	3.3
Improve your reputation and market positioning	26	2.8
More transparency	29	3.0
Capital treatment	28	4.2

**score from 0 (i.e. 'no relevant') to 5 (i.e. 'extremely relevant')*

Source: JC of ESAs – Market survey

i. **The preferential capital treatment**[25] is perceived, by far, as the main advantage associated with STS securitisations (as illustrated by its 4.2 'relevance score'). Exposures to STS securitisations may receive favourable regulatory capital treatment, in the form of a lower risk-weight floor of 10%

[25] As pointed out by the EBA, in its report on qualifying securitisation of July 2015, empirical evidence on defaults and losses shows that STS securitisations exhibited better performance than other securitisations during the financial crisis, reflecting the use of simple and transparent structures and robust execution practices in STS securitisation which deliver lower credit, operational and agency risks. It was therefore seen as appropriate to amend Regulation (EU) No 575/2013 to provide for an appropriately risks sensitive calibration for STS securitisations, provided that they also meet additional requirements to minimise risk.

for senior positions, under the amended CRR, if certain conditions are met[26]. Therefore, from a bank investor point of view, such a preferential capital treatment makes STS securitisations more economically attractive than non-STS securitisations, everything being equal. With regards to Solvency II treatment, the Delegated Regulation 2018/1221 has modified the stress factors and introduced a new distinction between senior STS, non-senior STS, non-STS and re-securitisations see Annex 1). In addition, it has to be noted that other European regulations also now refer to the STS label in a way that gives it prudential benefit. For example, since April 2020, only STS-labelled exposures can count as high-quality liquid assets (HQLA) in banks' calculation of their liquidity coverage ratio (LCR) if certain conditions are met.

ii. From an issuer perspective, issuances of STS securitisations are primarily motivated by the possibility to attract **a broader and more stable investor bas**e (3.4 'relevance scope') **and to get better pricing** (3.3 'relevance score'). In this regard, the STS label is seen as particularly attractive for existing securitisations that already meet the STS requirements and which can be re-issued at better market conditions and without extra cost. Therefore, the extension of the STS label to existing transactions currently accounts for a significant proportion of the overall STS issuances, especially for private securitisations for which it is not unusual to find transactions issued between 3 to 5 years before the notification date to ESMA. In addition, in terms of market pricing, several studies[27] show that newly issued STS transactions have generally benefited from lower spread levels than those without the label, which demonstrates the attractiveness of the label for investors but also reflects the fact that the STS criteria tends to apply to asset classes that investors already considered to be less risky and more liquid.

iii. **Transparency and standardisation** are also considered as one of the main positive features of the STS label. However, according to market participants, they play a less crucial role in the attractiveness of the STS label than the factors abovementioned (i.e. preferential capital treatment, broaden investor base and better pricing). The STS label has been primarily designed to differentiate simple products from more opaque and complex securitisation products in order to make it easier for investors to understand and assess the risks of investing in a securitisation. Therefore, it is not surprising that transparency and standardisation contribute to the attractiveness of STS products. However, according to some respondents to the survey, the complexity of the STS requirements has also reduced the clarity and accessibility of the STS label.

iv. There are mixed views concerning the advantage of STS in terms of **reputation and market positioning.** While several stakeholders do not see reputation and market positioning as an important driving feature of the STS label, some large and frequent issuers of asset classes of a high quality consider that the market expected them to come up with an STS compliant transaction and to issue the very moment when the STS label was implemented.

b. Limitation of the STS label

[26] For instance, under the CRR, preferential capital charges only apply to STS transactions if the underlying collateral pool satisfies additional criteria on granularity and credit quality. For RMBS, no underlying loan should have an indexed loan-to-value (LTV) ratio of more than 100%. Also Articles 260 (SEC-IRBA), 262 (SEC-SA) and 264 (SEC-ERBA) CRR introduce capital benefits for STS securitisations.

[27] *How STS Has Shaken Up European Securitization So Far*, Standards and Poor, November 2019, Link

93. Similarly, there are also various reasons why market participants may have not considered entering the STS market yet. As shown in Table 5, these limitations mostly refer to the complexity and the restrictiveness of the STS requirements, the compliance cost, and the risk of sanctions in case of non-compliance. As illustrated by the similar 'relevance score' given to each of these factors by the participants to the survey, all these challenges are seen as equally problematic for the attractiveness of the STS label.

Table 5 : Challenged currently faced by the STS label –Results Market Survey

	Count	Score*
Restrictiveness of STS requirements	29	3.7
Complexity of STS requirements	29	3.9
Lack of clarity of STS criteria	27	3.5
Delays in the implementation of parts of the STS framework (level 2 and level 3 provisions)	26	3.2
STS compliance cost	29	3.6
Penalties for non-compliance	29	3.7

**score from 0 (i.e. 'not relevant') to 5 (i.e. 'extremely relevant')*

Source : JC of ESAs – Market survey

94. **Complexity of the STS requirements**. The STS requirements were designed to capture all the aspects of securitisations which had been an issue during the 2007/2008 financial crisis and to prevent any repetition of these weaknesses. As a result, the STS framework has set a very high-quality standard in order to restore market confidence and to de-stigmatise securitisation products. To meet the STS requirements, a securitisation must comply with a comprehensive set of rules, which includes over 100 criteria. According to market participants, the complexity of the requirements combined with **the risk of legal penalties** if the requirements are not met, may discourage some of the smaller issuers to engage in STS securitisations.

95. **Restrictiveness of the STS label**. The STS requirements have been intentionally designed so that certain asset classes and structures are excluded from the STS label. These include securitisations with active portfolio management (CLOs and CDOs), residential mortgage portfolios that include 'self-certify' loans, commercial mortgage backed securities[28] (CMBS) and synthetic securitisations (although the recent amendment of the SECR as part of the adoption of the EU Capital Recovery Package[29] has now extended the STS frameworks to synthetic securitisation). Therefore, the STS label currently applies to a restricted segment of the EU securitisation market. For example, roughly 20% of total European securitisation issuance in 2019 has been in the form of CLOs and CMBS sectors [30] . Therefore, the STS framework *de facto* excludes a significant number of market

[28] Which cannot meet the homogeneity criteria due to a strong reliance on the sale of the underlying loans in order to repay the CMBS obligations.

[29] Regulations (EU) 2021/557 and 2021/558 Link

[30] AFME, Securitisation Data report, Q3 2020 (Link)

participants in the EU securitisation market. In addition, the potential for further growth in the use of the STS label very much depends on the relative strength of the ABS and ABCP markets.

96. **Compliance cost:** Securitising parties that want to get the STS label likely have to revamp the IT processes and to incur additional costs to demonstrate compliance of the eligibility criteria:

- According to most of the respondents to the survey, complying with **the transparency requirements** is the biggest cost associated with the securitisation legal framework including the STS label, especially for private securitisations, due to the amount of field items that need to be populated in the standardised templates and the uncertainty concerning the way some data fields for a given transaction should be completed (See Chapter 5). In addition, creating an efficient and new automated reporting infrastructure for STS securitisations involves new knowledge and investment in resources. Time-to-market is another consideration as securitising parties also need to prepare the templates and collate information for the applicable asset classes before they can launch any STS transactions. As a result, some market participants expressed the view that the extra cost of the compliance with the STS label is not commensurate with the potential pricing benefit associated with STS issuances compared to non-STS issuances, which make the STS label not necessarily economically attractive.

- In addition, most of the originators of STS transactions to date have employed a **third-party verifier** to provide an opinion on adherence to the criteria (see paragraph 84). According to the survey, most market participants share the view that TPVs bring an additional level of control of processes in the perspective of STS compliance and provide analysis which is highly valued by investors and less advanced originators. In particular, STS verifiers are seen as an additional source of guidance to interpret the regulation and are used to reduce the risk of financial fines (and criminal liability) involved in case a mistake is made in respect of STS regulation. The use of TPVs has become a widely spread market practice for issuing STS securitisations (a transaction without any verification agent tends to be considered less reliable). However, some well experienced originators and sponsors consider that TPVs may constitute an unnecessary extra cost and burden to the process and should only be used where there is an investor request to do so.

6.1.3 State of play of the STS framework

97. It is early to make definitive conclusions about the state of play of the STS market and the impact of the new framework after only two years since the entry into force of the SECR and only six months since the entry into force of the delegated acts implementing the STS framework (the RTS[31] and ITS[32] on STS notifications). On top, the specific market conditions, which currently affect the securitisation market following the COVID-19 pandemic crisis has not helped the development of the STS market.

98. The start of the STS label does indicate a strong demand from investors. As illustrated in section 6.1.1, it appears that the STS label has been attractive for investors. In 2019, 143 securitisations were

[31] Commission delegated regulation supplementing Regulation (EU) 2017/2402 of 12 December 2017 and laying down regulatory technical standards specifying the information to be provided in accordance with the STS notification requirements

[32] Commission implementing regulation laying down implementing technical standards with regard to templates for the provision of information in accordance with the STS notification requirements

notified to ESMA as meeting the STS standard. In 2020 that number reached 286. Effectively, almost all transactions publicly placed since March 2019 and which may achieve the STS standard have elected to do so. In addition, the STS issuances have continued despite the COVID-19 crisis, which may indicate the crisis resilience of STS securitisations. After two years of existence, the STS label has gained widespread acceptance. In Q3 2020, STS securitisations represented 30% of all securitisation issued volume in the EU[33]. It is therefore a workable standard which seems to help reducing the stigma of securitisation products among investors.

99. However, it is premature to conclude that the introduction of the STS label has led to a meaningful change in the composition of the investor base for securitisation products. This could be partly explained by:
    i the diversity of fixed-income securities investors who are currently facing a wide variety of product to tailor their investment strategies[34].
    ii the monetary policies injecting liquidity into the economy at a very low price make wholesale funding in general and, securitisation in particular, less competitive and,
    iii the uncertainty surrounding whether non-EU investors are covered by the due diligence requirements under the SECR may explain the difficulties for widening the investor base also outside the EU (see also JC opinion on the jurisdictional scope of application of the SECR).

100. In addition, there has not been a significant increase in the overall volume of issuances in the EU securitisation market following the introduction of the label and STS issuances have not yet contributed to expand the available amount of credit to the economy as expected[35]. In Q3 2020, EUR 39.8bn of securitised product was issued in Europe, a decrease of 19.1% from Q2 2020 and a decrease of 1.5% from Q3 2019. Of the EUR 39.8bn issued, EUR 18.8bn was placed, representing 47.2% of issuance, compared to the 77.0% of issuance in Q3 2019. This is the lowest year to date issuance since 2013[36]. Most of this fall is however not directly linked with the STS standards but have been caused by the disruptions generated by COVID-19 and by Brexit (UK being the largest securitisation jurisdiction in Europe) as illustrated in paragraphs 86 to 89.

6.1.4 Prudential treatment of STS framework

101. It should be noted that the growth of the EU securitisation market in general and, of STS securitisations in particular, does not only depend on the efficiency of the STS label per se but also relates to i) the attractiveness of STS securitisation vis a vis other funding instruments and ii) the adequacy of its regulatory regime. Indeed, according to most market participants in the survey, the prudential treatment of STS securitisation constitutes the main determinant to the growth of the STS market (Table 6). In particular, market participants consider that the capital treatment under the CRR

[33] AFME, Securitisation Data report, Q3 2020 (Link)
[34] holding term of an investment vs. more opportunistic investment strategy, relative value strategy etc.
[35] According to the European Commission's impact on assessment of the STS regulation, if the securitisation market would have returned to pre-crisis average issuance levels and new securitisation issuances would have been used by credit institutions to provide new credit, these could have provided an additional amount of credit to the private sector ranging between €100-150bn (Link).
[36] AFME, *Ibid*

and Solvency II as well as the applicable regime under the Liquidity Coverage Ratio (LCR) could play an important role in the development of the STS market (Table 7).

Table 6 : Determinants of growth of the STS market –Results Market Survey

	Count	Score*
Current market conditions	23	3.5
Potential impediments related to the new securitisation legislation	25	4.0
Prudential treatment of STS securitisation exposures	21	4.3
Supervisory assessments/approvals	22	3.0

Table 7 : Main regulatory drivers of the growth of the STS market

	Count	Score*
Capital treatment in CRR	29	4.4
Capital treatment of STS in Solvency II	20	4.3
LCR treatment in CRR	23	4.3
Supervisory assessments of significant risk transfer	17	3.5

**score from 0 (i.e. 'not relevant') to 5 (i.e. 'extremely relevant')*

Source: JC of ESAs – Market survey

102. With regards to Solvency II, the Delegated Regulation 2018/1221 has modified the prudential treatment for STS and non-STS securitisations held by insurance and reinsurance undertakings (see Annex 1). A quantitative analysis[37] developed by the EIOPA shows that:

i. In spite of the introduction of the STS framework, between 2018 and 2019, the proportion of investments in securitisation positions did not significantly change for EU insurers (see Table 8).

Table 8: Share of securitisation positions on total EU Insurers' investments

Proportion among EU insurers overall investments	**Date**	
	end-2018	end-2019
Securitisation positions	2.4%	2.3%

Source: EIOPA

ii. The investment in STS labelled securitisation only represents around 2 % of the total amount of investment in securitisation positions (see Table 9).

Table 9: Investment in securitisation by type

[37] EIOPA has introduced in 2020 some lines in the regular Supervisory reporting templates to gather information on the new framework. Results have been computed using the data submitted by EU insurers using the standard formula and enables to draw a clear picture of the very few immediate consequences of the introduction of the STS framework.

End-2019	Investment in Securitisations - split by type
Senior STS securitisation	*0.9%*
Non-senior STS securitisation	*1.0%*
Re-securitisations	*0.0%*
Other securitisation	*96.6%*
Transitional type 1 securitisation	*1.4%*
Guaranteed STS securitisation	*0.0%*

Source: EIOPA

iii. Despite the introducing of a preferential treatment for STS labelled securitisation positions, the average shock applied on securitisation positions does not significantly change between 2018 and 2019 (due to the relatively low proportion of investment in STS transactions) (see Table 10)

Table 10. Average shock applied to securitisation position

Average shock applied	Date	
	end-2018	end-2019
Securitisation positions	*-38%*	*-37%*
STS securitisation (Senior & Non-senior)	*N/A*	*-20%*

Source: EIOPA

103. Regarding the attractiveness of STS securitisation vis a vis other funding instruments, it is uncertain whether the different regulatory regimes applicable to STS securitisations compared to similar products might distort stakeholders' appetite for securitisation instruments. In particular, securitisation is now subject to regulatory requirements in terms of capital, liquidity and transparency requirements which might make them less attractive compared to other funding tools. For example, in comparison with covered bonds, securitisations have higher capital requirements. Covered bonds are also eligible under Level 1, 2A and 2B assets while STS securitisation is only eligible as level 2B assets under the LCR.

6.1.5 Recommendations and Key messages – STS label

104. In light of the review of the functioning of the STS label, the JC of ESAs is of the view that the following recommendations and key messages should be considered:

- Despite the difficulties raised by some stakeholders regarding the complexity of the STS criteria, the transparency requirements and the extra cost of compliance, the STS label has been adopted by market participants and has become the norm for STS eligible securitisations. The STS label is, therefore, a workable standard.

- However, the fact that there has not been yet a notable broadening of the investor base nor a significant rebound in the EU securitisation market, although this was an explicit purpose of the STS framework, suggests that some adjustments might be needed.

- While some of these adjustments have been investigated in the present report, others, such as the prudential treatment of STS securitisation fall outside the mandate of this report (as per Article 44 of the SECR) and have not been assessed.

- These potential prudential impediments should be examined in the broader context of the European Commission's review of the securitisation framework prescribed by Article 519a of the CRR. In particular, as part of this review, it will be important to investigate whether the overall regulatory treatment of STS securitisation is commensurate with its risks profile in order to ensure that the STS framework remains safe, sound but also reasonably attractive for market participants.

6.2 Implementation of the STS criteria

105. In order for a securitisation to be designated as an STS securitisation it must comply with the requirements that apply to all European securitisations. In addition, it should meet all the STS criteria listed in Section 1 of Chapter 4 for term (i.e. non-ABCP) securitisations and in Section 2 of Chapter 4 for short-term (i.e. ABCP) of the SECR.

106. The criteria for both types of securitisation are very similar. However, there are a few differences in the criteria for ABCPs that were adapted to reflect the specificities of the structural features of these instruments. The functioning of ABCP and non-ABCP securitisations are different with ABCP programmes relying on a number of ABCP transactions consisting of short-term exposures which need to be replaced once matured. In addition, STS criteria need also to reflect the specific role of the sponsor providing liquidity support to the ABCP conduits.

107. The STS criteria were designed to ensure that STS securitisations are structured in such a way that diligent investors should be able to assess without difficulty the risk associated to them. They are not meant to necessarily ensure that STS securitisations have a lower risk profile. Therefore, the STS standard focuses more on the structure of the transaction rather than on the quality of the underlying assets.

6.2.1 Content of STS criteria

a) <u>Criteria for Non-ABCP securitisations as per Articles 20 to 22 of the SECR</u>

108. Table 11 summarises the required features that constitute the STS criteria for non-ABCP securitisations. Each criterion is addressed in a specific provision of the SECR (from Articles 20 to Article 22). The STS criteria identify three main pillars on the basis of which securitisation transactions should be structured. Overall, the aim of the STS criteria is to ensure:

- **Simplicity:** The structure of an STS securitisation should allow for a clear and comprehensible modelling of the risk and should facilitate easier credit analysis and understanding by the investors. In particular, the underlying assets should i) meet predetermined, unambiguous, and clearly documented eligibility criteria, ii) be homogenous, iii) be originated in the ordinary course of an originator's business and iv) not include impaired exposures.

- **Transparency:** The investors should be able to perform the appropriate due-diligence with information, rights and responsibilities clearly articulated. These requirements go beyond the general disclosure obligations applicable to all securitisations (as per Article 7 of SECR) and include disclosure of static and dynamic historical default and loss performance data, an external verification of a sample of the underlying exposures and a liability cash flow model.

- **Standardisation:** The securitisation structure should allow for an easy comparison with other STS securitisations. In particular, the investors should be able to understand and compare securitisation transactions without relying on third party assessments.

Table 11: STS criteria for non- ABCP securitisation

Simplicity (Art. 20 of SECR)	Transparency (Art. 22 of SECR)	Standardisation (Art. 21 of SECR)
▪ True sale of the underlying assets to the issuer SSPE [Art. 20 (1)-(6)] - No severe claw back risk - Unencumbered underlying assets ▪ Underlying assets meeting predetermined, unambiguous, and clearly documented eligibility criteria [Art. 20 (7)] ▪ No active portfolio management ▪ Homogeneity of the underlying exposures [Art. 20 (8)] - Underlying exposures with only one asset type - Underlying exposures with similar characteristics relating to the cash flows of the asset type - Underlying exposures with defined periodic payment streams ▪ No re-securitisation [Art. 20 (9)] ▪ Underwriting standards [Art. 20 (10)] - Underlying assets that are originated in the ordinary course of an originator's business - Underlying assets originated according to underwriting standards that are no less	▪ Historical default and loss performance data to be provided to investors before pricing [Art. 22(1)] ▪ External verification of a sample underlying exposure data by an appropriate independent party [Art. 22(2)] ▪ Liability cash flow model to be provided to investors before pricing and on an ongoing basis [Art. 22(3)] ▪ Originator and sponsor must provide environmental performance of assets financed in a residential mortgage or auto loan/lease non ABCP transaction [Art. 22(4)] ▪ Compliance with the general transparency requirements (e.g. transaction documentation, asset performance), with related information to be made available to potential investors before pricing [Art. 22(4)]	▪ Compliance with risk retention requirements [Art. 21(1)] ▪ Appropriate mitigation of interest-rate and currency risks [Art. 21(2)] ▪ Referenced interest payments [Art. 21(3)] ▪ Requirements in case of enforcement or delivery of an acceleration notice [Art. 21(4)] ▪ Non-sequential priority of payment notices [Art. 21(5)] ▪ Early amortisation provisions/triggers for termination of the revolving period [Art. 21(6)] ▪ Transaction documentation with clear provisions for resolution of conflicts between classes of investors, bondholder voting provisions and trustee responsibilities [Art. 21(7)] ▪ Expertise of the servicer [Art. 21(8)] ▪ Clear and consistent terms definitions, remedies and actions related to delinquency and default of a debtor [Art. 21(9)] ▪ Clear provisions to facilitate resolution of conflicts between different classes of investors ([Art. 21(10)]

stringent than those applied to an originator's non-securitised assets - Material changes should be disclosed ▪ No exposures in default or exposures to credit impaired borrowers [Art. 20 (11)] ▪ At least one payment having been made on the underlying assets at the time of transfer to the SSPE [Art. 20 (12)] ▪ No predominance on the sale of assets [Art. 20 (13)]		

109. The STS criteria for non-ABCPs included in the SECR have been complemented by two sets of regulatory standards (i.e. the Guidelines on STS criteria for Non- ABCPs and the RTS on homogeneity), which purpose are i) to remove the ambiguities and uncertainties incorporated in some of the criteria listed in Table 11, ii) to enable issuers, third party certifiers, investors and supervisors to determine whether the criteria are met and iii) to ensure that the application of the STS criteria is consistent across the EU.

110. **EBA Guidelines on STS criteria for non ABCP securitisation**[38]. In accordance with Art. 19 (2) of the SECR, the EBA has developed Guidelines on the STS criteria for non-ABCP, which came into force in May 2019. These guidelines focus on a set of core criteria where clear interpretation was essential for the correct implementation of the STS framework. In particular, the guidelines provide further guidance on the implementation of the:

i. Criterion on underwriting standards (paragraphs 22 to 36);
ii. Criterion on exclusion of exposures to credit impaired borrowers (paragraphs 37 to 45);
iii. Criterion on disallowing predominant dependence on sale of assets (paragraphs 48 to 50);
iv. Mitigation of interest rate and currency risks (paragraphs 51 to 59); and
v. Criterion on the determination of expertise of originator and servicer in originating and servicing the exposures of similar nature (paragraphs 68 to 70).

111. **RTS on homogeneity of the underlying assets in securitisation**[39]**.** In accordance with 20(14) of the SECR, the EBA has developed RTS on homogeneity, which came into force in November 2019. These RTS further specify which underlying exposures are deemed homogeneous. The overarching objective of the homogeneity requirement is to enable investors to assess the risks of the underlying pool of assets on the basis of common points of comparison. The RTS set out four conditions for the underlying pool to be

[38] Link
[39] Link

considered homogeneous[40]. The RTS on homogeneity also provide a non-exhaustive list of most common asset categories observed in market practice and they specify the homogeneity risk factors, including the type of obligor, the seniority of the collateral, the type of immovable property and the jurisdiction of property or obligor.

b) <u>Criteria for ABCP securitisations as per Articles 24 to 26 of SECR</u>

112. The criteria for STS ABCP securitisations follow the same criteria as for term/no-ABCP securitisations with some adjustments to reflect the specific structural features of these instruments. While the criteria for non-ABCP securitisations focus on the simplicity, transparency and standardisation, those for ABCP securitisations focus on the distinction between transaction, sponsor and programme level criteria. In addition, the criteria for ABCPs include some additional requirements that are not found in the criteria applicable to non-ABCP securitisations. Table 12 summarises the main STS criteria specifically applicable to ABCP securitisations.

Table 12 : Specific STS criteria for ABCP securitisations

Transaction level (Art. 24 of SECR)	Programme level (Art. 26 of SECR)	Sponsor level (Art. 25 of SECR)
▪ The originator and the sponsor should make available data on static and dynamic historical default and loss performance to cover a period of no shorter than five years, or three years in the case of trade receivables [Art. 24 (14)]. ▪ The pool of underlying assets must have a weighted average life of not more than one year and none of the underlying exposures must have a maturity of more than three years, except for pools of auto loans and leases and equipment lease transactions which must have a remaining exposure weighted average life of not more than three and a half years and a residual maturity of no more than six years [Art. 24 (15)]. ▪ The underlying exposures may not include residential or commercial mortgages [Art. 24 (15)]	▪ For an ABCP program to meet the STS requirements, all ABCP transactions within an ABCP programme must be STS in order for the programme to be considered STS (subject to a 5% margin for error at any given point designed to allow for a small volume of transactions temporarily being non-compliant at any given time [Art. 26 (1)]. ▪ The remaining weighted average life of the underlying pool of an ABCP program must not be more than two years and the ABCP program must be fully supported by a sponsor [Art. 26 (2)]. ▪ None of the securities issued under the ABCP programme should include call options, extension clauses or other clauses affecting the final maturity of the instrument [Art. 26 (3)]. ▪ The servicer should have expertise in servicing exposures of a similar to those securitised [Art. 26 (8)].	The Securitization Regulation requires the sponsor to: ▪ be a credit institution [Art. 25 (1)]. ▪ provide a liquidity facility to supporting all securitization positions [Art. 25 (2)]. ▪ furnish evidence to competent authority that its role as sponsor does not put at risk its solvency and liquidity even under extremely stressful market situations [Art. 25 (3)]. ▪ satisfy the due diligence, risk retention and transparency requirements 9 applying to ABCP [Art. 25 (4)(5)(6)]. ▪ Permit liquidity facility to be drawn if such a liquidity facility is not extended situations [Art. 25 (7)].

[40] The underlying assets must i) have similar underwriting standards; ii) be serviced according to uniform servicing procedures; iii) fall within the same asset category (for example: residential loans, commercial loans, credit facilities to natural persons, credit facilities to SME and corporates, auto loans and lease, credit card receivables, trade receivables); and iv) be homogeneous with reference to at least one risk/homogeneity factor.

113. Similar to non-ABCP securitisations, the STS criteria for ABCP securitisations have been complemented by two sets of regulatory standards i.e. the **Guidelines on STS criteria for ABCP securitisation** pursuant to Article 23 (3) of the SECR and the **RTS on homogeneity** pursuant to Article 24 (21) of the SECR:

i The conditions for the homogeneity specified in the RTS are exactly the same for both the non-ABCP and the ABCP securitisation (see paragraph 111).

ii The EBA Guidelines on STS criteria for ABCPs[41], which also came into force in November 2019, provide clarification on:
- the calculation of the weighted average life of the pool of the underlying exposures [Art. 24 (15)];
- the limited temporary non-compliance with certain STS transaction level criteria [Art. 26 (1)];
- the documentation of the ABCP programme [Art. 26 (7)];
- the expertise of the servicer [Art. 26 (8)].

6.2.2 Challenges associated with the implementation of STS criteria

114. The level 2 and level 3 pieces of regulation as well as the guidance provided by the TPVs have proven to be very useful in supporting the launch of the STS market (see paragraph 96). In addition, market participants have been able to adapt swiftly in order to start issuing STS securitisations (see paragraph 98). However, according to market participants, the implementation of the STS criteria for non-ABCPs and ABCPs has been demanding because, i) the STS label sets high standards, ii) the requirements to be satisfied in order to meet the STS standards are numerous and iii) involve departing from prevailing market practices and processes.

a) Challenges associated with STS criteria for non-ABCP securitisations

115. As illustrated by Table 13, the implementation of the STS criteria could cause difficulties to stakeholders because of i) open interpretation issues of some of the STS criteria, ii) the exclusion of certain asset classes from STS, iii) the stringency of some eligibility criteria and, iv) the unavailability of some data to fully comply with the STS transparency requirements.

Table 13 : Main challenges associated with the implementation of STS criteria for non- ABCPS according to market participants

Simplicity requirements	Standardisation requirements	Transparency requirements
▪ Interpretation and compliance with the homogeneity requirements (Art. 20.8 and EBA RTS on homogeneity);	▪ Delays around the introduction of the ESMA templates; ▪ Availability of the data required;	▪ Uncertainties and delays in the publication of the RTS on risk retention (Art. 22.1); ▪ Lack of definition of the performance triggers (Art.22.5);

[41] Link

▪ Compliance with requirements associated with the tracking and the exclusion of impaired exposures (Art. 20.11); ▪ Compliance with Art. 20.7 (‘not actively managed’); and, ▪ Compliance with Art. Art 20.12 which requires debtors to have made at least one payment and compatibility with payment holidays ongoing framework.	▪ Interpretation issues in the regulation including: - uncertainty with regards to the right timing to make information available in the case of retained deals (Art 21.1), - lack of guidelines for auditing the portfolio criteria (Art.21.2), - the interpretation of the concept of a 'Liability Cash Flow model' and the extent this differed from the traditional Cash Flow Models (i.e. Bloomberg/Intex) [Art. 21(3)] ▪ Lack of clarity on the data related to the environmental performance (Art.21.4); ▪ Difficulty to demonstrate whether the documentation clearly specify the contractual obligations (Art. 21.6).	▪ Uncertainty in the concept of 'value‘ of the underlying exposures held by the SSPE (Art. 22.6).

i. **Interpretation of STS criteria**

116. The STS regulation provides a broad and consistent set of qualitative criteria applicable to all EU jurisdictions and across all eligible asset classes. As such, due to differences in national approaches and differences in the nature of underlying assets across jurisdictions (e.g. credit assessment, legal framework and underlying standards) there have been some interpretation issues. These have largely been resolved through the EBA Guidelines and the RTS on homogeneity, which have been helpful to advise on the implementation of the SECR. However, there are still some criteria for which a common market understanding needs to be reached as to how they apply in practice.

117. The following list provides examples of interpretation issues affecting some STS criteria, according to market participants (see also Table 13):

- Uncertainty regarding the concept of “excessive and undesirable concentration in the securitised portfolio” and the concept of “similar underwriting standards which apply similar approaches for assessing associated credit risk” (Art. 1 of the RTS on homogeneity);
- Uncertainty on the timing to make the information available in the case of retained deals due to the absence of a pricing process (Art 22.1 of the SECR);
- Uncertainty on how to perform the external auditing requirements of the portfolio criteria (Art.21.2 of the SECR);
- Uncertainty regarding the extent to which the liability cash flow model may differ from the traditional cash flow models (i.e. Bloomberg/Intex) (Art. 21(3) of the SECR);
- Uncertainty regarding the calculation of the 'value‘ of the underlying exposures held by the SSPE (Art. 22.6 of the SECR);
- Absence of a definition of the performance triggers (Art.22.5 of the SECR); and,
- Difficulty to demonstrate whether the documentation clearly specify the contractual obligations (Art. 21.6 of the SECR).

118. Interpretation issues are very common in the first years of implementation of a new regulation. Therefore, it could be expected that a body of precedents and market understanding of STS criteria will further increase as more STS issuances are executed. The ESAs' Q&As tool, the European Commission's interpretative guidance and the public disclosures of the TPVs' assessments of the STS criteria could also be used to reduce this gap.

ii. Exclusion of certain asset classes from the STS label

119. As mentioned in paragraph 95, the SECR, through the STS criteria, excludes certain products from being STS. In particular, as a result of the refinancing risk associated with commercial real estate assets (including the fact that the cash flows rely on the sale of the assets securing the underlying exposures), the CMBS transactions cannot be eligible for the STS label. In addition, the STS criteria do not permit active portfolio management on a discretionary basis, thereby excluding CLOs from the STS.

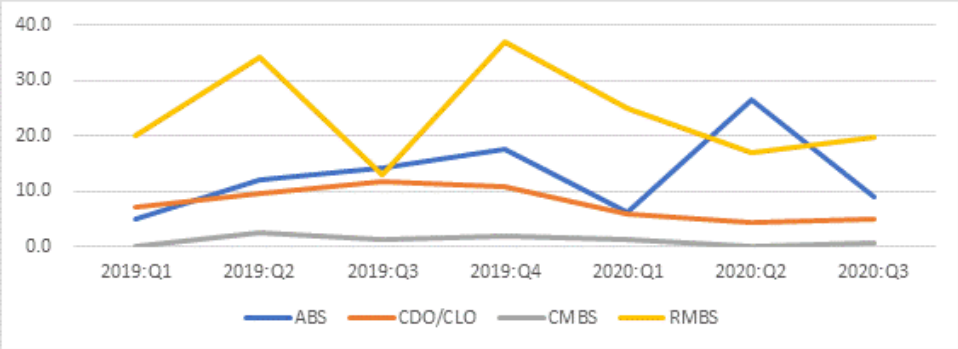
120. Before the STS label was introduced, there have been fears of some market participants that it might lead to undue stigmatisation of sectors that fall outside its scope. In addition, some stakeholders have been arguing that, in an effort to revitalise more broadly the EU securitisation market and to facilitate its recovery, the STS criteria should be revised so that CLOs[42] and CMBS[43] are not fully excluded. Some also consider that the inclusion of CMBS and CLOs in the STS framework would incentivise these two market segments to develop appropriate standards for simplicity, transparency and standardisation.

121. However, it has be reiterated that the inclusion of the CLOs and CMBS are not deemed compatible with the fundamentals of STS securitisations due to the inherent complexity and risk associated with their structure. Furthermore, after two years of existence of the STS label, there does not appear to have been a significant drop-off in the issuance of CLOs or CMBS (see Figure 11). While the market is, by definition, now separated into STS and non-STS segments, these look to coexist successfully, with STS exposures more likely to appeal to bank treasuries, while non-STS transactions may attract a wider group of investors.

Figure 11: Total European issuance by collateral

[42] With regards to CLOs, some market participants consider that a securitisation should not be excluded on the basis that it is actively managed and that the STS criteria should rather consider that regulated CLO managers perform a in depth credit analysis on each asset and adds an expertise to the transaction by monitoring each credit in the portfolio.

[43] With regards to CMBS, some argue that a securitisation should not be excluded on the basis that the repayment to investors is substantially depend on the sale of assets securing the underlying exposures and that the STS criteria should rather consider how refinancing risk can be managed and mitigated.



Source: AFME (Securitisation Data Report – Q3 2020)

iii. Stringency of some STS criteria

122. The STS framework has set up high quality standards in order to restore market confidence and to destigmatise securitisation products. Therefore, some STS criteria are quite restrictive and/or have been difficult to comply with. For example,

- **No defaulted exposures**. Pursuant to Art. 20.11 of the SECR, no underlying loans may be in default within the meaning of Article 178(1) of the CRR at the time of transfer into the securitisation. This criterion has been challenging for a number of asset classes, including credit card receivables, which may often include assets that are more than 90 days overdue.

- **No credit-impaired obligors:** Pursuant to Art. 20.11 of the SECR, the underlying loans should not be made of exposures to credit impaired debtor or guarantor to the best of the knowledge of the originator or original lender. This criterion has been challenging because tracking impaired borrowers after the credit decision is made, was not necessary part of the day-to-day process of some market participants. In addition, some debtors can be on public credit registries for minor impairments such as services on telephone bills or local taxes.

- **At least, one payment should be made**: Pursuant to Art. 20.11 of the SECR, at least one payment must have been made at the time the underlying exposure is transferred to the securitisation. There is an exception for personal overdraft facilities, credit card receivables, trade receivables, dealer floorplan finance loans and exposures payable in a single instalment. However, according to some market participants such requirements is not compatible with the legislative frameworks setting-up payment holidays, especially in the case of recently originated loans.

123. These criteria were intentionally meant to avoid that STS securitisations include exposures subject to negative credit risk developments given that risk analysis and due diligence assessments by investors become more complex when securitisation exposures include risky underlying assets.

iv. Availability of data to comply with STS transparency requirements

124. According to market participants, compliance with the STS transparency requirements adds operational steps that may be cumbersome especially for small originators. In addition, data

collection could be rather lengthy and cause delays in the STS issuances. The lack of available data might also affect the volume of STS issuances.

125. In this regard, the STS criterion on transparency set out in Art. 22.1 of the SECR requires that prior to pricing of an STS securitisation, the originator and the sponsor should make available to investors, historical data on static and dynamic default and loss performance data for substantially similar exposures to those to be securitised for a minimum period of 5 years. Without such data, a transaction will not be able to obtain an STS designation. One of the main challenges faced in terms of historic data is that new originators in the market and originators of new asset classes may struggle to provide these data. The Guidelines on STS criteria and the ESMA Opinion on amendments to the technical standards[44] have addressed this issue by clarifying that i) "substantially similar exposures" should not be limited to exposures held on the balance sheet of the originator and ii) by making some adjustments to certain template fields and by increasing the number of fields that may use "No Data" options.

b) Challenges associated with STS criteria for ABCP securitisations

126. Given that the STS criteria for ABCP securitisations follow the same criteria as for non-ABCPs securitisations, most of the challenges associated with the implementation of STS criteria for non-ABCP are also applicable to ABCP securitisations. In addition, ABCP securitisations also encounter specific implementation issues as shown in Table 14.

Table 14 : Main challenges associated with the implementation of STS criteria for ABCPs according to market participants

Transaction level requirements	Programme level requirements	Sponsor level requirements
▪ The maturity limits and weighted average life limits restrict the types of underlying transactions in which an ABCP program can invest and depart for existing market practices (Art. 24.15).	▪ Compliance with the condition set out in Art. 26.1, which requires that all ABCP transactions within an ABCP program must be STS compliant. ▪ Compliance with the condition set out in Art. 26.2, which requires that the remaining average life of the underlying exposures of an ABCP program should not be more than two years.	▪ Only the sponsor should be responsible for compliance with transparency requirements while in practice data are collected through the originators (Art. 25.6) ▪ Compliance with transparency requirements (Art. 25.6 & Art. 7) for private (ABCP) transactions (i.e. the regulators have to be informed of transaction amendment while in practice some programme may have over 100 transactions); ▪ Potential complexity of the supervisory framework as the sponsor and the originator may be subject to different supervisory entities.

[44] ESMA Opinion : Amendments to ESMA's draft technical standards on disclosure requirements under the Securitisation Regulation Link

127. The most prominent difficulty concerning the application of the STS criteria for ABCPs relates to the requirements at programme level. While STS ABCP programmes are possible under the SECR, no STS issuances have been made at programme level so far. The lack of STS issuances at programme level is mainly due to the fact that i) market participants have firstly focussed on the implementation of STS criteria at transaction level, ii) the benefits for achieving STS at programme level are very limited and iii) the existing STS requirements at programme level are hard for sponsors to meet:

i. **Application of STS criteria at transaction level.** With the introduction of the new SECR in 2019 and the finalisation of the level 2 regulations, market participants have started with the implementation of ABCP STS criteria at transaction level. ABCP STS transactions are mainly existing deals and ABCP sponsor banks have invested primary efforts to agree with originators i) to amend ABCP transactions to comply with STS criteria, ii) to have ABCP transactions STS-verified and STS-notified and iii) to implement the new reporting standards according to Art. 7 of the SECR. Main drivers for efforts from originators and ABCP sponsor banks were to limit the increase of new risk weights (as per Art. 243 of the CRR) and to assure legal compliance with new securitisation regulation including the reporting templates for ABCP and non-ABCP transactions especially in syndicated deals where both templates apply.

ii. **Limited benefits for achieving STS at programme level.** ABCP transactions fulfilling ABCP STS criteria at transaction level can reduce the capital requirements on the liquidity lines backing the transactions. The STS label at transaction level can therefore support the development of ABCP securitisations and enhance investors' confidence. However, at programme level, the STS label provides limited prudential benefit because European money market funds investors, which represent an important part of investors of ABCP programmes (more than 50%) are not eligible for preferential capital treatment. Furthermore, the liquidity treatment is key for ABCP programmes but the LCR does not include ABCP as an eligible HQLA asset even if the ABCP is STS.

iii. **The STS requirements at programme level are difficult for sponsors to meet.** Article 26(1) of the SECR, which requires that all underlying securitisation transactions must be STS securitisations (with a temporary carve out of 5%), and Article 26(2) of the SECR, which requires that the remaining average life of the underlying exposures of an ABCP programme should not be more than two years, are currently difficult to meet and to track given existing ABCP structures in the EU. Therefore, according to market participants, the programme level requirements of Article 26 of SECR are too demanding when compared to the benefits achievable when converting an existing ABCP programme to STS or creating a new STS ABCP programme.

128. In order to make the STS programme effectively applicable and create the right balance of incentives, some adjustments to the STS criteria of Articles 26.1 and 26.2 of the SECR may be investigated. For example, it could be assessed whether it would be appropriate to reduce the threshold of the STS requirements at programme level (e.g. minimum [x]% of transactions to be STS within an STS ABCP programme and average WAL no more than two years only for these [x]%). However, such adjustments would only be relevant if there is a market need for an STS label at programme level. In this regard, the current absence of liquidity benefit associated with the STS label for ABCPs, does not make the business case for STS at programme level evident at present.

6.2.3 Recommendations and key messages – STS criteria

129. In light of the review of the functioning and of the implementation of the STS criteria prescribed in Chapter 4 of the SECR, the JC of the ESAs is of the view that the following recommendations and key messages should be considered:

STS criteria for non-ABCP securitisations

- The STS criteria for non-ABCP securitisations seem to be functioning as expected. Many of the challenges raised by the stakeholders are due to limitations that have been intentionally prescribed by the regulation (e.g. exclusion of CMBS and CLOs, exclusion of impaired exposures, strict homogeneity requirements, extended STS disclosure) or could be solved by providing further guidance regarding the interpretation of the STS criteria, for example via European Commission's interpretative guidance or JC's Q&As**.**

- Therefore, no changes in the STS criteria for non-ABCPs are deemed necessary at the initial stage of the implementation of the STS legal framework. While it is acknowledged that the STS requirements are dense and demanding, it is not seen as appropriate to amend the regulation in a sense that might risk lowering the quality of the STS standards. The EU securitisation market is currently adapting to the STS requirements and changes in the STS criteria might be disruptive or perceived negatively by investors. However, as more STS issuances are executed and the STS market reaches a stable pace, further analysis should be performed to determine whether the STS criteria could be simplified without reducing the quality of the standards.

STS criteria for ABCP securitisations

- The existing STS requirements set out in Articles 26.1 and 26.2 of the SECR have proven to be particularly difficult for sponsors to meet. As a result, the STS label have not been used in practice for ABCP programmes as no sponsor has notified STS at programme level to ESMA.

- In order to further facilitate the use of the STS label at programme level, the legislator may consider introducing some targeted adjustments to the regulation. However, at this stage, there does not seem to be a strong business need for an STS label at programme level due to the limited prudential benefit associated to the STS label for ABCP, especially from a liquidity perspective and due to the limited interest of the most common investors of ABCPs (i.e. money market funds) for STS products.

- Accordingly, it is considered that no changes are made to the level 1 text until the business case for the STS label at programme level becomes more vibrant. In this regard, the European Commission should examine the adequacy of the prudential treatment of STS securitisation, including for STS ABCP programmes, in its review of the securitisation framework prescribed by Article 519a of the CRR.

6.3 Supervision by competent authorities of the compliance with the STS requirements

130. This section of the report focusses on the supervision by competent authorities of compliance with the STS requirements, in particular addressing the current approaches to the supervision, the challenges that have been faced by competent authorities and the possible recommendations to address them.

131. Article 29(5) of the SECR requires that Member States[45] must designate one or more competent authority to supervise the compliance of originators, sponsors and SSPEs with the STS requirements laid down in Articles 18 to 27. ESMA maintains an up-to-date list of designated competent authorities[46] on its website (in accordance with Article 29(8) of the SECR).

132. As outlined in paragraph 11 of this report, a survey was provided to competent authorities to seek feedback from a supervisory perspective on the functioning of the SECR, including on their experiences so far on the supervision of the compliance with the STS requirements. The results of the survey indicate that experience in the supervision of the compliance with the STS requirements in some jurisdictions has been limited so far. This is due to:

    I. The recent creation of the STS label;

    II. In some jurisdictions no practical experience has been gained because there have been no securitisations designated as STS in those jurisdictions[47] and hence no supervision has been performed;

    III. In some jurisdictions[48] there have been very low numbers of securitisations designated as STS and so knowledge is limited to a small number of supervisors.

    IV. In some jurisdictions, competent authorities have been designated late or not designated yet.

133. Therefore, in those jurisdictions with little experience gained with the supervision, supervisory practices and supervisory tools are still in the development phase, and so are not yet fully developed across all competent authorities.

134. It is evidenced in the survey results, that across those jurisdictions where there have been higher issuances of STS designated securitisations[49] the supervision is performed in different ways across competent authorities. Furthermore, different supervisory tools have been developed. Examples of these include:

    a. Assessment templates with the goal of ensuring a consistent assessment of the STS requirements across all STS securitisations;

[45] As of the date of this report not all Member States (Belgium, Italy, and Latvia) have designated a competent authority for the specific supervision of the STS criteria.

[46] Link

[47] Romania, Denmark, Lithuania, Sweden, Slovakia, Hungary, Greece (for less significant institutions).

[48] Czech Republic (negligible), Finland (1), Poland (2) Portugal (2).

[49] See graph 6 for the geographical breakdown of public securitisations designated as STS to ESMA.

b. Supervisory manuals for the assessment and monitoring of STS securitisations;
c. Annual audits of supervised entities to check compliance with the STS requirements;
d. Checklists to check that each STS requirement is fulfilled.

135. Given that there are different approaches to the supervision across competent authorities and the limited experience gained so far in some jurisdictions, this could lead to an unlevel playing field to the supervision of the STS requirements at EU level. In particular this could cause a risk that the supervision is not performed effectively in jurisdictions with limited resources should there be higher numbers of STS designated securitisations issued in the future. Furthermore, the cost of developing a supervisory regime and tools could be high for competent authorities in those jurisdictions where the issuances of STS designated securitisations remains limited.

136. One possible option to be considered in the future to mitigate this risk, to ensure a level playing field at EU level and to ensure economies of scale is the possible delegation of supervision of the STS requirements from those jurisdictions with no or limited issuances, experience and/or resources to those jurisdictions with a higher number of issuances or alternatively the centralisation of the supervision to one of the ESAs. However, some competent authorities consider that it may be too early to change the current supervisory responsibilities in the SECR with respect to STS supervision given that the STS label was only recently created, and the assessment of compliance with the STS requirements is seen as a complex process which requires in-depth knowledge. Furthermore, careful consideration is needed to assess whether there are legal challenges to this, how to amend the legal text and how supervisors will be equipped with the necessary knowledge and expertise to carry out STS supervision, in particular with respect to national specificities of securitisations, given that a number of STS criteria require an in-depth understanding of the civil law governing the securitisation.

6.3.1 Challenges to supervision

137. The outcome of the survey has also identified other challenges with respect to the supervision of the STS requirements:

I. The STS requirements may allow for different interpretations across competent authorities which could lead to fragmentation in the market with respect to the implementation of the STS framework and a common supervisory approach. It is therefore essential to provide clarity on the STS criteria at EU level. More clarity could be provided via interpretative communications by the Commission or via guidelines and/or Q&As by the ESAs. Furthermore, competent authorities are encouraged to seek guidance via the JCSC if there are uncertainties on how to interpret the STS criteria. This will ensure that there is sufficient communication and cooperation across competent authorities and the ESA's, and a common understanding to the STS requirements at EU level;

II. As outlined in paragraph 94 of the report with respect to the market participants view on the complexity of the STS requirements given the high number (over 100) of STS criteria, some competent authorities have also outlined the heavy workload and complexity associated with verifying the STS criteria. This further confirms the need to ensure there is a common understanding and interpretation across competent authorities;

III. The RTS on cooperation between competent authorities and the ESAs, submitted to the Commission in January 2019, has not yet been published in the Official Journal of the EU (at the time of developing this report). Competent authorities view that the lack of adoption of the RTS on cooperation does not help the communication and flow of information amongst competent authorities in case of potential errors or infringements relating to securitisation transactions. Furthermore, in the case of STS designated securitisations, as the competent authority of the originator, sponsor and SSPE are required to supervise the compliance of the STS requirements it may result in situations in which three different competent authorities check compliance of the same criteria. The lack of RTS on cooperation leads to there being no procedure with respect to the cooperation between competent authorities in the case that a securitisation transaction involves entities in multiple jurisdictions;

IV. Finally, in some cases, and in particular for private securitisations, competent authorities are not timely notified by the originators or sponsors of STS securitisations in their jurisdiction. In these cases, it is only when the STS notification has been submitted to ESMA and ESMA has published the STS notification on its website that the competent authority is able to identify the existence of the STS notification. This can lead to a lack of timely supervision of STS private securitisations.

6.3.2 Recommendations and key messages – STS supervision

138. In light of the review of the functioning of the supervision of compliance with the STS requirements, the JC of the ESAs is of the view that the following recommendations and key messages should be considered to address the challenges faced by competent authorities on the supervision of the STS requirements and to facilitate a common and harmonised approach to supervision:

Promote supervisory convergence amongst competent authorities

- Changes in the level 1 text are not deemed necessary in relation to supervisory competences on STS requirements at this stage. However, given the different approaches to supervision across competent authorities and the lack of experience with the supervision of the STS requirements in some jurisdictions it is recommended to provide further guidance to supervisory authorities in order to ensure efficient and consistent implementation of the existing level 1 text. Such guidance could be provided by the JC of the ESAs in order to develop further common understanding, best practices and supervisory tools to ensure a common supervisory approach at EU level. An EU harmonised approach amongst competent authorities for monitoring compliance of the STS requirements is seen as essential for the success of the STS label and for the establishment of a stable STS securitisation market.

- In this context, the JCSC (in accordance with its mandate laid down in Article 36(3) of the SECR) could invite competent authorities to further explore how to share best supervisory practices and develop common supervisory tools. Moreover, if deemed necessary, the JCSC could set up a dedicated sub-group to the JCSC to allow the competent authorities to share their interpretations and approaches to the supervision of compliance with the STS requirements as well as the challenges faced in their on-going supervision. Consequently,

competent authorities with less supervisory experience can benefit from lessons learned and challenges faced by other competent authorities.

- Given the challenges identified with respect to cooperation amongst competent authorities, it is essential for the Commission to publish the RTS on cooperation without further delay. In addition, if deemed further necessary, the JCSC could develop further clear procedures for fostering cooperation amongst competent authorities, in particular given the cross-jurisdictional aspect of the SECR and when multiple parties in different jurisdictions are involved in a securitisation transaction.

Further explore the possibilities of centralisation of supervision of the STS requirements

- At a later stage, the JCSC could explore and analyse whether a change in the supervisory landscape by centralising or delegating the supervision of the STS requirements, including the delegation of supervision of the STS requirements to ESA's, could improve the STS supervision and avoid fragmentation and an unlevel playing field to the supervision of the STS requirements at EU level. This analysis could be done in the next JC report to be published in 2024, once competent authorities have gained further experience in the supervision of the STS requirements.

- This is because centralising the supervision of the STS requirements may ensure a level playing field across all STS securitisations, whilst also ensuring economies of scale, in particular in those jurisdictions where there have been few issuances of STS securitisations and hence possibly a lack of experience with the STS requirements.

- Further analysis needs (i) to provide further evidence as to whether the current supervisory responsibilities under the SECR are adequate or not (ii) to lay out how a change in the supervisory landscape could affect the STS supervision (iii) the potential impacts of centralising or delegating the supervision, (iv) the legal articulation and the necessary amendments into the legal text and (v) whether there is sufficient in-depth knowledge to carry out such supervision given the national specificities of securitisations. Furthermore, it could also be assessed, if further supervisory convergence is achieved in the meantime, whether the current supervisory landscape has been improved and may already be sufficient without the need for centralising or delegating the supervision of the STS requirements.

6.4 Third-party verifiers (TPVs) of STS compliance

139. This section of the report focusses on the TPVs authorised to verify STS compliance, the role performed by the TPVs since the entry into force of the SECR and the opportunities and challenges identified by competent authorities, as well as recommendations and key messages to address these challenges.

140. In accordance with Article 28(1) of the SECR, a third party can be authorised by a competent authority to assess the compliance of securitisations with the STS criteria provided for in Articles 19 to 22 or Articles 23 to 26 of the SECR.

141. To date, only two TPVs have been authorised to verify STS compliance. These are:

    i. PCS which was approved[50] by AMF (France);

    ii. SVI GmbH which was approved by BaFin (Germany).

142. As outlined in paragraph 96, the survey to market participants indicate that TPVs are seen as an additional source of guidance and control to interpret the STS requirements which is valued by investors and less experienced securitising parties[51]. As further outlined in Section 6.1.2 of the report, most market participants (65%) who provided responses to the survey have used a TPV authorised under Article 28 of the SECR to assess whether the securitisation complies with the STS criteria. In addition, to date 96% of public STS notifications received to ESMA have been verified by TPVs.

143. Given this information, the use of TPVs has provided more certainty to securitising parties on STS compliance, in particular against possible penalties in the case of incorrect interpretations of the STS criteria.

6.4.1 Challenges to the use of TPVs

144. Some possible challenges have been identified with respect to the use of TPVs:

I. The high use of TPVs to verify STS compliance and the dominant position in the market of the two TPVs authorised thus far, and in particular by one TPV as evidenced in Graph 7, may lead to the risk that the knowledge of the practical implementation of the STS requirements is concentrated within the two TPVs. Furthermore, the results of the survey to competent authorities indicate that only a small number of queries have been received from TPVs on how to check compliance or interpretative questions related to the STS requirements. This could imply that there is not enough transparency for competent authorities on how TPVs are interpreting and implementing the STS requirements which could lead to the risk of there being different interpretations amongst TPVs and competent authorities on the STS criteria and outcome of the STS assessment. Competent authorities are therefore encouraged to engage in further cooperation and/or technical exchanges with TPVs to ensure consistent interpretations of the STS criteria and public disclosure of those interpretations.

II. Further to this, it should also be stressed that the securitising parties remain fully responsible for verifying STS compliance and that there should be no over-reliance on TPVs. Securitising parties should ensure that they do not solely rely on TPV assessments as well as institutional investors should ensure that they can fulfil their obligations under Article 5

[50] Also approved by the UK FCA as a TPV in the UK
[51] Originator, sponsor or SSPE

of the SECR as explicitly required by the last sentence of the first subparagraph of Article 27(2) of the SECR. In this regard, there is the danger of securitising parties only checking a securitisations compliance with the STS criteria at one point in time and not throughout the lifetime of a securitisation. This could lead to the risk that a securitisation remains labelled as being STS compliant even if the securitisations features changes throughout the lifetime of the securitisation resulting in it no longer being STS compliant. Thus, further clarification on this point in the level 1 text may be beneficial to ensure STS compliance throughout the lifetime of a securitisation. Increasing transparency, as outlined in the previous point, would also further assist securitising parties in checking the STS compliance throughout the lifetime of a securitisation and would further provide a better understanding for institutional investors to adequately perform their due-diligence requirements.

III. Finally, in relation to the authorisation of TPVs, Article 28 of the SECR specifies the conditions to be met for a TPV to be authorised by a competent authority, as well as the information to be provided to a competent authority when a TPV is applying to be authorised. It does not, however, set out the conditions and procedures for ongoing supervision of TPVs but only the authorisation conditions[52]. As the supervision of TPVs only consists in checking the initial and ongoing compliance with the authorisation conditions, it falls under the responsibility of competent authorities to organise the supervision of such authorisation conditions. This could lead to different approaches amongst competent authorities on organising supervision of ongoing compliance with TPV authorisation conditions.

6.4.2 Recommendations and key messages - TPVs

145. The JC of ESAs is of the view that the following recommendations and key messages should be considered with respect to TPVs verifying STS compliance:

Attract further TPV agents' applications and encourage further transparency

- In order to help facilitate the entrance of new TPVs in the market and to provide more guidance to securitising parties and institutional investors in performing their own assessments of compliance with the STS criteria, it is recommended that further guidance and Q&As on compliance with the STS criteria could be published by competent authorities. Furthermore, more transparency from TPVs on how they apply the criteria to perform the STS assessment could be of benefit to securitising parties in carrying out their own assessment and for competent authorities in their supervision of compliance with the STS requirements. This will result in more consistency and transparency across the securitisation market.

Compliance with the STS criteria throughout the lifetime of the securitisation

[52] Competent authorities shall also withdraw the authorisation of a TPV in accordance with Article 28(1) of the Securitisation Regulation if it considers that the TPV is no longer compliant with the authorisation conditions.

- In order to ensure sufficient investor protection, it is recommended that clarifications should be provided by the European Commission in the level 1 text that whilst the TPV may verify the compliance of a securitisation with the STS criteria at issuance, the securitising parties are under an ongoing obligation to check compliance with the STS requirements throughout the lifetime of the securitisation. This will further highlight that securitising parties should not solely rely on a TPVs assessment at issuance and continue to fulfil its obligations throughout the lifetime of a securitisation.

Supervision of TPV authorisation conditions

- The need for competent authorities to develop a consistent approach to ongoing supervision of authorisation conditions for TPVs should be further analysed. Such analysis could be carried out by the JCSC. If deemed necessary, guidance could be provided by the ESAs JC to work on a common approach to supervising ongoing monitoring of authorisation conditions, focussing on a common understanding of robust methodologies for assessing STS criteria.

7 Material risks

146. This report is also intended to provide "an assessment of the actions that competent authorities have undertaken, on material risks and new vulnerabilities that may have materialised" (Article 44 (b) of the SECR). The results of the survey to competent authorities indicate that little material risks and emerging sources of vulnerabilities have been identified by competent authorities. However, this is not to say that the EU securitisation market does not involve any risks but according to the information currently available from competent authorities, it cannot be concluded at this stage that material risks and new vulnerabilities have materialised. Furthermore, it was highlighted that the ESRB is the designated competent authority responsible for the macroprudential oversight of the Union's securitisation market (Article 31 of the SECR)

147. This section focusses on the impact of the COVID19 pandemic as a possible vulnerability on the EU securitisation market as well as the actions undertaken by competent authorities and also, highlights an upcoming report on the financial stability implications of the securitisation market to be provided by the ESRB in accordance with Article 31 of the SECR.

7.1 Impact of COVID19 pandemic

148. The full impact of the COVID19 pandemic on the EU securitisation market is not yet known. It is possible that the securitisation market may be affected by the deterioration of the financial situation of lenders caused by the pandemic, including a possible increase in credit risk and subsequent effects on the pricing of securitisations, and could impact on the ratings of securitisations by credit rating agencies.

149. Consequently, this may lead to a decrease in the interest shown by investors for securitisation products. However, it is still uncertain about the consequences of the pandemic in both the short and long term.

150. The effect of the holiday payment moratoria on the EU securitisation market is hard to predict and measure. Current securitisations may be affected by the future consequences of the payment moratoria measures that are/were in place across the EU. While payment moratoria have been adopted or foreseen by EU Member States to support borrowers (such as payment holidays on residential mortgages), the question remains whether this support will imply a lower level of cash receipt and consequently, an impact on securitisation transactions. It is however difficult at this stage to quantify this impact because this will depend on many factors including the nature of forbearance measures which could impact on the categorisation of loans (arrears or not) within a securitisation transaction or the existence of contractual clauses such as "triggers" which could be affected by the making of payment holidays.

151. The stretching of liquidity in the EU ABCP market during the first phase of the pandemic crisis in 2020 also resulted from tensions in money market funds liquidity which have reduced their investment maturities and look for government securities investment. These tensions have fuelled the discussion on at least two aspects: the way to increase the diversification of ABCP transactions' investor basis; as with the monetary measures of the US Federal Reserve (the setting up of the Corporate Paper

Funding Facility (CPFF)), the Bank of England and the Bank of Canada, whether EU ABCP transactions facing liquidity dry up should have benefitted from similar support measures. Given the role of sponsors under the European context as liquidity facility provider of ABCP Programmes, the direct support at the sponsor level appeared to be as effective for the EU ABCP market.

152. To provide guidance to the market, and monitor the impact of the COVID 19 pandemic on the EU securitisation market, the ESA's adopted actions throughout 2020, including:

    i. EBA Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID 19 crisis;
    ii. EBA issued a statement in April 2020 on additional supervisory measures in the COVID 19 pandemic;
    iii. ESMA issued Q&A's on reporting payment moratoria information in the ESMA reporting templates;
    iv. JCSC agreed on sharing and coordinating actions to address the COVID19 crisis and monitoring the impact of the crisis on the securitisation market.

7.2 ESRB report on the financial stability implications of the securitisation market

153. In accordance with Article 31 of the SECR, the ESRB is required, in collaboration with the EBA, to publish a report on the financial stability implications of the securitisation market. This report is expected to be published in Q3 2021.

154. If material risks are observed, the report shall provide warnings and, where appropriate issue recommendations for remedial action in response to those material risks including on the appropriateness of modifying the risk-retention levels, or the taking of other macroprudential measures, to the Commission, the ESAs and to the Member States.

8 Other considerations on the functioning of the SECR

155. The division of supervisory roles and responsibilities between the ECB and competent authorities in the supervision of Articles 6-8 of the SECR, has been in the past unclear in respect of significant credit institutions who are under the direct supervision of the ECB and who are acting as originators, sponsors or original lenders (Article 29(2) and (3) of the SECR). This has caused uncertainty in the market leading market participants to have doubts as to who is responsible for the supervision. Effective supervision is key for the orderly functioning of securitisation markets.

156. The opinion of the ECB of 11 March 2016[53] and subsequent Opinion on 23 September 2020[54] reflected the position of the ECB in respect with the division of the roles and responsibilities laid down in the SECR and highlights that the roles and responsibilities assigned to the ECB needed further clarity.

157. However, the European Commission, the European Parliament and the Council have reiterated the division of the roles and responsibilities laid down in the SECR, in the context of the Capital Markets Recovery Package[55]. Recital 26 on amendments to the SECR states that compliance of Articles 5 to 9 of the SECR are specifically entrusted to the competent authorities in charge of the prudential supervision of the relevant financial institutions given the prudential dimension of those obligations.

158. Given Recital 26, the uncertainty with respect to the different interpretations of the supervisory responsibilities is now clear. Therefore, cooperation between the ECB, the ESAs (taking into account ESMA's direct supervisory role of securitisation repositories) and competent authorities should be promoted to ensure an efficient and consistent application of the supervisory roles and responsibilities set out in the SECR.

[53] OPINION OF THE EUROPEAN CENTRAL BANK of 11 March 2016 on (a) a proposal for a regulation laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation; and (b) a proposal for a regulation amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms

[54] OPINION OF THE EUROPEAN CENTRAL BANK of 23 September 2020 on proposals for regulations amending the Union securitisation framework in response to the COVID-19 pandemic

[55] Regulations (EU) 2021/557 and 2021/558 Link

Annex 1: Changes introduced in the prudential treatment of STS and Non-STS Securitisations under Solvency II

159. The Delegated Regulation 2018/1221 has amended the Delegated Regulation 2015/35 on the prudential treatment for STS and non-STS securitisations held by insurance and reinsurance undertakings. Among the different modifications introduced by the Delegated Regulation 2018/1221, the most significant one refers to the calculation of capital requirements for securitisations, which is specified in Article 178 of the Solvency II.

160. **Past capital requirements calculation:** In order to calculate capital requirements, the old Solvency II regulation divided securitisation into three categories, type 1, type 2 and re-securitisation positions and then calculated capital requirements for each group:

- A securitisation position was type 1 if it met a list of 20 stringent criteria, which were listed in Article 177.2 of Regulation (EU) 2015/35. The quality criteria included structural characteristics in particular: only positions with a minimum Credit Quality step of 3 (equal or better than BBB) and only most senior tranches were considered for a type 1 classification.
- A re-securitisation position existed if at least one of the underlying exposures was a securitisation position and the associated risk was tranched again.
- If a securitisation position did not meet the type 1 criteria and was not a re-securitisation position, it was classified as a type 2.

161. The capital requirement for a securitisation position was calculated as its market value multiplied by a defined stress factor. The stress factor for the capital requirement depended on the duration, the credit rating and the type allocated to the securitisation position.

162. **Current capital requirements calculation:** The Delegated Regulation 2018/1221 modified the stress factors by replacing the above described categorisations according to type 1, type 2, re-securitisations and quality criteria for type 1 with a new classification in senior STS, non-senior STS, non-STS and re-securitisations:

- By allocating lower stress factors to senior STS securitisations, the new classification now puts them in a better position than the previous type 1 securitisations.
- Ratings below Credit Quality Step 3 and STS securitisations that are not most senior are now also allocated relatively low stress factors.
- On the other hand, the non-STS securitisations are allocated the same values as the former type 2 securitisations.
- Transitional provisions have been provided for any type 1 securitisations issued before 1 January 2019 to be treated as STS securitisations.