

Keynote Address

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Ladies and gentlemen,

I am very pleased to be with you today and to have been invited to address this diverse and distinguished audience at what is a crucial moment for EU securitisation markets in my view. After so many years of discussions, negotiations, and question marks, 2019 is the first year when the new European regime for securitisations actually applies.

Before going into the main part of my remarks, let me begin by stating that ESMA is fundamentally supportive of European securitisations that are well-regulated, with an appropriate transparency regime and an adequate infrastructure for assisting investors in understanding these products. Securitisations are a crucial tool for lenders that seek to raise funding for providing credit to the economy. Securitisations also help investors gain direct exposure to a number of asset classes that they would not normally have access to.

We hope that the Securitisation Regulation, once fully implemented, will help build confidence in EU securitisation markets. Indeed, the new Securitisation Regulation is a key part of the Capital Markets Union, which itself seeks to build well-functioning capital markets, strengthen Europe's economy and promote a more integrated and stable financial system.

If you're here today, you would probably agree with me that securitisations are a complex and heterogeneous product. Therefore, it's perhaps not surprising that the Securitisation Regulation reflects this in its own complexity. The Regulation has been finalised since December 2017 and many opinions have been written on it. Today, I would like to provide ESMA's perspective on some key aspects of the Regulation.

I hope that, by the end of my remarks, it will be easier to see where ESMA fits in among the different authorities involved in implementing the Regulation. I also hope that it will be clearer to everyone in this room why ESMA took certain paths in the pieces of draft legislation that it submitted to the European Commission in 2018 and early 2019. And, finally, I will try to provide further details on ESMA's forthcoming activities and deliverables in the context of the Securitisation Regulation.



With these goals in mind, I will focus on the following topics:

1. ESMA's role in the broader EU regulatory framework
2. The proposed securitisation disclosure requirements developed by ESMA
3. ESMA's activities regarding Simple, Transparent, and Standardised (STS) securitisation notifications
4. ESMA's registration and supervision of securitisation repositories, and
5. Our ongoing efforts to interpret some key aspects of the Securitisation Regulation and to ensure that supervisors' activities are as coordinated as possible

Let me start by turning now briefly to ESMA's role among EU regulators and supervisors. This will help frame the rest of my remarks that specifically relate to the Securitisation Regulation.

ESMA within the EU Regulatory Framework

ESMA was established in 2011, two years after a call by the European Heads of state and government for more harmonised regulation and integrated European supervision.

ESMA's establishment formed part of the wider European System of Financial Supervision. Like its sister organisations the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), ESMA's mission is to improve the protection of investors, and to promote stable and well-functioning financial markets in the EU. In addition, ESMA, the EBA, and EIOPA, work closely together with the European Systemic Risk Board (ESRB) to achieve these objectives.

As an independent institution, ESMA achieves this mission by building a single rulebook for EU financial markets. This involves, for example, delivering technical standards and advice. To ensure consistent implementation and application of that single rulebook across the EU, ESMA actively coordinates national supervisory activities and drives for convergent supervision and enforcement – a role that I will discuss later in the context of securitisation. ESMA is also mandated to supervise some key types of financial services firms with a pan-EU reach. This includes credit rating agencies, trade repositories and, as I will discuss in a few minutes, securitisation repositories.

ESMA does not develop technical standards and advice in a vacuum. Our draft texts must, quite rightly, reflect input not only from national competent authorities, but also from the wider stakeholder community such as yourselves. We also have close working relationships with the European Commission, the European Parliament and the Council of Member States—and ESMA is formally accountable to the Parliament and Council. In fact, ESMA is a technical body, but not a legislative body. In other words, our standards and advice are not EU law—they are submitted to the European Commission, who must decide whether to adopt them into EU law, after providing the Parliament and Council with an opportunity to object.

This is, in fact, where we now stand with the majority of ESMA's technical standards and advice under the Securitisation Regulation. A total of 12 different pieces have been submitted to the Commission during 2018 and early 2019, and are awaiting the outcome of their review, including the views of the Parliament and the Council.

Let me now discuss the securitisation disclosure requirements, which are one of ESMA's major regulatory activities under the Securitisation Regulation.

Securitisation disclosure requirements

The disclosure requirements, which ESMA finalised and submitted to the European Commission in January this year, represent the single largest area of work for ESMA in the context of rulemaking under the Securitisation Regulation. They aim to ensure that investors, potential investors, competent authorities, and other public authorities have sufficient information to meet their due diligence and supervisory obligations under the Regulation. ESMA's work in this context falls squarely within its investor protection mandate, which I mentioned a few moments ago.

European securitisations come in many shapes and sizes, from fast-moving asset-backed commercial paper transactions, to small true sale auto loan-backed securities, to non-performing exposure securitisations supported by government guarantees, to diverse small and medium-sized enterprise deals, and also to transactions backed by gigantic rotating pools of residential mortgages. This impressive variety is created by large individual lenders or by multiple originators banding together either in the same country or across borders. And there are any number of counterparties that can get involved to provide services as well, such as swap providers, account banks, back-up servicers, and calculation agents.

ESMA faced the challenge of developing templates that would be flexible enough to capture all of this variety, while still ensuring a measure of consistency across the templates for investors seeking to make comparisons, and for public entities seeking to supervise and monitor the market. For this reason, we developed dedicated templates to cover the most common types of underlying exposures in EU securitisation markets, while also leaving space for other more 'esoteric' arrangements.

At the same time, we did not try to re-invent the wheel. Instead, we took as a key source of inspiration the securitisation templates developed by the European Central Bank as well as those developed by ESMA earlier in the decade. As a result, ESMA's current draft templates are as consistent with those previous iterations as possible.

However, we could not simply copy what had already been done. For example, there were important lessons learned since the development of the ECB and previous ESMA templates, including which fields had proven to be particularly useful for assessing securitisations and which fields were less useful. In addition, the Securitisation Regulation introduced some new formal requirements on investors, potential investors, and public authorities, such as due diligence and stress test requirements, and market monitoring tasks. The Regulation also

specifically required entire new template sections to be developed, such as securitisation cash flows and ‘trigger’ events.

It was also of course necessary to be sure that the templates were in line with the specific mandates given to ESMA by the co-legislators under the Securitisation Regulation. One issue that we faced in this context was whether the templates should apply only to securitisations that require a prospectus to be drawn up (‘public securitisations’), or to all securitisations. In the end, following a careful reading of the Regulation and the mandates therein, it appears that the template sections dealing with underlying exposures and investor reports are required to be completed by all securitisations. Nevertheless, I think we all agree that it would have been helpful for the Securitisation Regulation to have been clearer in this regard.

The draft templates are available on ESMA’s website and, when opening them, it’s immediately clear that they are quite detailed. Because of this, ESMA also needed to explore arrangements for when data cannot be reported. For example, the pool of underlying exposures in a securitisation can include very old loans created at a time when it was neither required nor common practice to collect certain pieces of information. These loans can still be safe though—indeed, if a borrower has been paying back on time for many years, then it’s likely they will continue to do so. It seemed to us that the disclosure templates should not exclude such safe loans entirely just because a few pieces of information could not be provided. For this reason, we believed that an element of proportionality was needed to ensure the minimum data completeness standard was not overly burdensome, while still allowing investors to receive a sufficient amount of information. The disclosure technical standards thus introduce a system of standardised codes, which allow reporting entities to explain to data users why a certain piece of information cannot be provided.

The result of all of this work is a set of fifteen interlocking templates, for a total of about 1,350 fields. Templates of this size are inevitably complex to decipher. Since the last quarter of 2018, we’ve received hundreds of questions on how to interpret certain fields and other aspects of the disclosure templates. Formally, as I mentioned earlier, the disclosure templates must be adopted by the Commission before they become law, and ESMA’s hope is that this will happen very soon. However, we have tried to go ahead and provide clarifications to the market even before the templates have been finalised by the Commission, by publishing Q&As on our website. A first round was published in late January 2019, plus a further set of updates a few weeks ago, and we have another package in the pipeline for the coming weeks.

I recognise that it takes ESMA some time to respond to market participants on their questions. This delay is not a sign that nothing is happening behind the scenes—once we receive a question ESMA needs to go through several rounds of discussions in order to agree a common line across all public entities involved on this topic. Importantly, these discussions include the national competent authorities that are responsible for supervising compliance with these templates. This ensures that the answers can be relied upon by stakeholders as reflecting the views of both ESMA and all supervisory authorities involved. The procedure also ensures that the answers are shared with all market participants simultaneously and in a transparent manner.

Another aspect that has kept us busy since January has been the creation of the necessary technical documents for the templates to actually be incorporated in database systems. Again, normally this would be done after the templates have been adopted by the Commission, but due to the time needed by the Commission to review these standards, and due to the fact that no transitional or phase-in period is foreseen by the Securitisation Regulation, ESMA found it necessary to front-load the technical work as much as possible. I'm pleased to report that this work has been progressing well, and that we hope to publish a first version of XML schema, validation rules, and reporting instructions on our website in the next few weeks. As usual, there will always need to be some fine-tuning afterwards, but we hope that this will provide IT and other technical staff in your institutions with some helpful material to implement the necessary reporting systems.

Securitisation repositories

The Securitisation Regulation provides for a system of securitisation repositories to host all this data and make it available to investors in a centralised fashion. These repositories are the next topic that I would like to focus on this morning.

Securitisation repositories will play a crucial role in centralising all of the securitisation information across the EU for investors and other data users. The repositories will also be responsible for conducting completeness and consistency checks of the disclosure templates and transaction documents sent to them by reporting entities. In November 2018, ESMA published a set of technical standards on these operational aspects, which are also with the Commission at the moment for review.

These technical standards include, among other aspects, the concept of completeness thresholds, which aim to ensure that a minimum degree of information exists in the disclosure templates. These thresholds would be determined by ESMA, to avoid the risk that each repository would set different figures. ESMA is preparing the threshold calibrations in parallel with the Commission's review of these technical standards. The calibrations look also at past experience with data completeness using, for example, the ECB securitisation disclosure templates. The purpose of the thresholds is not to introduce another cliff effect for reporting entities. Instead, we hope to use them as a dynamic tool to guide the market in a smooth manner towards an appropriate degree of data completeness, taking into account reporting burdens and the needs of data users. For this reason, we plan to consult on the initial calibrations with market participants, and our aim is to be able to do this in the coming weeks.

ESMA will register and supervise securitisation repositories, much as we do with trade repositories as part of derivatives reporting. Just as with trade repositories, we will charge fees to recoup our expenses. As mandated in the Securitisation Regulation, in November 2018 we published a set of draft registration requirements and also technical advice on our fees. Both of these items are also being reviewed by the European Commission at the moment.

The draft securitisation repository registration requirements were developed with the aim of being as consistent as possible with ESMA's existing registration requirements for trade repositories. This also reflects the overlap between the two spheres: trade repositories can

apply to be registered as securitisation repositories as well. However, we also needed to take into account the special nature of securitisations when developing the registration requirements. For example, certain types of securitisations will need to disclose a very high degree of detail for a small number of loans, while others will have millions and millions of loans with comparatively fewer pieces of information to disclose per loan. For this reason, we felt it important that the registration requirements be enhanced with respect to demonstrating that an applicant's IT systems can smoothly handle such a variety in file sizes and loan detail.

ESMA staff are preparing for the moment when applications will start to arrive from interested firms. When the draft registration requirements have been adopted by the European Commission and have subsequently entered into force, we can begin to examine applications we've received on or after that date. We know that securitisation repositories will play a crucial role in making the disclosure requirements function smoothly for both reporting entities and users. For this reason, ESMA will do its best to assess applications as soon as possible.

STS Notifications

I would now like to turn to notifications of securitisations that meet the 'Simple, Transparent, and Standardised' (STS) criteria set out in the Securitisation Regulation. ESMA has also been active on this subject: in July 2018 we published draft technical standards on the notification form to be used by originators and sponsors interested in obtaining the STS label. The European Commission is also reviewing those standards, which we understand are well advanced and should be published in the near future.

In order to benefit from the STS status and earn lower capital requirements, the securitisation originator or sponsor must submit an STS notification template to ESMA wherein they must explain how each of the STS criteria has been complied with. We will then publish the notification on its website for all to see. It is important to stress that ESMA's mandate only covers hosting this information. We do not supervise its contents, which is instead a role for national competent authorities. In this regard, the originator and sponsor should also share the STS notification with their national competent authority.

In the past months, ESMA has been working to build permanent capabilities to receive and publish these STS notifications. This system is planned to be operational in the first half of 2020. Before then, we have already developed an interim solution for those wanting to submit STS notifications to ESMA, which we are trying to make as robust and user-friendly as possible. I'm pleased that market participants have already begun using this interim solution, and would encourage any originator or sponsor interested in testing our system to consult the reporting instructions on our website.

One interesting development we have noticed is that, even though the draft technical standards have not yet become EU law, a number of securitisation originators and sponsors have already gone ahead and submitted STS notifications to ESMA for publication on its website. As of yesterday, we've received 16 STS notifications, the majority of which have been for public securitisations and covering residential mortgages and auto leases, whose originators/sponsors are established in the Netherlands, Germany, UK and France.



Interestingly, most of the STS notifications regarding public deals we've received have also used the services of so-called Third-Party Verifiers (TPVs).

These TPV firms provide an advisory service to issuers on whether a specific securitisation STS criteria have been complied with. TPVs are authorised and supervised by national competent authorities, using as a basis another set of draft registration requirements developed by ESMA and submitted to the Commission in July 2018. To date, several of these firms have already been authorised.

It is important to highlight that investor may rely to an appropriate extent on the STS notification, but this cannot be a substitute for their own due diligence.

Working across national and EU public bodies in the context of the Securitisation Regulation

At this point, I would like to take a step back and look at some more cross-cutting topics in the context of the Securitisation Regulation, such as providing further clarity on issues such as the jurisdictional scope of application of the Securitisation Regulation. and the term “potential investor”.

To handle such complex and transversal questions, the Securitisation Regulation requires that ESMA, the EBA, and EIOPA establish a specific sub-committee on securitisation as part of the Joint Committee of European Supervisory Authorities. I'm pleased to report that this sub-committee held its first meeting at the end of May and has already begun to discuss these and other topics requiring further interpretation. ESMA and the rest of the sub-committee's participants are well aware of the need to reduce uncertainty as much as possible for market participants such as yourselves. Using the Joint Committee, we will work together with our colleagues from the EBA and EIOPA to publish some further guidance on these topics in the coming months.

ESMA will also continue to play a role in coordinating the efforts of national competent authorities and ensuring that there is adequate cooperation amongst authorities. After publishing a draft technical standard on cooperation in early January of this year, we have also collected and published a list of the competent authorities involved in supervising securitisation activity in each EU member state. The list currently runs to 44 authorities, spanning securities markets regulators, insurance and pensions regulators, and banking regulators, some of which are also central banks.

All of this demonstrates the need for effective coordination both within Member States, across Member States, and between the national level and the European level.

Conclusion

Let me conclude. ESMA has been given a number of important tasks and responsibilities under the Securitisation Regulation, which includes providing technical input on disclosure

requirements, securitisation repositories, STS notifications, and coordination and cooperation with other public authorities. During 2018 and early 2019, ESMA delivered a total of 12 different pieces of draft legislation and advice to the Commission on these and other topics. We are now awaiting the outcome of the Commission's review, including the views of the Parliament and the Council.

At the same time, we are fully aware that market participants are operating under substantial uncertainty and time pressure, also because the Securitisation Regulation does not include much in terms of transition periods.

For this reason, ESMA did not pause after the rule-making period, and has, since late 2018, immediately transitioned towards the implementation phase, even before the technical standards have been adopted as formal Regulations by the European Commission. This implementation phase includes the finalisation of several critical deliverables. We are aiming to provide further Q&As and, where necessary, additional interpretations of the Regulation in the coming weeks and months. We will do this as fast as we can, taking into account the time we need to consult with stakeholders such as yourselves, and to agree common approaches with all public entities involved. And in parallel I would like to emphasise that there is only so much that we can do—it is essential that participants such as yourselves be ready by the time the technical standards like the disclosure requirements become EU law.

We are thus at a critical juncture for EU securitisation markets: much has been delivered, but the next few months will be crucial for setting out a stable platform for the coming years. Taking a longer-term view, I'm optimistic that, if we can all get these implementation steps right, we should be able to benefit from a vibrant and safe securitisation market that supports the needs of issuers, investors, consumers, and firms across the Union. That is certainly ESMA's hope, as well as our target.

Thank you for your attention, and I wish you a productive rest of the conference.