

# Peer Review Report

Peer Review on the implementation of the STS  
securitisation requirements

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## List of Terms and Acronyms

ABCP	Asset-backed commercial paper
ACPR	Autorité de contrôle prudentiel et de résolution
AFM	Autoriteit Financiële Markten
AMF, FR	Autorité des marchés financiers
AUP	Agreed-upon procedures
BaFin, DE	Bundesanstalt für Finanzdienstleistungsaufsicht
BdP	Banco de Portugal
CMVM, PT	Comissão do Mercado de Valores Mobiliários
DNB, NL	De Nederlandsche Bank
ESMAR	ESMA Regulation, Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
FTE	Full-time equivalent. One FTE is equivalent to one employee working full-time
Mandate	Mandate for this peer review as approved by the BoS in January 2024
Methodology	ESMA Peer Review Methodology (ESMA42-111-4966)
NCA	National Competent Authority
PRC	Peer Review Committee
SECR	Securitisation Regulation, Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 as amended by Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021
STS	Simple, Transparent and Standardised securitisation transactions, cf. Article 18 of SECR
SSPE	Securitisation Special Purpose Entity
TPV	Third-Party Verifier

# 1 Executive Summary

The Board of Supervisors (BoS) of ESMA decided to launch in 2023 a peer review on National Competent Authorities' (NCAs) supervision of Simple, Transparent and Standardised (STS) securitisation requirements, as mandated by the Securitisation Regulation (SECR). A robust and consistent STS framework in the EU contributes to increasing investors' confidence in securitisation transactions labelled as such and promoting access for cross-border investors. Therefore, a convergent approach amongst designated NCAs for the supervision of STS requirements is essential for an effective implementation.

The peer review was carried out based on ESMA's Peer Review Methodology<sup>1</sup> (the Methodology) by an ad hoc Peer Review Committee (PRC).

## ***Assessment areas***

The peer review covered NCAs' supervision of the STS securitisation requirements. In particular, the peer review focused on the supervision of a subset of the STS criteria under the (i) simplicity, (ii) transparency, and (iii) standardisation areas, which were selected using a risk-based approach and considering their comparability across non-ABCP and ABCP securitisation, as well as the potential room for divergence in NCAs' supervisory activity. For each of these areas, the peer review covered NCAs' supervisory work related to both STS securitisation transactions and their originators, sponsors and securitisation special purpose entities.

Through a questionnaire, on-site visits, and outreach to stakeholders, the peer review assessed NCAs against the supervisory expectations in these areas as set out in the peer review mandate. These expectations aimed to consider the efficiency and effectiveness of NCAs' supervision and enforcement, including the adequacy of their supervisory approach and the frequency, type and timeliness of supervisory intervention.

## ***Jurisdictions assessed***

The peer review targeted four of the most relevant jurisdictions in the EU based on the following objective criteria: (a) the number of STS securitisations in the Member State and (b) a balanced geographical distribution.

It should be noted that some other jurisdictions could have been selected based on the above criteria. However, they were excluded from the selection process of NCAs to be covered in the peer review because these NCAs had not yet implemented sufficient relevant and observable supervisory and enforcement practices during the review period, i.e. 2022-2023. This is notably the case of Belgium, where competent authorities for STS supervision have not been designated yet and Italy, where competent authorities were designated in September 2022. Still, the peer review aims to foster supervisory convergence and improve the supervisory practices of all NCAs, including those non-covered.

With this in mind, the following NCAs were selected for the peer review, in order not only to compare and assess their supervisory practices, but also to understand the approaches followed by NCAs taking into account their national legal framework and the different specificities of their securitisation market.

**TABLE 1 - NCAs ASSESSED IN THE PEER REVIEW**

Code	Country	Competent Authority	Acronym
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
FR	France	Autorité des marchés financiers	AMF
NL	Netherlands	De Nederlandsche Bank	DNB
PT	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM

### **Overall findings**

The PRC observed that the four NCAs followed different approaches built around mandatory steps dictated by national legal frameworks, especially in the case of DE and PT. Although PT and NL are considered sufficiently meeting supervisory expectations, both DE and FR partially meet expectations but for very different reasons, as explained below.

In Germany, STS supervision centres on the role of external auditors who are required by law to determine the compliance of credit and financial services institutions with disclosure obligations and requirements under SECR as part of the annual financial statement audits. The starting point of DE's supervision is the receipt and analysis of these auditors' annual reports. Auditors did not raise any suspected infringements during the review period, and only a few came from market participants and other NCAs. Based on this and the size of the STS securitisation market compared to other German markets, DE indicated to the PRC that it assessed its securitisation market as low-to-moderate risk and that it calibrated its STS supervision accordingly. During the review period, DE did not perform themselves verifications and checks on the transaction documentation on top of the work of auditors, nor entity-based reviews. The PRC observed that no exchange of information occurred between DE and auditors in the area of STS securitisation before or after the audits. Based on the finite information included in auditors' reports, the PRC considers that DE only had a limited level of assurance and could not ascertain compliance with STS requirements.

In France, between November 2021 and February 2022, the NCA conducted an ad hoc inspection ('SPOT inspection') covering the compliance of five entities with the STS notification requirements under SECR, which nonetheless falls outside the scope of this peer review. During the review period, FR conducted completeness and consistency checks on nearly all STS notifications. However, FR seldom verified whether the transactions complied with STS criteria, only when any detected issue was not resolved after consulting the STS notification and the third-party verifier (TPV) report. The PRC therefore notes that FR only performed ad hoc limited supervisory activities to ensure that the securitisation transactions notified as STS complied with the STS criteria, thus leaving some material risks unaddressed in the areas covered by this peer review.

<sup>1</sup> [ESMA42-111-4966 Peer Review Methodology](#)

Until October 2022, NL reviewed how each STS transaction complied with the STS criteria. From 1 November 2022, NL shifted to a risk-based approach built on their STS transaction monitoring and a set of risk criteria applied to both transactions and entities. From that point onwards, NL has conducted two STS inspections ('deep-dive inspections') per year, involving a combination of entity-level and transaction-level scrutiny. Over the review period, NL issued several observations and requested remediation to the inspected entities as a result of its deep-dive inspections. The PRC welcomes the approach followed by NL to supervise the originators and sponsors' compliance with the selected STS criteria. NL also ensured effective reviews of the adequacy of the policies, procedures and mechanisms that these entities have in place.

Under Portuguese law, the CMVM Board of Directors is required to approve each public and private securitisation transaction issuance. Therefore, PT verifies that each transaction complies with STS requirements by analysing the documents provided before issuance. PT notably checks that the information contained in the prospectus and in the transaction documentation is consistent and analyses the TPV's STS verification report. After issuance, PT is notified of any changes to the transaction, for example, in the case of revolving pools, and further receivable acquisitions require its approval. The PRC considers that the approach followed by PT also ensured compliance with the selected criteria. However, while notifications or complaints post-issuance may trigger an additional review, PT did not perform entity-based ongoing supervision of originators other than as part of prudential supervision. Therefore, certain risks were left unaddressed in the simplicity and transparency areas for transactions that change over their lifecycle, for example, given some of the transactions are revolving.

### **Overall assessment**

The table below summarises the PRC's assessment of NCAs in each assessment area based on the Methodology's benchmarks. It should be emphasised that this assessment concerns the specific approach to supervising STS securitisation activities, not the general supervision of all securitisation activities.

**TABLE 2 - ASSESSMENT OF NCAS**

	DE	FR	NL	PT
<b>Simplicity</b>				
<b>Transparency</b>				
<b>Standardisation</b>				

Fully meeting expectations	Largely meeting expectations	Partially meeting expectations	Not meeting expectations
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### **Recommendations**

The PRC recommends relevant NCAs to scale up their approach to STS supervision, so that risks arising from these transactions are adequately identified, assessed and addressed.

In particular, the PRC expects DE and FR to ensure that their supervisory approach includes a combination of activities at (i) transaction-level to ensure compliance with STS criteria and (ii) entity-level through regular reviews of processes of originators and sponsors<sup>2</sup>. PT should also ensure to regularly review supervised entities' processes and mechanisms in the area of STS securitisation.

DE and FR should introduce a more formalised and thorough supervisory framework using a well-defined risk-based approach and ensure that sufficient resources are allocated to STS supervision. The PRC considers indeed that one of the reasons explaining the current findings, in particular for FR, is the overall limited resources dedicated to STS supervision compared to the number of transactions under their responsibility.

The PRC also recommends DE to strengthen its supervisory activities around the work of auditors in order to have an adequate view of the risks in its STS securitisation market. This should include a combination of ex-ante and ex-post supervisory action, e.g. by providing guidance to clarify DE's expectations in relation to the auditors' annual reports, setting focus points for the reports, ensuring that the reports cover in greater detail supervised entities' arrangements, processes, mechanisms and the transactions notified, as well as conducting direct verifications for a sample of selected transactions and entities using a risk-based approach. These activities should be designed and implemented effectively.

In addition, it will be important for all NCAs to continue monitoring the evolution of their STS market going forward and adapting their supervisory approach and/or resources where necessary. In particular, in the current context of reviving the EU securitisation market, the PRC invites NCAs to consider how they would cope with an increase in STS transaction issuance, taking into account their national specificities. Such an increase may pose significant challenges, particularly for PT, under its current approach whereby PT is required to approve all securitisation transactions before issuance as per its national legislation.

### ***Good practices***

In general, the PRC positively regards the activities performed by NL and PT to verify that transactions complied with STS requirements and invites all NCAs to consider them in their supervisory approach.

Other good practices were identified in the peer review, such as (i) not relying only on the statements declared by the entities but also performing verifications on the underlying transaction documentation; (ii) cross-checking the conclusions of the TPV report with the findings from the verifications of the transaction documents and characteristics and (iii) as a baseline, documenting the approach followed by the NCA in internal policies and processes to ensure consistency in implementation.

While the peer review covered four NCAs, all NCAs in the EU could consider the findings, recommendations and good practices set out in this report in the context of their supervisory framework.

## 2 Introduction

1. This report presents the main findings of the peer review on National Competent Authorities' (NCAs) supervision of the Simple, Transparent and Standardised securitisation requirements.
2. The report is organised as follows: (i) this section provides background information on the peer review work, (ii) Section 3 provides contextual information on the STS securitisation market in the jurisdictions in scope and on the relevant NCAs' supervisory approaches, (iii) Section 4 presents the peer review findings and assessment including recommendations and good practices, (iv) the Annexes enclose the mandate that formed the basis of the peer review, and the questionnaire sent to the NCAs in scope.

### 2.1 Background

3. The EU Securitisation Regulation<sup>3</sup> (SECR) creates a framework for Simple, Transparent and Standardised (STS) securitisations. The STS framework was introduced in 2019 as one of the key measures to restore investor confidence in securitisation following the 2008 financial crisis. The STS criteria are intended to help the parties to a securitisation transaction evaluate its risks and assist investors with their due diligence. By establishing simplicity in terms of assets and structure, the STS criteria aim to provide a more accurate assessment by both investors and supervisors of the risk of securitisation exposures. Through the transparency criteria, the STS framework provides investors with greater access to comprehensive and reliable information about the structure and underlying assets' characteristics and their performance during the life of the transaction. Finally, the standardisation criteria enable a more straightforward comparison across securitisation transactions using standardised terms and definitions. Furthermore, under the Capital Requirements Regulation<sup>4</sup>, STS securitisations may qualify for a differentiated capital treatment under the conditions specified therein.
4. To obtain the STS label, originators, sponsors, or securitisation special purpose entities (SSPEs) need to ensure that a securitisation transaction complies not only with the general rules that apply to all securitisations under SECR but also meets the STS criteria laid down in the regulation. The process of designating a securitisation transaction as STS is based on a self-assessment by the originator and/or sponsor, who determine if their transaction meets the eligibility criteria. They may also use an optional process whereby an authorised third-party verifier (TPV) verifies that the STS criteria are met.
5. A consistent approach and understanding of STS requirements amongst designated NCAs for the supervision of STS requirements is essential for the effective implementation of the STS framework, to increase investors' confidence in STS securitisation and avoid barriers for cross-border investors<sup>5</sup>.
6. Against this background and considering that the SECR<sup>6</sup> requires ESMA to conduct a peer review on the implementation of the STS requirements<sup>7</sup>, the ESMA Board of Supervisors

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<sup>2</sup> Article 30(2) SECR

<sup>3</sup> Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.

<sup>4</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms.

<sup>5</sup> Recital 20 of SECR

<sup>6</sup> Article 36(7) of SECR

<sup>7</sup> Articles 19 to 26 of SECR



(BoS) decided to launch this peer review through the ESMA Annual Work Programme 2022-2023. Following a call for candidates, the BoS approved the composition of the Peer Review Committee (PRC) on 3 August 2023. In January 2024, the BoS approved the mandate<sup>8</sup> for this peer review, to be conducted in accordance with Article 30 of ESMAR and the Methodology<sup>9</sup>.

## 2.2 Scope of the peer review

7. The peer review covered the supervision and enforcement by NCAs of the requirements for simplicity, transparency and standardisation for traditional non-ABCP and ABCP securitisation.
8. In particular, the peer review assessed how NCAs supervised and enforced the arrangements, processes and mechanisms of originators, sponsors, and SSPEs to comply with the STS criteria both at the time of origination and on an ongoing basis. The peer review assessed the efficiency and effectiveness of NCAs' supervision and enforcement, including the adequacy of their supervisory approach and the frequency, type and timeliness of supervisory intervention.
9. For this purpose, the peer review focused on three assessment areas, each covering STS criteria selected using a risk-based approach, considering their comparability across non-ABCP and ABCP securitisation and the potential room for divergence in the supervisory activity.
  - a. Requirements related to simplicity: (i) the acquisition of the underlying exposures by the SSPE<sup>10</sup>, (ii) the absence of active portfolio management<sup>11</sup>, (iii) the homogeneity of assets<sup>12</sup>, (iv) the ban on securitised assets within the underlying asset pools<sup>13</sup>, (v) the underwriting standards and expertise<sup>14</sup>, and (vi) the absence of exposures in default<sup>15</sup>.
  - b. Requirements related to transparency: (i) the verification of a sample of the underlying exposures<sup>16</sup>, (ii) the liability cash flow model<sup>17</sup>.
  - c. Requirements related to standardisation: (i) the compliance with the risk retention requirements<sup>18</sup>, (ii) the non-sequential priority of payments or no trapping of cash following enforcement or acceleration notice<sup>19</sup>, and (iii) the required expertise from the servicer<sup>20</sup>.
10. Across these areas, and in accordance with ESMAR, the PRC also reviewed:
  - a. the degree of independence of designated NCAs and their capacity to achieve high-quality supervisory outcomes, including the adequacy of their resources and

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<sup>8</sup> Enclosed in Annex 1.

<sup>9</sup> [ESMA42-111-4966 Peer Review Methodology](#)

<sup>10</sup> Article 20(1)-(6) (non-ABCP) and Article 24(1)-(6) (ABCP) of SECR.

<sup>11</sup> Article 20(7) (non-ABCP), Article 24(7) (ABCP) of SECR.

<sup>12</sup> Article 20(8) (non-ABCP), Article 24(15) (ABCP) of SECR.

<sup>13</sup> Article 20(9) (non-ABCP), and Article 24(8) (ABCP) of SECR.

<sup>14</sup> Article 20(10) (non-ABCP) and, Article 24(18) (ABCP) of SECR.

<sup>15</sup> Article 20(11) (non-ABCP) and Article 24(9) (ABCP) of SECR.

<sup>16</sup> Article 22(2) (non-ABCP) and Article 26(1) (ABCP) of SECR.

<sup>17</sup> Article 22(3) (non-ABCP) and Article 26(1) (ABCP) of SECR.

<sup>18</sup> Article 21(1) (non-ABCP) and Article 25(5) (ABCP) of SECR.

<sup>19</sup> Article 21(5) (non-ABCP) and Article 24(17) (ABCP) of SECR.

<sup>20</sup> Article 21(8) (non-ABCP) and Article 24(20) (ABCP) of SECR.

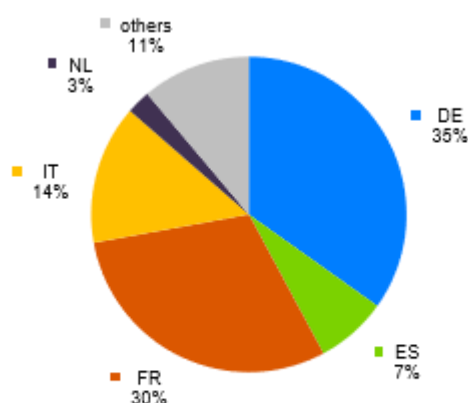
governance arrangements, in particular regarding the effective application of the legal requirements that fall within ESMA's remit;

- b. the capacity of designated NCAs to respond to market developments;
- c. the effectiveness and the degree of convergence reached in the application of Union law and supervisory practice, including regulatory and implementing technical standards, guidelines and recommendations, and the extent to which the supervisory practice achieves the objectives set out in Union law; and
- d. the application of best practices developed by NCAs that might be of benefit for other NCAs to adopt.

## 2.3 NCAs under review

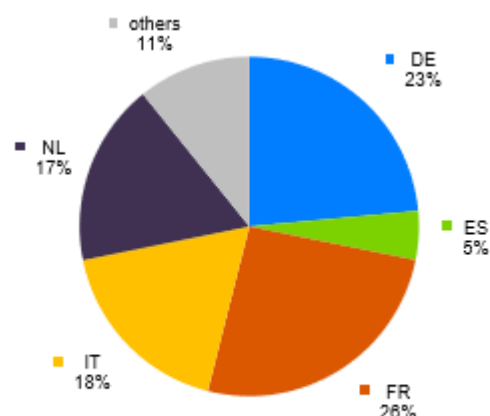
11. The peer review targeted four of the most relevant jurisdictions<sup>21</sup> in the EU, based on the following objective criteria (a) the number of STS securitisations in the Member State and (b) a balanced geographical distribution.

Chart 1  
Number of public STS securitisation by originator country



Note: Distribution of notifications by country of originator for public securitisations, cut off date 31/12/2023  
Sources: STS register, ESMA

Chart 2  
Number of private STS securitisation by originator country



Note: Distribution of notifications by country of originator for private securitisations, cut off date 31/12/2023  
Sources: STS register, ESMA

12. Germany accounted for the highest share of public STS notifications originated at the EU level (35%) as of 31 December 2023, followed by France (30%), Italy (14%), Spain (7%), and the Netherlands (3%) as displayed in Chart 1. In terms of outstanding public STS securitisations, the Netherlands accounted for the highest share at the EU level (22%) as of 31 December 2022, followed by France (21%), Germany (20%), Italy (18%), and Spain (13%), with the remaining EU Member States contributing together for 6%<sup>22</sup>.

13. France accounted for the highest share of private STS notifications originated at the EU level (26%) as of 31 December 2023, followed by Germany (23%), Italy (18%), the Netherlands (17%), and Spain (5%), as displayed in Chart 2.

<sup>21</sup> Under the Peer Review Methodology, peer reviews can cover all EEA NCAs or be restricted to a limited number of NCAs and/or target a limited scope of activities of certain NCAs.

<sup>22</sup> Based on the location of the originator, cf. [ESMA TRV](#), p.11

14. It should be noted that some other jurisdictions could have been selected based on the above criteria. However, they were excluded from the selection process of NCAs to be covered in the peer review because these NCAs had not yet implemented sufficient relevant and observable supervisory and enforcement practices during the review period, i.e. 2022-2023. This is notably the case of Belgium, where competent authorities for STS supervision have not been designated yet and Italy, where competent authorities were designated in September 2022. Regarding Spain, the STS supervisory responsibilities shifted from Comisión Nacional del Mercado de Valores to Banco de España in April 2023 for credit institutions and originators/original lenders under its supervision, that is in the middle of the review period, which made it a less relevant candidate to the objective of the peer review exercise despite the size of the Spanish securitisation market. Still, the peer review aims to foster supervisory convergence and improve the supervisory practices of all NCAs, including those non-covered.
15. With this in mind, the following NCAs were selected for the peer review, in order not only to compare and assess their supervisory practices, but also to understand the approaches followed by NCAs taking into account their national legal framework and the different specificities of their securitisation market.

**TABLE 3 - NCAs ASSESSED IN THE PEER REVIEW**

Code	Country	Competent Authority <sup>23</sup>	Acronym
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
FR	France	Autorité des marchés financiers	AMF
NL	Netherlands	De Nederlandsche Bank	DNB
PT	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM

## 2.4 Process of the peer review

16. The peer review was carried out by the ad hoc PRC identified in the mandate, composed of experts from NCAs and ESMA staff and chaired by a senior ESMA staff member.
17. As a basis of the assessment, in January 2024, the PRC addressed a questionnaire (in Annex 2) to the NCAs in scope. The PRC also conducted on-site visits to NCAs, met stakeholders and analysed samples of supervisory files to enhance its understanding of the NCAs' supervisory approaches.
18. The period under review covers 1 January 2022 to 31 December 2023.
19. The PRC reported its findings to the BoS for discussion and then approval after consulting the ESMA Supervisory Policy Committee and the Management Board.
20. The mandate identifies supervisory expectations against which NCAs have been assessed for each of the three assessment areas. Considering these expectations, the PRC made a qualitative assessment<sup>24</sup> of whether, for each of the three assessment areas, an NCA is: (i) fully meeting the peer review's expectations, (ii) largely meeting the peer review's expectations, (iii) partially meeting the peer review's expectations or (iv) not meeting the peer review's expectations. The summary of findings and analyses for each area is included in Section 4.1. The assessment table for all NCAs and the areas for improvement identified

<sup>23</sup> The list of designated CAs pursuant to Article 29(5) of SECR is available in [ESMA33-128-777](#). Member States allocated this competence to securities supervisors but also to prudential authorities.

<sup>24</sup> According to para 55 of the Methodology.

are set out in Section 4.2. Good practices identified in each assessment area are presented in Section 4.3.

21. The PRC would like to thank the visited NCAs that engaged openly and constructively in this peer review.

### 3 General information

22. This section sets out background information on the supervisory approaches in the jurisdictions in scope.

23. The SECR mandates NCAs (i) to ensure originators, sponsors and SSPEs compliance with the STS criteria<sup>25</sup> and (ii) to conduct entity-based supervision of the arrangements, processes and mechanisms that they have implemented to comply with an exhaustive subset of STS criteria<sup>26</sup>.

24. The number of STS securitisation transactions issued also varied significantly in the four jurisdictions under review, as displayed in Table 4.

**TABLE 4 - NUMBER OF ISSUED STS SECURITISATION TRANSACTIONS OVER THE REVIEW PERIOD (1 JAN 2022 TO 31 DEC 2023, NCA DATA)**

	DE	FR	NL	PT
Private	152	87	11	0
Public	64	31	15	5
Total	206	118	26	5

25. The four NCAs have adopted a variety of supervisory approaches. Under Portuguese law, the CMVM Board of Directors is required to approve each public and private securitisation transaction issuance. Therefore, PT verifies that each transaction complies with STS requirements<sup>27</sup> by analysing the documents provided before issuance. PT notably checks that the information contained in the prospectus and in the transaction documentation is consistent and analyses the TPV's STS verification report. If doubts about compliance with STS criteria arise, PT requires additional clarification before the transaction and the related prospectus are approved. After issuance, PT is notified of any changes to the transaction, for example, in the case of revolving pools, and further receivable acquisitions require its approval. While notifications or complaints may trigger an additional review, PT does not perform entity-based ongoing supervision of originators<sup>28</sup> other than as part of prudential supervision.

26. NL and FR's supervisory actions start upon receipt of the notification of the transaction as being STS by the originator or sponsor. Both NCAs (i) file the notifications received in a database with their main characteristics (e.g. transaction type, volume, notification date, name of the parties) and (ii) conduct completeness and consistency checks of the information included in the notifications. If missing or inconsistent information is detected in the

<sup>25</sup> cf. notably Recitals 11, 21, 45 of SECR, Articles 7, 29, 32(1)(f-j) and 36(5) of SECR.

<sup>26</sup> Article 30(2)(b-c) of SECR

<sup>27</sup> In the autumn of 2023, PT faced understaffing and temporarily implemented a simplified supervisory procedure for the approval of one securitisation transaction. Although all transparency criteria were still reviewed, only five simplicity and five standardisation criteria were randomly chosen for evaluation.

<sup>28</sup> Given that PT did not receive any request for approval related to ABCP operation, their supervisory focus needed not to cover sponsors.

notification, both NCAs check the available documentation sent to them and, if needed, follow up with the notifying entity. Both NCAs consult ESMA's STS Register on a regular basis. In particular, FR classifies each STS transaction notified to them<sup>29</sup> with a colour code by determining its risk level further to criteria<sup>30</sup> related to the originator and the transaction, based on the findings of their completeness and consistency checks. The colour determines the follow-up to be conducted on the STS notification.

27. Between November 2021 and February 2022<sup>31</sup>, FR conducted one ad hoc inspection ('SPOT control') covering the compliance of five entities with the STS notification requirements under SECR. The end objective of that review was to share supervisory expectations with all French originators and sponsors to ensure a level playing field and the adoption of consistent good practices. The SPOT control has been perceived as valuable input, including by other NCAs. However, the areas covered by that inspection are mostly out of the scope of this peer review.
28. Until October 2022, NL reviewed how each STS transaction complied with the STS criteria. For several reasons, notably a higher amount of STS transactions than expected, NL moved from 1 November 2022 to a risk-based approach based on their STS transaction monitoring and a set of risk criteria applied to both transactions and entities. From that point onwards, NL has conducted two STS inspections ('deep-dive inspections') per year. These inspections had a twofold scope:
- Entity-based: verifying the arrangements, processes and mechanisms implemented by originators, sponsors and SSPEs to comply with SECR of a selection of entities whose sample is defined yearly in accordance with the risk-based approach.
  - Transaction-based: assessing the compliance of a selection of transactions with STS requirements.
29. Over the review period, NL issued several observations to the inspected entities as a result of its deep-dive inspections. Entities were required to deliver a follow-up plan to these observations, which NL keeps track of their implementation, requiring evidence of compliance.
30. In Germany, STS supervision centres on the role of external auditors<sup>32</sup> who are required by law<sup>33</sup> to determine the compliance of supervised entities, which currently are only credit and financial services institutions<sup>34</sup> with disclosure obligations and requirements under SECR<sup>35</sup> as part of the annual financial statement audits. Audit standards<sup>36</sup> further clarify the scope of the auditors' verifications and define the required level of assurance. Auditors are required to provide a limited level of assurance, by assessing whether the originators/spon-

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<sup>29</sup> The original securitisations transaction, but also the modified and deleted ones.

<sup>30</sup> Which are not formalised in written procedure of guidance.

<sup>31</sup> The inspection period lasted from November 2021 to February 2022, while the peer review's review period is 1 January 2022 to 31 December 2024.

<sup>32</sup> External auditors mandated to carry out the audits under § 29 KWG are certified public accountants regulated by the German Chamber of Public Accountants (Wirtschaftsprüferkammer, WPK), which handles their certification, membership, and disciplinary oversight. Additionally, auditors of Public Interest Entities (PIEs), such as credit institutions, are also overseen by the Auditor Oversight Body (Abschlussprüferaufsichtsstelle, APAS), which monitors the quality and compliance of statutory audits and enforces regulatory standards. External auditors are not supervised by BaFin.

<sup>33</sup> § 29(2)(j) KWG (German Banking Act, Kreditwesengesetz).

<sup>34</sup> In Germany, all known originators and sponsors of STS securitisations are credit and financial service institutions. Due to this, the STS securitisation supervision is currently allocated solely within DE's banking supervision department in order to establish its supervisory approach, which assesses the risk exposures for the entire institutions together with the German Bundesbank.

<sup>35</sup> Including the STS requirements in the scope of the peer review.

<sup>36</sup> IDW Auditing Standard: Duties of the auditor in accordance with section 29 KWG (IDW PS 526 (10.2023)) (IDW Prüfungsstandard: Pflichten des Abschlussprüfers nach § 29 KWG).

sors have put in place adequate policies to comply with the STS requirements. The adequacy assessment<sup>37</sup> required from auditors consists in the assessment of whether the institution has adequately implemented the necessary organisational requirements derived from the supervisory requirements in processes, rules and procedures in order to meet the supervisory requirements. The required verifications, however, do not extend to the examination of the effectiveness of these policies.

31. DE assessed its securitisation market as low-to-moderate risk, based on the size of the German securitisation market and considering that DE has not become aware by auditors of any suspected infringements and only a few from market participants and other NCAs. DE indicated to the PRC that it calibrated its STS supervision accordingly.
32. The starting point of DE's supervision is the receipt and analysis of the auditors' annual report; DE does not systematically review new STS transaction notifications. Should DE obtain an indication of a suspected infringement from a third party (including the external auditors, other NCAs, market participants, etc.), DE would conduct follow-up verifications. DE was made aware of a few suspected infringements during the review period but, after analysis of the cases, did not consider any enforcement supervisory activity to be necessary.

## 4 Peer review findings

33. The following sections contain a summary of the peer review findings as follows: (i) the assessment of the three assessment areas (Section 4.1); (ii) the assessment table and the PRC recommendations (Section 4.2); (iii) the good practices that the PRC identified (Section 4.3).

### 4.1 Peer review findings in each area under review

34. The peer review assessed NCAs in each area against the specific supervisory expectations detailed in the peer review mandate and set out below. While there is some overlap due to the similarity in supervisory practices across the three criteria, the PRC strives to distinguish specific elements of supervisory work for each criterion wherever possible, as also reflected in the assessment.

#### 4.1.1 Simplicity criteria

##### 4.1.1.1 Summary of findings

35. The PRC assessed the supervision of six simplicity criteria related to:
  - the acquisition of the underlying exposures by the SSPE<sup>38</sup>,
  - the absence of active portfolio management<sup>39</sup>,

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<sup>37</sup> Paragraph 10(b) of the IDW Auditing Standard - Auditor duties in relation to § 29 KWG (PS 526).

<sup>38</sup> Article 20(1)-(6) (non-ABCP) and Article 24(1)-(6) (ABCP) of SECR.

<sup>39</sup> Article 20(7) (non-ABCP), Article 24(7) (ABCP) of SECR.

- the homogeneity of assets<sup>40</sup>,
- the ban on securitised assets within the underlying asset pools<sup>41</sup>,
- the underwriting standards and expertise<sup>42</sup>, and
- the absence of exposures in default<sup>43</sup>.

36. As described in para 32, DE indicated that they rely on third parties to identify any potential infringement, and, in particular, on external auditors' annual reports of the supervised entities to verify the existence of a proper business organisation in terms of compliance with the STS requirements. The PRC reviewed three reports from three different auditors, which all concluded on the originators' compliance with STS requirements, with varying levels of representation of the work performed and verifications stated in the reports. The PRC observed that in most cases, very little information is provided on the content of the checks conducted by the auditors in their reports.

37. As of 31 December 2023, DE was informed by third parties of two suspected infringements<sup>44</sup> to simplicity requirements that were related to the acquisition of the underlying exposures as part of a traditional securitisation<sup>45</sup>. For these cases, DE carried out targeted verifications. If DE were to receive other indications of suspected infringement, DE indicated to the PRC that they would perform checks for each of the simplicity criteria<sup>46</sup>, which are not formalised in written procedures or guidance.

38. As part of their completeness and consistency checks of the information included in the STS notifications, when inconsistencies were detected in the STS notification, FR checked the available documentation and, when needed, contacted the notification entity for clarification and resolution. Furthermore, FR's database includes the types of underlying assets, and, if there is a risk of a composite pool, FR indicated that they would conduct an investigation to verify the homogeneity of assets. The PRC also noted that during their 2021-2022 SPOT inspection, FR verified whether the representations made in the notifications in relation to four<sup>47</sup> of the six simplicity criteria under review were consistent with the information contained in the transaction documentation and TPV report.

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<sup>40</sup> Article 20(8) (non-ABCP), Article 24(15) (ABCP) of SECR.

<sup>41</sup> Article 20(9) (non-ABCP), and Article 24(8) (ABCP) of SECR.

<sup>42</sup> Article 20(10) (non-ABCP) and Article 24(18) (ABCP) of SECR.

<sup>43</sup> Article 20(11) (non-ABCP) and Article 24(9) (ABCP) of SECR.

<sup>44</sup> While not related to a suspected infringement, DE received and responded to policy interpretation questions.

<sup>45</sup> Articles 20(1) and 24(1) of SECR

<sup>46</sup> Regarding the acquisition of the underlying exposures by the SSPE: verify (i) the internal procedures of an originator, sponsor or SSPE and whether these are applicable and have been applied with regard to the respective jurisdiction relevant for the respective securitisation transaction and (ii) that the sales agreement together with a confirmation that the "true sale" is achieved, is enforceable and an assessment of clawback risks and re-characterisation risks is in place. In case of doubt as to the legal validity of the sales agreement, further enquiries would be made.

Regarding the absence of active portfolio management: compare the underlying exposures recorded in the sale agreement with those in the seller's IT systems and verify that the criteria listed in the EBA STS-GL are properly applied.

Regarding the homogeneity of assets: review the internal procedures applied by the party composing the underlying exposures and verify that the underlying exposures recorded in the sales agreement correspond to the homogeneity RTS requirements.

Regarding the ban on securitised assets within the underlying asset pools: review the underlying exposures recorded in the sale agreement with any included securitisation positions and compare them with those in the seller's IT systems.

Regarding the underwriting standards and expertise: verify the internal procedures applied by the originator or original lender with the underwriting standards and expertise.

Regarding the absence of exposures in default: review the internal procedures that are applied by the entity in charge of transferring the assets to the SSPE.

<sup>47</sup> Acquisition of the underlying exposures by the SSPE, no active portfolio management, homogeneity of assets, ban on securitised assets within the underlying asset pools.

39. NL (for the transactions selected following their risk-based approach) and PT (for all transactions) carried out the following checks on the transaction documentation<sup>48</sup>:

- Acquisition of the underlying exposures by the SSPE: verify the true sale nature of the transaction by means of an assessment, performed either by the legal department (NL) or a legal expert from the securitisation team (PT) of the documentation, including the registered deed of assignment and pledge, as well as the legal opinion.
- No active portfolio management: check which eligibility criteria/loan criteria must be complied with for the assets to be included in the securitisation. In particular, NL checked whether the eligibility criteria contained a statement applicable both for the initial pool and assets included during the revolving period (if any). Similarly, PT verified the representations and warranties made by the parties in the transaction documents regarding the underlying exposures and the information contained in the prospectus. Both NCAs consulted the report prepared by the external verification agent<sup>49</sup> that assessed that, at least for a sample of exposures, the information contained in the prospectus was accurate and corroborated by the portfolio sent to them. In doing so, NL and PT also verified that such exposures meet predetermined, clear and documented eligibility criteria. Furthermore, both NCAs verified that the arrangement within the servicing and sale agreements complies with EBA Guidelines on STS criteria and SECR provisions.
- Homogeneity of assets: review the characteristics of the assets and the homogeneity factor chosen and evaluate the servicing and underwriting procedures in place for the underlying assets, ensuring that adequate risk management controls and documentation are maintained. In addition, PT performed a detailed analysis of the credit assignment contract and the portfolio, including reviewing files describing each credit and debtor and their main characteristics. NL's assessment also covered which underwriting and servicing documents are in place and whether the Servicing Agreement contained a confirmation that the Servicer has well-documented and adequate policies, procedures, and risk management controls relating to servicing the assets.
- Ban on securitised assets within the underlying asset pools: verify the eligibility criteria stated in the transaction documents to confirm that the underlying exposures do not include any securitisation positions. PT also checked the portfolio (i.e. files describing each credit and its main characteristics) and the agreed-upon procedures (AUP) report for information on the underlying and the data pool.
- Underwriting standards and expertise: assess whether the underlying exposures originated under the originator's underwriting standards are no less stringent than those of the originator or original lender. PT also ensured that the prospectus includes a declaration that there have been no material changes to the portfolio since the cut-off date. In some cases, PT also requested a similar declaration from the servicer. PT also verified that the prospectus includes specific declarations and requests the identification of changes in the portfolio. NL also explicitly requested details on the selection method for securitised assets.

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<sup>48</sup> Including, but not limited to, the asset purchase agreement (e.g. Master Hire Purchase Agreement / Receivables Purchase Agreement) and the prospectus / transaction summary.

<sup>49</sup> Under Article 22(2) of SECR, as further defined in the EBA Guidelines on STS criteria.



- No exposures in default: verify whether exposures in default were included in the portfolio sent and transferred to the SSPE. PT reviewed the credit assignment agreement to confirm when the assignment will take effect.
40. Finally, NL checked during their cycle of yearly entity-based reviews ('deep-dives') the processes and mechanisms developed by a sample of pre-selected Dutch originators to comply with simplicity criteria, as mandated by SECR<sup>50</sup>. For instance, NL's assessment of the underwriting standards and expertise criteria covered whether the originators have processes and mechanisms in place to ensure (i) that the underlying exposures originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards are no less stringent than those of the originator or original lender; (ii) that material changes from prior to the underwriting standards are fully disclosed without undue delay to potential investors, and (iii) that the underlying exposures are transferred to the SSPE after selection without undue delay and do not include, at the time of selection, exposures in default or exposures to a credit-impaired debtor.

#### 4.1.1.2 Analysis

41. The PRC considers that the approach followed by NL and PT ensured adequate supervision of the originators and sponsors' compliance with the selected simplicity criteria. Indeed, the verifications carried out on the transaction documentation, TPV report, AUP report, and the underlying assets overall effectively mitigated or/and prevented the risk that (i) the underlying exposures were not acquired by means of a true sale or assignment or transfer with the same legal effect, (ii) the eligibility criteria allowed for active portfolio management, (iii) the underlying assets pool were not homogeneous in terms of asset types, (iv) the underlying asset pool contained securitisation positions, (v) the underwriting standards and expertise were unsatisfactory and not fully disclosed to potential investors, and (vi) the underlying exposures contained exposures in default.
42. Moreover, the PRC notes that NL and PT did not rely solely on the entity's statement but also reviewed the underlying transaction documentation. This prevented the NCAs from over-relying on the documentation/statements provided by the entities and allowed for a more in-depth and independent assessment. For instance, NL consulted the transaction summary and analysed the characteristics of the underlying assets by verifying the eligibility criteria and asset representations and warranties. NL and PT effectively challenged the legal structure of the underlying exposures with the support of legal experts. The verifications carried out by both NL and PT on the STS criteria were structured in clear working documents (e.g. analysis grids, templates), which allowed for adequate and consistent supervision.
43. The PRC notes that FR conducted completeness and consistency checks on nearly all STS notifications. However, FR verified the transactions' compliance with STS criteria only if any detected issue was not resolved after consulting the STS notification and the TPV report. These additional checks were not formalised in written procedures or guidance. The PRC welcomes FR's supervisory actions to ensure they received comprehensive information on their STS market, including the 2021-2022 SPOT inspection, which nonetheless falls outside the scope of this peer review, and their checks on the STS notifications they

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<sup>50</sup> Article 30(2)(b) of SECR

received. However, FR only performed ad hoc, limited verifications to ensure that securitisation transactions notified as STS complied with STS criteria, thus leaving some material risks unaddressed in the areas covered by this peer review.

44. The PRC notes that DE did not perform verifications and checks on the transaction documentation. DE's supervisory procedures<sup>51</sup> are only activated to follow up on indications of suspected infringements by third parties, which happened in two cases during the review period.
45. While external auditors are required by law<sup>52</sup> to determine the originators/sponsors' compliance with STS requirements, auditors are expected, by the auditing standards<sup>53</sup>, to provide assurance about the adequacy of the processes and procedures implemented by originators/sponsors to comply with SECR, but not about their effectiveness. Annual reports sent to DE do not necessarily mention the nature and depth of the auditors' verifications. The PRC considers that without this information and with only limited level of assurance, DE cannot ascertain compliance with STS requirements from the audit reports alone.
46. The PRC also notes that no exchange of information occurred between DE and auditors before the audits. While DE is not empowered to issue binding instructions to the auditors on how to carry out their audits (e.g. on the methodology, granularity, and depth of their audit verifications), DE can require<sup>54</sup> from audited entities that their annual audit report includes a specific audit focus (e.g. on a specific supervisory requirement), which the entity's auditor must implement. However, DE did not communicate expectations nor prescribed audit focuses.
47. As concerns the requirement to perform entity-based regular reviews of the processes and mechanisms<sup>55</sup>, the PRC notes that only NL carried out a thorough entity-based review through its "deep-dive" assessment. Based on a sample of pre-selected entities, it ensured effective reviews of the adequacy of the policies, procedures and mechanisms that the entities have in place. It also included a formalised follow-up in case of remedial actions to be taken by the supervised entities.
48. Regarding the other NCAs, PT did not conduct dedicated entity-based regular reviews. While the mandatory ex-ante approval by the CMVM's Board of Directors of both the transaction documentation and the transaction itself provided assurance that transactions notified as STS do comply with the STS criteria, certain risks were left unaddressed for transactions that change over their lifecycle, for example, given some of the transactions are revolving. Nonetheless, in the case of revolving transactions, further acquisitions of receivables are also subject to mandatory ex-ante approval by PT's Board of Directors, and PT is also notified of any subsequent changes to the transaction documents. While FR conducted an inspection on notification requirements that are outside the scope of this peer review<sup>56</sup>, this review can still be partly taken into consideration since FR also looked at the

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<sup>51</sup> Section 5.2.9. of the Prozesshandbuch Bankenaufsicht. The specific checks for the STS criteria mentioned by DE and listed above in the findings section are not formalised in written procedures or guidance.

<sup>52</sup> § 29(2)(j) KWG (German Banking Act, Kreditwesengesetz), which refers inter alia to STS requirements encompassed by Article 30(2) of SECR and § 31 PrüfV (German Audit Report Regulation, Prüfungsberichtsverordnung).

<sup>53</sup> Section 10 of IDW Auditing Standard PS 526 about the "Angemessenheitsprüfung", i.e. the "supervisory adequacy test", the assessment of whether the institution has adequately implemented the necessary organisational requirements derived from the supervisory requirements in processes, rules and procedures in order to meet the supervisory requirements. In contrast, the "Wirksamkeitsprüfung", i.e. the "supervisory effectiveness test", the assessment of whether the processes, regulations and procedures specified by the institution were complied with as intended within the reporting period.

<sup>54</sup> § 30 KWG

<sup>55</sup> Mandated under Article 30(2) of SECR.

<sup>56</sup> STS notification requirements are covered by Article 27 of SECR.

coherence between the information provided in the notification and the transaction documentation for some of the simplicity criteria under review<sup>57</sup>. DE did not conduct themselves entity-based reviews of German entities, which are by law conducted annually by external auditors. While the external auditors carry out an adequacy assessment, they do not carry out an effectiveness assessment. Therefore, overall, some of the risks detailed above in para 41 remained unaddressed.

#### **4.1.1.3 Assessment**

49. In light of the above, the peer review assessment is as follows:

- DE: partially meeting expectations
- FR: partially meeting expectations
- NL: fully meeting expectations
- PT: largely meeting expectations

50. In terms of good practices, the PRC notes that NL and PT involved legal experts when verifying the acquisition of the underlying exposures by the SSPE, which ensures a more expert review of the operation from a technical-legal point of view.

#### **4.1.2 Transparency criteria**

##### **4.1.2.1 Summary of findings**

51. The PRC assessed the supervision of two transparency criteria related to the verification of a sample of the underlying exposures<sup>58</sup>, and the liability cash flow model<sup>59</sup>.

52. As described in paras 32 and 36, DE indicated that they rely on third parties to identify any potential infringement and, in particular, on external auditors' annual reports of the supervised entities to verify the existence of a proper business organisation in terms of compliance with the STS requirements. As of 31 December 2023, DE was informed by a third party of a suspected infringement<sup>60</sup> of transparency requirements related to the prior verification of a sample of the underlying exposures and conducted targeted verifications. If DE were to receive other indications of suspected infringement, DE indicated to the PRC that they would perform checks for each of the transparency criteria<sup>61</sup>, which are not formalised in pre-existing written procedures or guidance.

53. As part of their completeness and consistency checks of the information included in the STS notifications, when inconsistencies were detected in the STS notification, FR checked

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<sup>57</sup> i.e. acquisition of the underlying exposures by the SSPE, no active portfolio management, homogeneity of assets, ban on securitised assets within the underlying asset pools, and the compliance with risk retention requirements.

<sup>58</sup> Article 22(2) (non-ABCP), and section 6.2 of the EBA STS Non-ABCP GLs; Article 26(1) (ABCP), and paras 77-84 of EBA STS ABCP GLs; and entity-based regular review of the processes and mechanisms under Article 30(2)(b) (non-ABCP).

<sup>59</sup> Article 22(3) (non-ABCP), Article 26(1) (ABCP), and entity-based regular review of the processes and mechanisms under Article 30(2)(b) (non-ABCP).

<sup>60</sup> While not related to a suspected infringement, DE received and responded to policy interpretation questions.

<sup>61</sup> Review that a sample of the underlying exposures is subject to external verification prior to issuance of the securities resulting from the securitisation.

Review the internal procedures applied along with the securitisation documentation regarding the contractually agreed retention. Check the contractually agreed retention with the retention holder's IT systems retention.

Check that the internal procedures applied by the originator or sponsor as well as the requirements set out in the EBA Guidelines are applied.

the available documentation and, when needed, contacted the notification entity for clarification and resolution. The PRC also noted that during their 2021-2022 SPOT inspection, FR verified whether the representations made in the notifications in relation to the underlying exposure sample verification requirement were consistent with the information contained in the transaction documentation and TPV report. On that occasion, FR asked the external verification agents to explain their process regarding the scope of verification and confirm their verification of the sample of the underlying exposures.

54. NL (for the transactions selected following their risk-based approach) and PT (for all transactions) carried out the following checks on the transaction documentation:

- Check the transaction documentation, the TPV and AUP reports, and the prospectus (if available), for explicit statements or descriptive confirmation on the circumstance that a sample of the underlying exposures has been subjected to external verification prior to issuance of the securities<sup>62</sup>.
- Verify that the AUP report's results on the eligibility criteria and the data disclosed to investors are accurate regarding the underlying exposures.
- Review the TPV reports to ensure that the verification has been performed and its results are consistent with the rest of the documentation.
- Check the transaction documentation to verify whether the originator and the sponsor make available to investors a liability cash flow model that precisely represents the contractual relationship between the underlying exposures and the payments flowing between the originator, sponsor, investors, other third parties, and the SSPE.
- Check the transaction summary and AUP report for explicit statements or descriptions in this regard. In addition, NL requested the entities to provide a link to a liability cash flow model within the documentation. For public transactions, NL also cross-checked whether the link was available in the repositories (i.e., EDW).

55. Finally, NL checked during their cycle of yearly entity-based reviews ('deep-dives') the processes and mechanisms developed by a sample of pre-selected Dutch originators to comply with transparency criteria, as mandated by SECR<sup>63</sup>. For instance, NL's assessment covered whether the originators had processes and mechanisms in place to ensure compliance with the liability cash flow model criterion. This review was a thorough assessment that required, for instance, the originators to demonstrate how the cash model is built in practice. When models are developed by third parties (e.g. Bloomberg and Intex), NL specifically asked originators to describe the procedures and mechanisms to ensure that the liability cash flow model was made available before and after the pricing of the transaction.

#### **4.1.2.2 Analysis**

56. The PRC considers that the approach followed by NL and PT ensured robust supervision of the originators and sponsors' compliance with the selected transparency criteria. The verifications carried out on the transaction documentation and AUP/TPV reports effectively mitigated the risk that (i) a sample of the underlying exposures was not subject to external verification prior to issuance of the securities resulting from the securitisation and that (ii)

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<sup>62</sup> EBA Guidelines set out in section 6.2 of the EBA STS Non-ABCP (for non-ABCP) (NL and PT) and in paras 77-84 of EBA STS ABCP GLs (for ABCP) are also taken into consideration (NL).

<sup>63</sup> Article 30(2)(b) of SECR

the originator and the sponsor did not make available to investors a liability cash flow model.

57. The PRC notes that FR conducted completeness and consistency checks on nearly all STS notifications. However, FR verified the transactions' compliance with STS criteria only if any issue detected was not resolved after consulting the notification and the TPV report. These additional verifications were not formalised in written procedures or guidance. The PRC welcomes FR's supervisory actions to ensure that they received comprehensive information on their STS market, including the 2021-2022 SPOT inspection, which nonetheless falls outside the scope of this peer review, and their checks on the STS notifications they received. That being said, FR only performed ad hoc, limited verifications to ensure that securitisation transactions notified as STS complied with STS criteria, thus leaving some material risks unaddressed in the areas covered by the peer review.
58. The PRC notes that DE did not perform verifications and checks on the transaction documentation. DE's supervisory procedures<sup>64</sup> are only activated to follow up on indications of suspected infringements by third parties, which happened in only one case so far for the transparency criteria. As detailed in paras 45 and 46, with only a limited level of assurance and no prior exchange of information with external auditors, the PRC considers that DE cannot ascertain compliance with STS requirements from the audit reports alone.
59. As concerns the requirement to perform entity-based regular reviews of the processes and mechanisms<sup>65</sup>, the PRC notes that only NL carried out a thorough entity-based review through its yearly "deep-dive" assessment. Based on a sample of pre-selected entities, it ensured effective reviews of the adequacy of the policies, procedures and mechanisms that the entities have in place. It also included a formalised follow-up in case of remedial actions to be taken by the supervised entities.
60. Regarding the other NCAs, PT did not conduct dedicated entity-based regular reviews. While the mandatory ex-ante approval by the CMVM's Board of Directors of both the transaction documentation and the transaction itself provided assurance that transactions notified as STS do comply with the STS criteria, certain risks were left unaddressed for transactions that change over their lifecycle, for example given some of the transactions are revolving. Nonetheless, in the case of revolving transactions, further acquisitions of receivables are also subject to mandatory ex-ante approval by PT's Board of Directors and any subsequent changes to the transaction documents are also notified to PT. While FR conducted an inspection on notification requirements that are outside the scope of the peer review<sup>66</sup>, this review can still be taken into consideration, since FR also looked at the coherence between the information provided in the notifications and the transaction documentation for one of the transparency criteria under review<sup>67</sup>. DE did not conduct themselves entity-based reviews of German entities, which are by law conducted annually by external auditors. While the external auditors carry out an adequacy assessment, they do not carry out an effectiveness assessment. Therefore, overall, some of the risks detailed above in para 56 remained unaddressed.

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<sup>64</sup> Section 5.2.9. of the Prozesshandbuch Bankenaufsicht. The specific checks for the STS criteria mentioned by DE and listed above in the findings section are not formalised in written procedures or guidance.

<sup>65</sup> Mandated under Article 30(2) of SECR.

<sup>66</sup> STS notification requirements are covered by Article 27 of SECR.

<sup>67</sup> i.e. the verification of a sample of the underlying exposures.

### 4.1.2.3 Assessment

61. In light of this, the peer review assessment is as follows:

- DE: partially meeting expectations
- FR: partially meeting expectations
- NL: fully meeting expectations
- PT: largely meeting expectations

62. In terms of good practices, the PRC notes that NL (i) checked the TPV report only after it had performed its verifications on the transaction documents and operation characteristics in order not to be influenced by the conclusions of the TPV, (ii) verified that the liability cash flow models are similar to the ones provided by third-party providers (e.g. Bloomberg or Intex), also checking the AUP Report, and (iii) conducted formalised follow-up in case of remedial actions to be taken by the supervised entities.

### 4.1.3 Standardisation criteria

#### 4.1.3.1 Summary of findings

63. The PRC assessed the supervision of three standardisation criteria related to:

- the compliance with the risk retention requirements<sup>68</sup>,
- the non-sequential priority of payments or no trapping of cash following enforcement or acceleration notice<sup>69</sup>, and
- the required expertise from the servicer<sup>70</sup>.

64. As described in paras 32 and 36, DE indicated that they rely on third parties to identify any potential infringement and, in particular, on external auditors' annual reports of the supervised entities. As of 31 December 2023, DE was not informed of any suspected infringement<sup>71</sup> of standardisation requirements by a third party (e.g. external auditors, NCA, market participant, etc.) and, therefore, did not take any supervisory actions or undertake any supervisory activity. However, if DE were to receive such an indication, they indicated that they would perform checks for each of the standardisation criteria<sup>72</sup>, which are not formalised in pre-existing written procedures or guidance.

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<sup>68</sup> For non-ABCP: Article 21(1) SECR. For ABCP: Article 25(5) of SECR. Also Commission Delegated Regulation (EU) No 625/2014 and since 7 November 2023, Commission Delegated Regulation (EU) 2023/2175.

<sup>69</sup> For non-ABCP: Article 21(5) and section 5.4 of EBA STS Non-ABCP GLs. For ABCP: Article 24(17) of SECR and paras 59-64 of EBA STS ABCP GLs; and Entity-based regular review of the processes and mechanisms under Article 30(2)(c) (for ABCP).

<sup>70</sup> For non-ABCP: Article 21(8) and paras 68-72 of EBA STS Non-ABCP GLs. For ABCP: Article 24(20) of SECR and paras 92-94 of the EBA STS ABCP GLs; and entity-based regular review of the processes and mechanisms under Article 30(2)(b-c).

<sup>71</sup> While not related to a suspected infringement, DE received and responded to policy interpretation questions.

<sup>72</sup> Review the internal procedures applied by the party in charge along with the relevant securitisation documentation and check it against the applicable EBA Guidelines.

Check the retention percentage with the one in the retention holder's IT systems.

Verify that the performance-related triggers include at least the deterioration in the credit quality of the underlying exposures below a predetermined threshold on the basis of the specific contractual agreements.

65. NL and PT reviewed the transaction documentation<sup>73</sup> to assess whether the originator, sponsor or original lender complies with the standardisation requirements. Both NCAs also consider the TPV and investor reports.
66. Regarding the risk retention requirement, NL requested evidence of how the risk retention was calculated on an ongoing basis. During its deep-dive investigations, NL further verified whether the processes entities had in place in this respect were sound and fit for the purpose. Moreover, NL considered any signals coming from the ECB's banking supervision, as well as any signals from the AFM and DNB's account supervision teams supervising LSI's and institutions not supervised by the ECB, together with the triggers described within the SECR regulation and EBA Guidelines.
67. In FR, the risk retention requirement is supervised by the prudential supervisor, who is also competent for general prudential supervision under SECR. The ACPR implemented two different verification procedures depending on the nature of the issuing entity (i.e., Significant Institutions (SIs) or Less Significant Institutions (LSIs)).
- For SIs, the ACPR applied the ECB Guide on the notification of securitisation transactions and the ECB Securitisation Hub guidelines, thus performing a full assessment of how the risk is retained and calculated for each securitisation meeting the materiality thresholds based on the transaction documents and the selection process of the transferred assets. Supervision was performed differently according to the type of securitisation: (a) a detailed focused assessment with the review of the transaction documentation and underlying assets; or (b) a fast-track assessment, where supervisors looked only at the notification template and at the self-declaration of compliance.
  - For LSIs', the ACPR followed a similar procedure as for the SIs, with two differences: (a) each new securitisation was subject to an in-depth review (no risk-based approach given the low number of transactions) and (b) the ACPR has not implemented a specific notification regime for new securitisation transactions. However, LSIs' issuance plans were discussed during supervisors' regular meetings, and LSIs' regular prudential reports were regularly checked by the ACPR.
68. In addition, the PRC noted that during their 2021-2022 SPOT inspection, which nonetheless falls outside the scope of this peer review, AMF verified whether the representations made in the notifications in relation to the risk-retention requirement were consistent with the information contained in the transaction documentation and the TPV report.
69. PT reviewed the documentation for representations confirming the retention of substantial net economic interest in the securitisation of at least 5%. While the Banco de Portugal (BdP) is in charge of the general prudential supervision under Article 6 of SECR, little information exchange occurred on the STS-specific risk retention verifications between the two authorities. PT indicated that improvements to their memorandum of understanding are currently under discussion.
70. For the verification of the required expertise from the servicer, there is a partial split of competencies:
- In the Netherlands, DNB contacted the AFM, in charge of the servicers' register, to verify whether the servicer meets the requirements.

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<sup>73</sup> e.g., the asset purchase agreement (e.g. Master Hire Purchase Agreement / Receivables Purchase Agreement), the Intercreditor Agreement, the Trust Deed, the Note Purchase Agreement, the Prospectus, the Transaction Summary.

- In Portugal, appointed servicers are the transaction originators, which are all credit institutions licensed and supervised by BdP. As such, Portuguese servicers all have more than five years of experience servicing credits similar to the ones being securitised. Moreover, they are required to have well-documented and adequate policies, procedures, and risk-management controls relating to the servicing of exposures. Therefore, PT's review focused on the main contracts<sup>74</sup> and relied mainly on the assessment carried out by its prudential counterpart.

71. NL and PT also checked all the relevant documentation to verify whether it contained an explicit statement in this respect, particularly on the 5-year experience criterion.
72. PT also checked the content of the transaction documents<sup>75</sup>, draft STS notification and TPV report to verify whether the transactions were fully sequential and to confirm that the mechanisms complied with the applicable criteria. NL reviewed the TPV report only after they had performed their supervisory checks to ascertain whether the TPV undertook due diligence to confirm the servicer's required expertise. These verifications performed by NL and PT aimed at ensuring that the transaction documentation contained explicit statements confirming the SECR compliance<sup>76</sup> and that the underlying documentation reflected the overall compliance as well.
73. As part of their completeness and consistency checks of the information included in the STS notifications, when inconsistencies were detected in the STS notification, FR checked the available documentation and, when needed, contacted the notification entity for clarification and resolution. FR also verified whether the servicer had the required expertise during their regular inspections and follow-up by a dedicated department.
74. Finally, NL checked during their cycle of yearly entity-based reviews ('deep-dives') the processes and mechanisms developed by a sample of pre-selected Dutch originators to comply with standardisation criteria, as mandated by SECR<sup>77</sup>. For instance, NL requested a sample of investor reports and reviewed the internal processes to calculate the risk retention on an ongoing basis.

#### 4.1.3.2 Analysis

75. The PRC considers that the approach followed by NL and PT ensured adequate supervision of the originators and sponsors' compliance with the selected standardisation criteria. The verifications carried out on the transaction documentation, TPV report, AUP report, and on the underlying overall effectively mitigated (i) the risk that the originator, sponsor or original lender did not satisfy the risk-retention requirement and did not retain the required material net economic interest; (ii) the risk concerning the non-sequential priority of payments or no trapping of cash following enforcement or acceleration notice; and (iii) the risk that the servicer did not have the required expertise.
76. Moreover, the PRC notes that NL and PT did not rely solely on the entity's statement but also performed deep controls on the underlying documentation, which is considered good

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<sup>74</sup> Relevant documentation here usually includes the Servicer's Representations and Warranties (that explain how entities comply with the specific EBA Guidelines) and the Receivables Servicing Agreement (which allows the assignor to be replaced by a Successor Servicer in the future, namely whether the conditions for its appointment are set out in this contract).

<sup>75</sup> Including the prospectus.

<sup>76</sup> e.g. about who retains the risk and in which manner or if the servicer has the 'well documented and adequate policies, procedures and risk management controls relating to servicing of exposures'.

<sup>77</sup> Article 30(2)(b-c) of SECR



practice. Indeed, this prevented the NCAs from over-relying on the documentation/statements provided by the entities and allowed a more in-depth and independent assessment by focusing on substance rather than only on form. Moreover, PT's practice of looking at concrete triggers and definitions and performing deeper checks on how payment priority was effectively assessed ensured that any non-sequential payment priority risks could be timely and adequately detected. Furthermore, DNB also proactively and systematically liaised with the AFM when ascertaining the servicer's expertise.

77. The PRC considers the verification processes carried out by ACPR to be sound and effective. In fact, given the nature of the controls performed, they effectively mitigated the risk of the originator, sponsor or original lender not satisfying the risk-retention requirement and not retaining the required material net economic interest. However, in this respect, the PRC notes that FR relied on the supervisory controls performed by the ACPR while limited information exchange occurred between the two authorities on the risk retention verifications.
78. The PRC notes that regarding the non-sequential priority of payments requirement, FR conducted completeness and consistency checks on nearly all STS notifications. However, verified the transactions' compliance with this requirement only if any issue detected was not resolved after consulting the notification and the TPV report. These additional verifications were not formalised in written procedures or guidance.
79. The PRC notes that DE did not perform verifications and checks on the transaction documentation. DE's supervisory procedures<sup>78</sup> are only activated to follow up on indications of suspected infringements by third parties, which has not happened so far for standardisation criteria. As detailed in para 45 and 46, with only limited level of assurance and no prior exchange of information with external auditors, the PRC considers that DE cannot ascertain compliance with STS requirements from the audit reports alone.
80. As concerns the requirement to perform entity-based regular reviews of the processes and mechanisms<sup>79</sup>, the PRC notes that only NL carried out a thorough entity-based review through its yearly "deep-dive" assessment. Based on a sample of pre-selected entities, it ensured effective reviews of the adequacy of the policies, procedures and mechanisms that the entities have in place. It also included a formalised follow-up in case of remedial actions to be taken by the supervised entities.
81. Regarding the other NCAs, while FR conducted an inspection on notification requirements that are outside the scope of the peer review<sup>80</sup>, this review can still be taken into consideration since FR also looked at the coherence between the information provided in the notifications and the transaction documentation for the risk retention requirement. FR verified the servicer's expertise through its ongoing supervision under its other mandates. DE did not conduct themselves entity-based reviews of German entities, which are by law conducted annually by external auditors. While the external auditors carry out an adequacy assessment, they do not carry out an effectiveness assessment. Therefore, overall, some of the risks detailed above in para 75 remained unaddressed.
82. As for the simplicity and transparency criteria, PT did not conduct entity-based reviews either. However, since only non-ABCP transactions were issued in Portugal over the review period, PT was not required to conduct these reviews for the selected standardisation criteria, which are mandated only for ABCP transactions.

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<sup>78</sup> Section 5.2.9. of the Prozesshandbuch Bankenaufsicht. The specific checks for the STS criteria mentioned by DE and listed above in the findings section are not formalised in written procedures or guidance.

<sup>79</sup> Mandated under Article 30(2) of SECR.

<sup>80</sup> STS notification requirements are covered by Article 27 of SECR.

#### 4.1.3.3 Assessment

83. In light of this, the peer review assessment is as follows:

- DE: partially meeting expectations
- FR: partially meeting expectations
- NL: fully meeting expectations
- PT: fully meeting expectations

84. In terms of good practices, the PRC notes that NL used standardised templates and grids that guide the supervisor throughout the supervisory steps to check STS requirements (e.g. specific grids for ABCP and non-ABCP transactions). This practice effectively ensured consistency of approaches among the supervisors and streamlined the supervisory process overall.

#### 4.1.4 Cross-cutting findings

85. Resource-wise, three NCAs (DE, NL, PT) indicated allocating around one full-time equivalent (FTE) to carry out the supervision of STS securitisation as described in the above sections. In contrast, FR allocated 0.8 FTE to ongoing STS supervision due to internal resource constraints.

86. In this regard, the PRC notes that NL and PT are either fully or largely meeting expectations across all areas, with only one FTE dedicated to STS supervision. The PRC also notes that these NCAs followed different approaches tailored to either their national framework and/or the size of their national STS market. However, the PRC considers that the resources allocated by FR are not sufficient to conduct effective supervision of their STS market given its size. Bearing in mind the external auditors' central role in the German supervisory framework, the PRC considers that DE should assign resources based on the market's risk level while ensuring that they have sufficient level of assurance of the effectiveness of STS supervision in their jurisdiction.

87. It will be important for NCAs to continue monitoring the evolution of their STS market going forward and adapting their supervisory approach and/or resources where necessary. In particular, in the current context of reviving the EU securitisation market, the PRC invites NCAs to consider how they would cope with an increase in STS transaction issuance, taking into account their national specificities. Such an increase would pose significant challenges particularly for PT under its current approach, as its national legislation mandates a prior verification of all securitisation transactions. While PT resources were comparable with other NCAs (DE, NL), they were stretched thin during a period due to staff absence, which hindered PT's ability to apply their verification procedure fully<sup>81</sup>.

88. The PRC has not identified any finding related to the independence of NCAs, which was also considered as part of a separate and more focused exercise<sup>82</sup>.

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<sup>81</sup> cf. footnote in para 25.

<sup>82</sup> cf. ESMA Report on the independence of National Competent Authorities ([ESMA42-110-3265](#)).

## 4.2 Assessment and recommendations tables

### 4.2.1 Assessment

89. The following table sets out the peer review’s assessment grade for each NCA under the areas assessed. In each case, NCAs are assessed as fully meeting expectations, largely meeting expectations, partially meeting expectations or not meeting expectations.

**TABLE 4 - ASSESSMENT OF NCAs**

	DE	FR	NL	PT
<b>Simplicity</b>				
<b>Transparency</b>				
<b>Standardisation</b>				

Fully meeting expectations	Largely meeting expectations	Partially meeting expectations	Not meeting expectations
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### 4.2.2 Recommendations by the PRC

90. As foreseen in Article 30 of ESMAR, the table below includes the recommendations made by the PRC to address weaknesses identified in the peer review. Recommendations marked open may be subject to follow-up two years from the publication of this report as defined by the PRC at that time.

**TABLE 5 - RECOMMENDATIONS**

NCA	Recommendation	Follow up
DE, FR, PT	Ensuring that the supervisory approach combines the supervision of both transaction-based compliance with STS criteria and entity-based regular review of processes under Article 30(2) of SECR.	Open
FR, PT	Ensuring that sufficient resources are allocated to perform the STS supervision tasks.	Open
DE	Issuing guidelines to clarify DE’s expectations in relation to the auditors’ annual reports, setting focus points for the reports, and ensuring that the reports cover in greater detail supervised entities’ arrangements, processes, mechanisms and the transactions notified.  Conducting direct verifications for a sample of selected transactions/entities using a risk-based approach.	Open
FR	Introducing a more formalised and thorough supervisory framework using a well-defined risk-based approach.	Open

PT	Finalising the revision of the BdP-CMVM memorandum of understanding to improve the exchange of information, as well as the supervision manual to ensure consistency of approaches among the staff and streamline the supervisory process.	Partly Closed
NL	Assess the opportunity to enhance the risk criteria for the selection of transactions and entities to be reviewed during the deep dives, notably in light of investor protection.	For consideration

### 4.3 Good practices

91. The PRC identified good practices with regard to NCAs' supervision of the STS securitisation requirements, as presented in the table below.

**TABLE 6 – GOOD PRACTICES**

<b>Topic</b>	<b>Good practices identified by the PRC in relation to NCAs</b>
Cross-cutting	<p>Not relying only on the statements/intentions declared by the entities but also performing deep verifications on the underlying transaction documentation. (NL, PT)</p> <p>Checking the TPV report only after performing the checks on the transaction documents and operation characteristics, so as to cross-check the outcomes of its verification process and findings. Not only relying on the TPV report but also checking whether its assessment is sound. (NL, PT)</p>
Cross-cutting	<p>Drafting a written and formalised internal policy covering: (i) the internal process addressing each step of the supervision, (ii) the workflow of the supervisory and inspection processes, and (iii) the material risks and consequences that can arise from supervision and how to deal with it. (NL, PT)</p> <p>Using standardised templates and grids that guide the supervisor throughout each supervisory step to verify STS requirements (e.g., specific grids for both ABCP and non-ABCP transactions) to ensure consistency of approach and streamline the supervisory process, as well as to improve the onboarding of newcomers. (NL, PT)</p>
Transparency - Liability cash flow model	Verifying that the cash models are similar to the ones by third-party providers (e.g., Bloomberg or Intex), also checking the AUP Report and asking the entity to demonstrate how the liability cash model is built in practice. (NL)
Cross-cutting	Involving legal experts in their verification process, ensuring a more expert review of the operation from a technical-legal point of view. (NL, PT)
Cross-cutting	Conducting formalised follow-up in case of remedial actions to be taken by the supervised entities. (NL)

Cross-cutting	Conducting a thematic review of the STS notification process, publishing identified good practices and supervisory expectations, as an initial building block for STS criteria supervision (FR)
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## 5 Annex 1 - Mandate



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## 6 Annex 2 - Questionnaire



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