



European Securities and  
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ESMA REGULAR USE

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# ESMA's consultation papers on draft regulatory standards under the securitisation regulation

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# Outline

- **New Securitisation Regulation & ESMA's deliverables**
- Transparency requirements
- STS criteria and notification
- Third parties authorisation

Annex



# Why is there a Securitisation Regulation

- ❑ Need to restart high quality securitisation markets **without repeating the mistakes of the financial crisis**
- ❑ **When used properly**, securitisation can contribute to a well-diversified funding base and act to improve capital efficiency
- ❑ A **key component of CMU**. Securitisations are complex, opaque, and not consistently regulated
- ❑ A **general framework for all securitisations + criteria to get ‘Simple, Transparent, and Standardised’ (STS) status**



## Timeline of ESMA's deliverables

### **Deadline – 18 July 2018**

- RTS and ITS on information in the STS notification (CP published)
- Authorisation rules for third-party firms verifying STS status (CP published)
- Amendments to EMIR (collateral and margining) for STS securitisations (joint with EBA) (to be published)

### **Deadline – 18 January 2019**

- RTS and ITS on transparency requirements (CP published)
- RTS on operational standards for collection and verification of data (CP published)
- RTS on securitisation repositories
- RTS on cooperation arrangements between CAs and the ESAs



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## Transparency: Legal basis and rationale

- ❑ ESMA to draft RTS and ITS on transparency requirements, *taking into account the needs of investors and public authorities*
  
- ❑ Securitisations are flexible instruments with complex purposes...
  - ❑ Non-ABCP securitisations: isolate underlying exposure credit risk
  - ❑ ABCP securitisations: hedge sponsor default risk using short-term exposures
  
- ❑ ...which results in complex features and a strong need for transparency:
  - ❑ Heterogeneity of underlying loans and collateral
  - ❑ Transfer of risk (true sale or synthetic)
  - ❑ Hedges (accounts and counterparties)
  - ❑ Repayment priorities (tranches and tests/triggers)



## Principles used to design the templates

Aim for consistency with existing arrangements and recommendations...

- ESMA CRA3 templates
- European Central Bank templates
- Bank of England templates
- Joint Committee Report on Securitisation
- AnaCredit Regulation
- ESRB recommendation on closing real estate data gaps
- Rating agency practices

...plus necessary adjustments:

- Meet “the needs” of investors, potential investors, & public authorities listed in Article 17(1)
  - Due diligence and stress tests
  - Supervisory assessments
  - Market monitoring
- Reflect lessons learned since the previous templates
- Reflect Sec. Reg. requirements not yet present in templates: e.g. tests/triggers, cash flows
- Meet ISO 20022 standards (dates, LEIs, etc.)



## Template structure

- ❑ Underlying exposures (non-ABCP):
  - ❑ Loan-level information for all templates: residential, commercial, corporate/SME, leasing, auto, consumer, credit cards
  - ❑ Collateral-level information for SME and commercial mortgages
  - ❑ Tenant-level information for commercial mortgages
- ❑ Underlying exposures (ABCP): aggregated according to exposure types
  - ❑ Trade Receivables; Auto; Consumer; Equipment; Floorplan; Insurance Premiums; Credit Cards; Residential; Commercial; SME; non-SME corp.; Future Flow; Leverage Fund; CBO & CLO; Other
- ❑ Investor report information (non-ABCP):
  - ❑ Deal-level
  - ❑ (complete for as many as exist): tranche-level, test/trigger-level, account-level, counterparty-level
  - ❑ Cash-flow information (complete for each line of the priority of payments)
  - ❑ Other information (free text section)
  - ❑ Synthetics only: protection-level (for each protection) and collateral-level (for each item)
- ❑ Investor report information (ABCP):
  - ❑ Programme-level (complete for as many programmes)
  - ❑ Transaction-level (complete for each transaction)
  - ❑ (complete for as many as exist): bond-level, test/trigger-level, account-level, counterparty-level





## Scope & timing of reporting arrangements

- Regulatory coverage:
  - All (public) securitisations issuing notes starting in 2019
  - + (public) securitisations issued before 2019 that seek STS status
  
- How often to report? Quarterly (non-ABCP), monthly (ABCP)
  
- How quickly must data be made available?
  - Non-ABCP: within 30 days of the interest payment date (& 60 days of data cut-off date)
  - ABCP: monthly (& 30 days of data cut-off date)
  
- Who reports? 'Reporting entity' (one of: originator, sponsor, SSPE)
  
- Who supervises? National competent authorities
  
- Entry into force? TBD (consult until 19 March; report to COM by 01/2019)



## Operational standards and access conditions (1/3)

- ❑ Where will the data be reported/available? Securitisation repositories
  
- ❑ ESMA mandates falling under this item (all RTSs):
  1. “timely, structured, and comprehensive” collection of data by sec. repositories
  2. “timely, structured, and comprehensive” aggregation and comparison of data across repositories
  3. procedures for repositories to “verify completeness and consistency” of data/docs
  4. access conditions for investors/potential investors/public authorities
  
- ❑ Approach: be consistent (where possible) with :
  - ❑ requirements for trade repositories (SFTR, EMIR): feedback, availability of data
  - ❑ requirements under MiFIR
  - ❑ Global standards: Legal Entity Identifiers, ISO 20022



## Operational standards and access conditions (2/3)

- ❑ ESMA to provide model XML messages for use in (secure) data transfer (both from reporting entities to repositories and from repositories to users)
- ❑ ‘Completeness and consistency checks’ on data:
  - ❑ Template format violations
  - ❑ Verify accurate use of LEIs
  - ❑ Consistency across fields for the same line item (e.g. loan, collateral, etc.)
  - ❑ Consistency across time for the same field
  - ❑ Ask for confirmation that data is not relevant
- ❑ ‘Completeness and consistency checks’ on docs: written confirmation
- ❑ What else will repositories do in addition to hosting & checking the data?
  - ❑ Produce unique identifiers, data completeness score, & end-of-day reports
- ❑ What will repositories *not* do?
  - ❑ Supervise template contents (e.g. use of ‘No Data’ options, verify explanations provided)
  - ❑ Give guidance on how to comply with transparency requirements (ESMA Q&A instead)



## Operational standards and access conditions (3/3)

- Who can access the raw data? (free of charge)
  - Investors/potential investors
  - EBA, ESMA, EIOPA, ESRB
  - National securities market regulators
  - SSM & national supervisory authorities
  - SRB & national resolution authorities
  - ECB & national central banks
  - Supervisors of investors: insurers, AIFs, UCITS, pension funds
  
- What else is proposed to be made (freely) available by repositories?
  - End-of-day reports and data completeness scores
  - The results of completeness and consistency checks (incl. formulae and methodology)
  
- Who supervises Securitisation Repositories? ESMA (forthcoming RTS on application requirements)
  
- Entry into force? TBD (consult in Spring 2018; report to COM by 01/2019)



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## STS securitisation – key aspects

### ❑ Compliance with STS criteria

- ❑ **Self-certification**, which means that liability remains with the originator, sponsor and SSPE
- ❑ Required in order for investments in/exposures to STS securitisations to benefit from the **lower capital requirements**

### ❑ Scope of application

- ❑ The originator, sponsor and SSPE shall be **established in the Union**
- ❑ **True sale** securitisation, **homogenous** assets (residential loans, corporate loans,...)

### ❑ **Separate sets of criteria** for term transactions and for ABCP transactions



# The STS criteria for non-ABCP & ABCP securitisation

**Simple:** the structure allows for a clear & comprehensive modelling of risks  
**Transparent:** investor is in a position to perform its own due diligence  
**Standard:** the securitisation follows high quality standards

**Additional prudential eligibility criteria (CRR)**

## Non-ABCP securitisation

## ABCP securitisation

### Example “Simple” criteria:

- True sale of assets
- Homogenous pool
- No re-securitisation
- Originated in lender’s ordinary course of business
- Underwriting no less stringent than for non-securitised assets
- No defaulted assets
- Repayment of investors not primarily dependent on asset sales
- Interest and currency mismatches mitigated

### Example “Transparent and standardised” criteria:

- Contractual obligations, duties and responsibilities of all key parties clearly defined
- Experienced servicer
- Provision of historical default and loss data (min. 5 years) to investors before pricing
- External verification of a sample of underlying exposures by an appropriate third party
- Regular transaction reporting

### Simple, transparent & standardised

- Separate transaction level and programme level criteria
- Specific requirements for the sponsor

### Risk weight threshold:

Underlying assets must not, on their own, have a risk weighting > a prescribed set of thresholds.

**Concentrations & LTV limits:** the transaction must meet further criteria, such as maximum borrower concentrations and LTV limits.



## STS notification – key roles

### **Originators and sponsors to:**

- Comply with all STS criteria for non-ABCP or ABCP
- Jointly notify ESMA that the securitisation meets the STS criteria
- Provide an explanation on how each of the STS criteria has been complied with
- Designate one entity to be the first contact point
- Immediately notify ESMA when STS criteria are no longer met

### **CAs to:**

- Ensure originators, sponsors and SSPE's compliance with the STS requirements

### **ESMA to:**

- Develop RTS & ITS on STS notification (content & format)
- Maintain & update a “STS register” on its official website
- Inform where a transaction is no longer STS
- Indicate when administrative sanction have been taken





## STS notification – key elements

- ❑ **General information:**
  - ❑ ISIN, LEI
  - ❑ Securitisation name, seller name
  - ❑ Type of securitisation
  
- ❑ **Proportionate-based explanation** reflecting each of the STS criteria:
  - ❑ Confirmation (e.g. self-explanatory STS criteria)
  - ❑ Concise explanation (e.g. linked criteria)
  - ❑ Detailed explanation (e.g. homogeneity of the assets)
  
- ❑ **Cross-reference to Prospectuses**, to avoid duplication
  
- ❑ **Two separate STS notifications:** non ABCP / ABCP
  
- ❑ **Private securitisations** covered but specifically addressed



# STS notification templates – key features

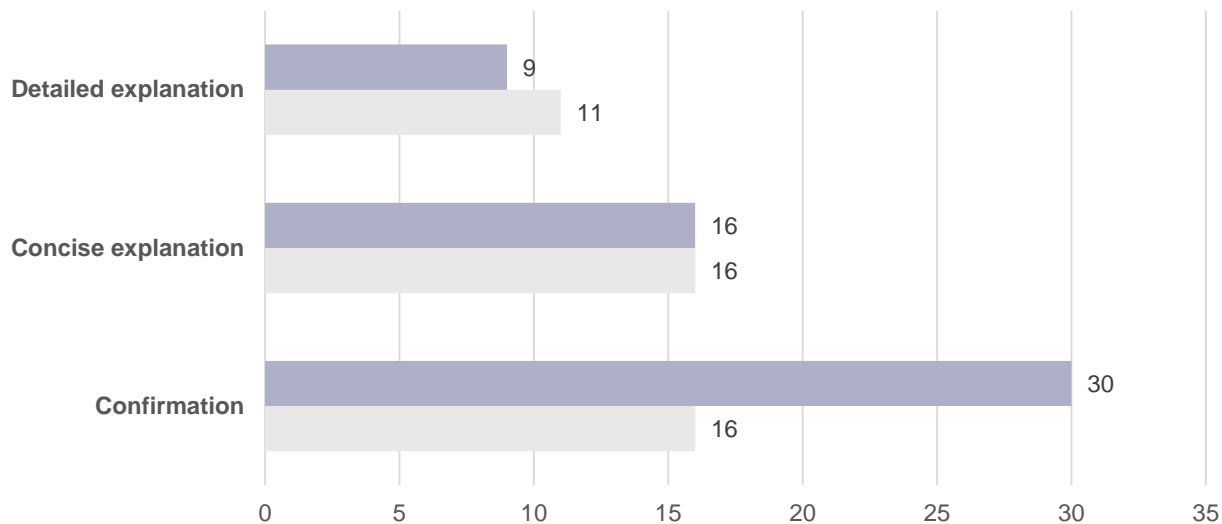
**Non ABCP**

General information: **22 fields**  
 STS criteria: **43 fields**

**ABCP**

General information: **22 fields**  
 STS criteria: **55 fields**

Explanation type



	Confirmation	Concise explanation	Detailed explanation
■ ABCP	30	16	9
■ Non ABCP	16	16	11

■ ABCP ■ Non ABCP

# STS notification - example

## Non-ABCP securitisation

### Information to be provided regarding compliance with Articles 20 to 22 of the Regulation 2017/2402

N.	Articles	Field	Confirmation	Concise explanation	Detailed explanation	Content to be reported	Cross-references to the Prospectus  (From 1 January 2019 to 20 July 2019, reference to Annexes 10 and 11 shall be read as reference to Annexes VII and VIII of Commission Regulation N°809/2004)
<b>Requirements relating to simplicity</b>							
STSS2 3	Articles 20(1)	Transfer of the underlying exposures by true sale or assignment		√		The STS notification shall confirm and explain whether there is no circumstance in which a liquidator or creditor of the originator could seek to unwind the securitisation and claim that the receivables are available to the general creditors of the originator. The confirmation should specify whether the transfer of the underlying exposures is made by means of true sale, assignment (legal or equitable), by declaration of trust or by way of novation	Item 3.3 of Annex 11 (additional building block for asset-backed securities)



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# Authorised third parties

## What role for third parties?

- Optional involvement to assess/attest fulfilment STS requirements;
- May help investors in forming their opinions but ultimate responsibility remains with the originator/issuer

## Requirements of the Securitisation Regulation

- Third party cannot be a regulated entity under different sectoral legislation
- No advisory, audit or equivalent services to be provided to parties to the transaction
- Independence to be ensured and conflicts of interest properly managed
- Management body of the third party:
  - at least one third of independent directors
  - required experience
- Non-discriminatory & cost based fees



## Approach/Challenges

### ESMA's role:

- ❑ **Develop RTS specifying the information to be provided by third parties to the CA for authorisation**

### Approach

- ❑ Requirements adapted from the registration process for Credit Rating Agencies, taking into account specificities
- ❑ Scope of authorisation – NCA authorisation valid for the entire EU
- ❑ Balance to be struck between detail of requirements and role of the third party and scope of its activities
- ❑ Attestation provided by 3<sup>rd</sup> party is a “point in time assessment” - no explicit requirement for ongoing monitoring
- ❑ Specific focus on conflict of interest & outsourcing of activities by 3<sup>rd</sup> parties
- ❑ Consultation until 19 March 2018; draft RTS to COM by 18 July 2018



Thank you