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CONTRÔLES SPOT

Summary of SPOT inspections on simple, transparent
and standardised (STS) securitisation

INTRODUCTION

In accordance with the supervision priorities of the Autorité des Marchés Financiers ("the AMF") for 2021, a series of short thematic "SPOT" inspections¹ relating to simple, transparent and standardised securitisations (hereinafter "STS securitisations") were carried out from November 2021 to February 2022. These inspections took place within the framework of the provisions introduced by Regulation (EU) 2017/2402 of 12 December 2017 creating a general framework for securitisation and a specific framework for STS securitisations (hereinafter "SECR"),² which came into force on 1 January 2019, as amended by Regulation (EU) 2021/557 of 31 March 2021, which came into force on 9 April 2021. The investigations covered a sample group of five investment service providers (hereinafter "ISPs") and covered a period from 1 January 2019 to 30 September 2021.

The SECR aims to regulate the development of the securitisation market in Europe, identified as an opportunity for the diversification of sources of funding and risk spreading, but whose potential systemic implications were demonstrated during the "subprime crisis".

The document introduces several categories of new obligations for market participants, applicable to all securitisation transactions, and in particular:³ for institutional investors, more thorough due diligence obligations (Article 5); for originators, sponsors and original lenders, risk retention requirements (Article 6) and, for originators, sponsors and securitisation special purpose entities (SSPEs),⁴ transparency requirements, e.g. with respect to investors regarding the nature, quality and performance of the underlying exposures (Article 7).

In addition to the creation of a general framework for securitisation, the SECR provides that certain securitisation transactions may be covered by an "STS" quality label, provided that they meet the criteria described in detail in Articles 19 to 22 for securitisations other than Asset Backed Commercial Paper (ABCP), and Articles 23 to 26 for ABCP securitisations⁵ and programmes.⁶

To verify a securitisation's eligibility for the STS label, the participants in the transaction may call on the services of an authorised third party by virtue of Article 28 (hereinafter "third-party verifier"), although the use of such a service in no case affects their liability concerning their legal obligations under the SECR.

To be able to benefit from this optional label and its advantages, including, in particular, more favourable prudential treatment, the SECR requires that originators and sponsors send ESMA a reporting statement (hereinafter "STS notification") and inform the competent national authority of this, namely the AMF for institutions domiciled in France.

In light of the authority bestowed on the AMF,⁷ the main objective of this series of SPOT inspections was to ensure compliance of the STS notifications incumbent on originators and sponsors within the framework of traditional securitisation transactions.⁸ Therefore, particular attention was paid to: *i) the arrangements for determining the STS nature of a transaction and its notification, ii) the control system, and iii) the arrangements for withdrawal and monitoring of the label.* It should be stressed that the due diligence performed by the inspection does not imply that the transactions in question comply with all the requirements of the label. Moreover, although the STS notification must explain how the transaction complies with each of the STS criteria, it is then published

¹ SPOT: Supervision des Pratiques Opérationnelle et Thématique (operational and thematic supervision of practices).

² SECR: Securitisation Regulation.

³ The document contains other provisions applicable to all securitisations, concerning (i) the requirements relating to the sale of securitisations to retail clients (Article 3), (ii) the requirements applicable to securitisation special purpose entities (SSPEs) (Article 4), (iii) resecuritisation, prohibited except in special cases (Article 8), (iv) the criteria for granting credits giving rise to securitised exposures (Article 9) and (v) the conditions and procedures applicable to securitisation repositories (Articles 10 to 17).

⁴ SSPE: Securitisation Special Purpose Entity.

⁵ SECR, Article 2, paragraph 8: an 'asset-backed commercial paper transaction' or 'ABCP transaction' means a securitisation within an ABCP programme.

⁶ SECR, Article 2, paragraph 7: an 'asset-backed commercial paper programme' or 'ABCP programme' means a programme of securitisations the securities issued by which predominantly take the form of asset-backed commercial paper with an original maturity of one year or less.

⁷ See: Monetary and Financial Code, Article L.621-20-9; ESMA, list of designated competent authorities under securitisation regulation (ESMA33-128-777).

⁸ Synthetic securitisation transactions were excluded from the scope of the investigations.

on the ESMA website without the European supervisor verifying the information provided. The entity tasked with notification remains liable for the transaction's compliance with the requirements of the STS label.⁹

Three years after the entry into force of the SECR, the AMF has detected significant shortcomings in the required due diligence regarding STS securitisation by the ISPs in the sample group. The quality of the arrangements governing the granting, monitoring and withdrawal of the STS label established by the inspected ISPs shows an insufficient level of maturity, sometimes due to a poor understanding of the regulations.

This document is neither a position nor a recommendation. The practices identified as either “good” or “poor” highlight approaches identified during the inspections that may facilitate, or complicate, compliance with the STS Securitisation Regulation.

⁹ SECR, Article 27, paragraph 2: "The originator, sponsor or SSPE may use the service of a third party authorised under Article 28 to check whether a securitisation complies with Articles 19 to 22 or Articles 23 to 26. However, the use of such a service shall not, under any circumstances, affect the liability of the originator, sponsor or SSPE in respect of their legal obligations under this Regulation. The use of such service shall not affect the obligations imposed on institutional investors as set out in Article 5."

1. SUMMARY OF THE MAIN FINDINGS

Firstly, granting of the STS label to a securitisation transaction implies that the ISP has established a process for governing decision making in order to comply with the legal and regulatory obligations entailed by such a certification. The inspection noted shortcomings in the arrangements made by the five firms, ranging from a lack of maturity to the absence of formal establishment of such a process for one firm.

Regarding the procedural corpus governing granting of the STS label, the inspection noted that two firms had no bespoke procedures at the time of the investigations. For the other three firms, the level of completeness of the procedural corpus proved uneven: at the time of the inspection only one firm had a procedure describing the governance, the role and the responsibilities of the market participants, specifying direct operational implications.

Regarding the committees governing granting of the STS label, the inspection noted that only one ISP had established a committee dedicated to the STS certification of its transactions. For the other four firms, the decision to use the STS certification is taken by the line personnel tasked with arranging and structuring the transaction further to or in parallel with the committees governing the securitisation activity. For two firms, this decision making is not formally defined.

Moreover, the SECR provides that the originator, the sponsor or the SSPE may use the services of an authorised third-party verifier even though the use of such a service shall not, under any circumstances, affect the liability of the originator, sponsor or SSPE in respect of their legal obligations under this Regulation. The inspection noted that four of the five ISPs have called on the services of such an actor at least once.

Secondly, before they can rely on the benefits of the STS label for a securitisation transaction, the firms must send notification to ESMA, inform their competent national authority and wait for the transaction to be added to the list published on the ESMA website.

Regarding the notification sent to ESMA, the inspection noted that the five firms had sent a notification for all of their STS securitisations. However, the observed time for notification ranges between one day and fifteen months. It should be remembered that Article 7 of the SECR stipulates that the STS notification is one of the documents that must be made available before pricing, and Article 22 of the SECR specifies that "*the final documentation shall be made available to investors at the latest 15 days after closing of the transaction.*" Furthermore, the Joint Committee of the European Supervisory Authorities¹⁰ at its meeting of 10 December 2021 concerning Regulation (EU) 2017/2402 specifies that the STS notification must be available at least in draft form, and that only minor changes may be made after pricing.

Regarding the information sent to the AMF, as the competent national authority of the five ISPs in the sample group, the inspection noted major disparities. For example, one firm sent no information to the AMF for granting of the STS label. For two other firms, the AMF is copied on the notification sent to ESMA to ensure that the competent national authority is informed simultaneously. In such cases, the delays in notification of ESMA logically had repercussions on the time taken to inform the AMF. Lastly, two firms systematically informed the AMF, but in highly variable time frames: for one of them, the time frame ranged between a few days following STS notification and two years; for the second one, the AMF was informed on average 35 days after the date of issue.

Thirdly, the inspection performed tests designed to verify the compliance with certain STS criteria in the legal documentation of the transactions. The inspection noted, for four of the five ISPs, that the information appearing in the analysed documents was consistent with that provided in the notification sent to ESMA, and met the

¹⁰ The Joint Committee of the European Supervisory Authorities is a forum designed to strengthen cooperation between the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

requirements of the aforementioned regulatory provisions. For the fifth ISP, the inspection also concluded that the information found in the analysed documents was consistent with that provided in the notification sent to ESMA. For two transactions, however, the inspection task force noted that the STS label had been granted even though they did not have a securitisation special purpose entity. It should therefore be reiterated that in accordance with Article 24.1 of the SECR, all traditional securitisation transactions labelled STS must have a securitisation special purpose entity.

Fourthly, the inspection analysed the control system supervising the subject of STS securitisation, based on Articles 22 of Delegated Regulation 2017/565, L.533-10 of the Monetary and Financial Code and 312-1 of the AMF General Regulation. A distinction is made between controls implemented ahead of and following STS notification and granting of the label.

Regarding pre-notification controls, the inspection noted that the implementation of controls to ensure that the transaction complies with the label requirements was not systematic. Three ISPs implement ex-ante controls, but these are confined to level-one controls. For the other two ISPs, no ex-ante control is implemented. Regarding this, it should be remembered that the ISP remains liable for the STS notification and for the transaction's compliance with the label requirements. Accordingly, the use of an authorised third-party verifier or an outside law firm cannot justify the absence of control. Moreover, no firm in the sample group implements a level-two control before granting the label.

Regarding post-notification controls, the ex-post control system of the inspected ISPs is partially satisfactory. Only two ISPs implement controls following granting of the label. However, these are merely level-one controls which, in one case, are based solely on the legal documentation of the transactions. The other three ISPs perform no control taking into account the specific features of the label once it has been granted. Therefore, the absence of control governing the granting of the label is liable to hinder the detection of events which could call into question the compliance of a transaction with STS criteria. Moreover, no ISP in the sample group implements a level-two control after granting the label.

Lastly, the inspection task force analysed the arrangements for withdrawal and monitoring of the label. Article 27 of the SECR stipulates that the originator or sponsor must immediately notify ESMA and inform the competent authorities whenever a securitisation transaction no longer complies with the requirements of the STS label. Regarding the arrangements for withdrawal and monitoring of the label, major disparities were noted within the sample group, regardless of the scale of STS securitisation and the number of transactions having become ineligible for the label. Three firms in the sample group have made arrangements for withdrawal and monitoring of the label, including the two ISPs that had to inform ESMA of the non-compliance of some of their transactions with the label requirements. The other two ISPs have no arrangements for withdrawal and monitoring of the label. The first one considers that this case is unlikely to occur due to the static nature of several criteria, while the second one justifies the absence of arrangements by the small number of labelled transactions.

2. CONTEXT AND SCOPE

2.1. Presentation of the sample of ISPs inspected

These SPOT inspections were performed jointly in five credit institutions authorised to provide investment services.

The criteria which governed the choice of the five firms selected by the task force are as follows:

- Firms that have stated that they use the STS certification for some of their securitisation transactions;
- Firms having a significant size;
- An incident and/or an inconsistency may have been detected for certain firms in the sample group.

Synthetic securitisation transactions were excluded from the scope of the investigations.

We should stress the heterogeneity of the selected firms in several respects:

- First, although the five ISPs in the sample group have a significant size, there are still major disparities, notably with regard to the firms' respective NBIs;
- The growth of the securitisation business in general, and of STS securitisation in particular, is very uneven from one firm to another, as attested by the number of labelled transactions over the period in question (between 2 and 101 transactions);
- The securitisation transactions may be of different kinds: on the one hand, they may be public¹¹ or private;¹² on the other hand, they may be ABCP transactions,¹³ forming part of an ABCP programme,¹⁴ or non-ABCP transactions.¹⁵ The regulatory requirements may vary depending on the kind of transaction;
- Finally, the five firms do not play the same role in the securitisation transactions. The sample group contains three sponsors, one arranger¹⁶ and one originator.

The heterogeneity of the sample group can therefore account for the diversity of certain observed practices.

Table 1: Activity of the ISPs in the sample group

| | ISP A | ISP B | ISP C | ISP D | ISP E |
|---|----------|---------|------------|---------|---------|
| Role | Arranger | Sponsor | Originator | Sponsor | Sponsor |
| Number of securitisation transactions labelled STS | 5 | 3 | 2 | 31 | 101 |
| Of which ABCP transactions | No | Yes | Yes | Yes | Yes |
| Of which non-ABCP transactions | Yes | No | Yes | No | No |

¹¹ Transaction covered by a prospectus produced in accordance with Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or with a view to the admission of securities to trading. The national threshold above which in France an offer of securities must be covered by a prospectus is increased to €8 million (MFC, L. 411-2-1, 1°). This measure is accompanied by the obligation to produce, below this threshold, a summary information document for offers of unlisted securities open to the public.

¹² Transaction not covered by a prospectus produced in accordance with Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or with a view to the admission of securities to trading. Private securitisations are often bespoke securitisation transactions. In such cases, investors are in direct contact with the originator and/or the sponsor and receive from them directly the information needed to perform appropriate due diligence. Unlike public transactions, therefore, private securitisations are exempted from the requirement to submit information concerning the transaction to a securitisation repository.

¹³ "Securitisation within an ABCP programme" within the meaning of Article 2 of the SECR. Short-term debt securities (of maturity less than or equal to one year) issued by a conduit to refinance specific assets purchased from a financial institution.

¹⁴ "A programme of securitisations the securities issued by which predominantly take the form of asset-backed commercial paper with an original maturity of one year or less" within the meaning of Article 2 of the SECR.

¹⁵ Any other transaction that cannot be considered as ABCP.

¹⁶ Entity, generally a bank, in charge of structuring the securitisation transaction, assessing the debt pool and the characteristics of the securities to be issued, in order to reconcile the objectives of the sellers and the interests of the investors. The arranger, who can be selected by the seller based on an invitation to tender, proposes to the originator a structure for the transaction.

2.2. Topics addressed and methodology used

The following topics were addressed during these inspections:

- Arrangements for determining the STS nature of a transaction and its notification. More precisely, special attention was paid not only to the securitisation activity of each of the firms as a whole, but also to the organisation and governance of the aforementioned arrangements, in particular *i) the dedicated committees, ii) the participants in the organisation of a securitisation transaction, iii) any use of a third-party verifier, and iv) notification of the transaction to the competent authorities;*
- The control system, distinguishing between first-, second- and third-level controls, performed ahead of and following STS notification;
- The arrangements for withdrawal of the label for transactions that have become ineligible for it, and its monitoring.

For each firm inspected, the inspection analysed in particular:

- The existing documentation relating to the securitisation arrangements, and more precisely concerning the STS label;
- The legal documentation relating to STS transactions;
- The report of the third-party verifier when the firm has chosen to use one, or the gap analysis where it exists, in order to determine whether the transaction meets the label requirements;
- The STS notification sent to ESMA.

Moreover, in order to investigate in greater detail and assess the operational implementation of the requirements and arrangements mentioned above, the inspection task force performed tests in order to check that certain STS criteria are replicated in the legal documentation of the transactions.

For firms having less than ten transactions labelled STS, i.e. three of the five ISPs in the sample group, the tests covered all the transactions. In the other cases, a selection was made by the inspection task force to form a sample comprising 10 or 11¹⁷ transactions. Selection was performed randomly.

The tests were carried out in two phases:

- First, the tests concerned the materiality of the STS analysis. The inspection task force checked that all the STS criteria had been taken into consideration to ensure the compliance of a transaction with the label requirements;
- Then, the inspection task force selected several criteria relating to simplicity, transparency and standardisation, which could apply to all transactions, irrespective of their nature (public or private, ABCP or non-ABCP), and checked the information indicated in the STS notification sent to ESMA for each of the selected criteria, against at least the prospectus for public transactions and the legal documentation for private transactions. This information was also compared with the report of the third-party verifier when the firm has chosen to use one, or with the gap analysis where it exists.

It is specified that these tests did not aim to give an opinion on the compliance of the transactions in question with all the label requirements, but to check that the information contained in the analysed documents was consistent with that provided in the notification sent to ESMA, and met the requirements of the relevant regulatory provisions regarding these tests.

¹⁷ The initial sample was 10 transactions. One extra transaction was added. This was an ABCP transaction for which the ISP is sponsor, and which was unable to be selected for another ISP in the sample group because it is the originator of this transaction. As a reminder, only the sponsor is liable for the STS notification of an ABCP transaction (SECR, Article 7(1)).

2.3. Applicable regulations

The inspection based its work in particular on:

- Regulation (EU) 2017/2402 (hereinafter the "**SECR**");¹⁸
- Delegated Regulation 2017/565 (hereinafter "**DR 2017/565**");
- The French Monetary and Financial Code (hereinafter the "**CMF**");
- The AMF General Regulation (hereinafter the "**AMF GR**").

Arrangements for determining the STS nature of a transaction and its notification

- **Article 2 of the SECR** relating to the definitions of key concepts employed in the Regulation, such as securitisation special purpose entity, originator, sponsor, ABCP programme, ABCP transaction, servicer and securitisation repository;
- **Article 6 of the SECR** relating to risk retention, in particular the obligation for the originator, sponsor or original lender of a securitisation to constantly retain a significant net economic interest of at least 5% in said securitisation;
- **Article 7 of the SECR** concerning, in particular, the obligation for the originator, sponsor and securitisation special purpose entity (hereinafter "SSPE") to provide the holders of a securitisation position, the competent authorities and, on request, potential investors, with at least certain information, including the STS notification. This should be made available before pricing;
- **Article 18 of the SECR** relating to the requirements that the originators, sponsors and SSPEs must meet in order to be able to use the term "STS" for their securitisation transactions;
- **Non-ABCP STS securitisations**
 - **Article 19 of the SECR** concerning the requirements that a securitisation must meet in order to be considered as being STS;
 - **Article 20 of the SECR** concerning the requirements relating to simplicity, such as the acquisition by the SSPE of the title to the underlying exposures by means of a true sale, the homogeneity of the underlying assets, and the fact that the underlying exposures shall not include any securitisation position;
 - **Article 21 of the SECR** concerning the requirements relating to standardisation such as the obligation of complying with the risk retention requirement in accordance with Article 6, and the information that must be specified by the transaction documents (remedial measures and actions in the case of delinquency or default of debtors, debt restructuring, payment holidays, etc.);
 - **Article 22 of the SECR** concerning the requirements relating to transparency, such as making available to potential investors, before pricing, data on static and dynamic historical default and loss performance, for substantially similar exposures to those being securitised. This data shall cover a period of at least five years;
- **ABCP STS securitisations**
 - **Article 23 of the SECR** relating to the requirements that must be met by an ABCP transaction and an ABCP programme in order to be considered STS;
 - **Article 24 of the SECR** relating to the requirements at the ABCP transaction level, such as the acquisition by the SSPE of the title to the underlying exposures by means of a true sale, the homogeneity of the underlying assets, and the fact that the underlying exposures shall not include any securitisation position;
 - **Article 25 of the SECR** concerning the sponsor of an ABCP programme, who shall be a liquidity facility provider and shall support all securitisation positions on an ABCP programme level by covering all liquidity and credit risks and any material risks of dilution of the securitised exposures;
 - **Article 26 of the SECR** which specifies in particular that the remaining weighted average life of the underlying exposures of an ABCP programme shall not be more than two years, that the ABCP programme shall be fully supported by a sponsor, and that it shall not contain any resecuritisation;

¹⁸ SECR: "Securitisation Regulation".

- **Article 27 of the SECR** concerning the STS notification requirements. It is specified in particular that the originators and sponsors shall jointly send to ESMA an STS notification whenever the securitisation can be considered as being STS. In the case of an ABCP transaction and an ABCP programme, only the sponsor shall be responsible for STS notification. In addition, the originators and sponsors of a securitisation shall inform their competent authorities of the STS notification, namely the AMF for firms resident in France;
- **Article 28 of the SECR** concerning the verification, by an authorised third-party verifier, of the compliance of a securitisation transaction with STS criteria;
- **Article L.533-10 II-1 of the MFC** relating to the establishment, by investment service providers other than asset management companies, of rules and procedures enabling them to ensure compliance with the measures applicable to them.

Control system

- **Article 27 of the SECR** concerning STS notification requirements, which states that the originator, sponsor or SSPE can use the services of an authorised third-party verifier to assess whether the securitisation transaction can be considered as being STS;
- **Article 28 of the SECR** concerning the verification, by an authorised third-party verifier, of the compliance of a securitisation transaction with STS criteria;
- **Article L.533-10 II-1 of the MFC** relating to the establishment, by investment service providers other than asset management companies, of rules and procedures enabling them to ensure compliance with the measures applicable to them;
- **Article 22 of Delegated Regulation 2017/565** relating to the organisational requirements and operating conditions applicable to investment firms, which states in particular that investment firms shall establish and maintain a permanent and effective compliance function which operates independently;
- **Article 312-1 of the AMF GR**, which states that the investment service provider shall implement the compliance policy and the procedures relative to the responsibilities of the management body laid down in Articles 22 and 25 of Commission Delegated Regulation 2017/565.

Arrangements for withdrawal of transactions that have become ineligible for the STS label

- **Article 27 of the SECR** concerning the STS notification requirements, which states that the originator and sponsor shall inform ESMA whenever a securitisation transaction can no longer be considered as being STS;
- **Article 28 of the SECR** concerning the verification, by an authorised third-party verifier, of the compliance of a securitisation transaction with STS criteria;
- **Article L.533-10 II-1 of the MFC** relating to the establishment, by investment service providers other than asset management companies, of rules and procedures enabling them to ensure compliance with the measures applicable to them.

3. OBSERVATIONS AND ANALYSIS

Firstly, it should be emphasised that, although the ISPs in the sample group have a procedural corpus and committees governing securitisation transactions, particularly with regard to credit delegation, the arrangements put in place by the firms governing the granting, monitoring, control and withdrawal of the STS certification show major disparities. While some firms have adopted specific arrangements for the STS certification of securitisation transactions, two of the five ISPs had no procedure at the time of the investigations.

Moreover, the control systems of the five ISPs in the sample group show an insufficient level of maturity, even though some firms have designed a control system governing the granting of the STS label. On the other hand, no firm has a control system allowing monitoring of the STS criteria throughout the life of the transactions.

3.1. Arrangements for determining the STS nature of a transaction and its notification

3.1.1. Committees and associated procedural corpus

Generally, the entry into force of the SECR introducing a specific framework for STS securitisations did not lead the firms to alter the decision-making circuit for securitisation transactions. The five firms decided to create a parallel process for certification of transactions, or simply to update their in-house documentation.

The five firms in the sample group do not all have bespoke procedures for the subject of STS securitisation. Two of the firms had no procedures governing the granting of the STS label at the time of the investigations. However, it should be noted that for one of them, documents had been formally presented and made available to the personnel tasked with the transactions.

For the other three firms, the level of robustness of the procedures seems heterogeneous. At the time of the inspection only one firm had a procedure describing the governance, the role and the responsibilities of the market participants, specifying direct operational implications.

Regarding the committees governing granting of the label, only one of the five firms has set up a committee dedicated to the STS certification of transactions, in parallel to the committees governing the risks related to securitisation activities and the customary credit review process. For the other four firms, the decision to claim the STS label is not made in a committee meeting; it is taken by the line personnel tasked with the transaction further to or in parallel with the conventional decision-making process relating to securitisation activities. While, for two of the four firms, the firm's intention of labelling the transaction can be found in the operational documents exchanged during a committee meeting (although without that being expressed formally, strictly speaking), no formal expression of this decision making appears in the committee meetings of the other two firms.

✓ **Good practice**

- Setting up a committee dedicated to the subject of STS securitisation.

3.1.2. Possible use of an authorised third-party verifier

Article 27 of the SECR provides for the possibility, for the originator, sponsor or SSPE, of using a third-party verifier to check that a securitisation transaction complies with the STS criteria. However, the use of such a service shall not, under any circumstances, affect the liability of the originator, sponsor or SSPE with regard to their obligations under the SECR: they shall remain responsible for the transaction's compliance with the label requirements.

Where a third-party verifier is used, the STS notification shall contain an indication specifying that compliance with the STS criteria has been confirmed by said authorised third party.

At present, this market is shared between two market participants in Europe: PCS, authorised by the AMF, and SVI, authorised by the BaFin.

It was noted that, among the firms in the sample group, the use of a third-party verifier is a common practice, because four of the five ISPs have used one at least once. This practice is considered as improving the security of the transaction, facilitating the work of analysing compliance with the STS criteria, and as being more reassuring for investors. The work of verification is performed mostly based on the legal and contractual documentation of the transaction. After analysing this, the outside third party sends the firm its verification report, which is also available on its website. For a public transaction, the firm makes this report available to investors on a securitisation repository, in this case the European Data Warehouse (hereinafter "EDW")¹⁹ for the firms in the sample group in question.

However, this is not a systematic practice. The use of a third-party verifier mostly concerns public transactions. For private transactions, the firms in the sample group tend more to use an outside law firm to perform a gap analysis, or even capitalise on the work performed previously by a third-party verifier on one of their public transactions.

Table 2: Activity of the ISPs in the sample group

| | ISP A | ISP B | ISP C | ISP D | ISP E |
|--|-------|--------------------|-------|-------|-------|
| Use of a third-party verifier on the initiative of the ISP²⁰ | YES | NO | YES | YES | NO |
| Number of transactions selected in the sample | 5 | 3 | 2 | 11 | 10 |
| Proportion of transactions having undergone analysis by a third-party verifier²¹ | 80% | 100% ²² | 50% | 45% | 0% |

✓ **Regulatory reminder**

- The originator, sponsor or SSPE can use a third-party verifier. However, the entity remains liable for the securitisation transaction's compliance with the requirements of the STS label (Article 27 of the SECR).

✓ **Good practice**

- Using a third-party verifier to ensure the compliance of a securitisation transaction with the requirements of the STS label and thereby minimising the risk of anomalies.

¹⁹ A securitisation repository is a dedicated area for storing the monthly reporting statements of all public transactions. Private securitisations are exempted from the obligation to use a securitisation repository, but not from the obligation to make available all the documentation relating to the transaction.

²⁰ All the transactions in question underwent an analysis by a third-party verifier, although in the case of ISP B this work was not performed on the initiative of this ISP, acting as sponsor of each of the transactions, but on the initiative of the originator.

²¹ The inspection task force based its analysis on the transactions selected in the sample, which therefore does not include all the STS transactions for ISPs D and E due to the large number of labelled transactions.

²² All the transactions in question underwent an analysis by a third-party verifier, although this work was not performed on the initiative of the ISP, which is the sponsor of each of the transactions, but on the initiative of the originator.

3.1.3. Transaction notification to the competent authorities

STS notification sent to ESMA

When they choose to claim the STS label, Article 27 of the SECR stipulates that originators and sponsors must send ESMA a notification when a non-ABCP securitisation transaction complies with the STS criteria. On the other hand, only the sponsor is responsible for STS notification in the case of an ABCP transaction or an ABCP programme. That is why one of the ISPs, originator of two STS transactions, performed notification of only one of its transactions; the second one was notified by the sponsor in accordance with the regulatory provisions.

ESMA provides the firms with a standard document setting out the various criteria to be met depending on the type of transaction (public/private, ABCP/non-ABCP). For each of them, the firm must provide evidence making it possible to assess the transaction's compliance.

While all the STS transactions analysed by the inspection task force were indeed notified to ESMA, the time for notification is nevertheless highly variable (between one day and fifteen months).

Regarding this, several firms mentioned that no time frame was specified in the SECR. However, it should be remembered that Article 7 of the SECR stipulates that the STS notification is one of the documents that must be made available before pricing, and Article 22 of the SECR specifies that "the final documentation shall be made available to investors at the latest 15 days after closing of the transaction." Furthermore, the Joint Committee of the European Supervisory Authorities at its meeting of 10 December 2021²³ concerning Regulation (EU) 2017/2402 specifies that the STS notification must be available at least in draft form, and that only minor changes may be made after pricing.

Table 3: Activity of the ISPs in the sample group

| | ISP A | ISP B | ISP C | ISP D | ISP E |
|--|-------|-------|-----------------|-----------------|-------|
| Number of STS transactions of the sample notified to ESMA | 5 | 3 | 1 ²⁴ | 9 ²⁵ | 10 |
| Number of STS transactions notified to ESMA within fifteen days | 5 | 0 | 1 | 4 | 6 |
| Number of STS transactions notified to ESMA in more than fifteen days | 0 | 3 | 0 | 5 | 4 |
| Proportion of STS transactions notified to ESMA within fifteen days | 100% | 0% | 100% | 56% | 60% |

Since 3 February 2022, ESMA has put in place an automated process to facilitate notifications, and makes them available on its website in a new STS register. This new register therefore now replaces the temporary solution of a list on the ESMA website.

Information to the competent national authority

Article 27 also stipulates that, in order to claim the STS label, the competent national authority, namely the AMF for firms whose head office is situated in France, shall be informed of the notification sent to ESMA.

In this respect, numerous disparities were also noted:

- One of the five firms did not inform the AMF for use of the STS label;

²³ Joint Committee Q&As relating to the Securitisation Regulation (EU) 2017/2402.

²⁴ As mentioned earlier, the ISP is the originator of two STS transactions, but since one of them is an ABCP transaction in an ABCP programme, it was notified to ESMA by the sponsor.

²⁵ The sample was initially 11 transactions, but two of them were rejected for analysing notification to the competent authorities because they were issued before the entry into force of the SECR and, as such, benefited from the anteriority clause.

- Two other firms cc the AMF on the notification sent to ESMA to ensure that the competent national authority is informed. In such cases, the delays in notification of ESMA also have repercussions on the time taken to inform the AMF.
- Two firms informed the AMF systematically, but in highly variable time frames. For one of them, the time frame ranges between a few days following STS notification and two years; for the second one, for transactions notified to ESMA after the period of fifteen days, the AMF was informed on average 35 days after the date of issue.

The diversity of practices noted both within a given firm and between the ISPs in the sample group can be explained by the fact that only three ISPs have procedures or documents specifying the operating procedures for notification and for informing the competent authorities. However, none of the firms in the sample group has formally defined the time frames to be complied with in this respect.

Furthermore, the AMF has a generic address (STS@amf-france.org), which should be used in place of the firms' customary correspondents in the AMF.

Table 4: Activity of the ISPs in the sample group

| | ISP A | ISP B | ISP C | ISP D | ISP E |
|---|-------|-------|-------|-------|-------|
| Number of STS transactions selected in the sample for which the AMF was informed of labelling | 5 | 0 | 1 | 9 | 10 |
| Number of STS transactions for which the AMF was informed of labelling within fifteen days | 3 | NA | 1 | 2 | 6 |
| Number of STS transactions for which the AMF was informed of labelling in more than fifteen days | 2 | NA | NA | 7 | 4 |
| Proportion of STS transactions for which the AMF was informed of labelling within fifteen days | 66% | NA | 100% | 29% | 60% |

✓ **Regulatory reminders**

- When they choose to claim the STS label, originators and sponsors must send ESMA a notification when a non-ABCP securitisation transaction complies with the STS criteria. On the other hand, only the sponsor is responsible for STS notification in the case of an ABCP transaction or an ABCP programme (Article 27 of the SECR);
- The STS notification is one of the documents to be made available before pricing (Article 7 of the SECR);
- The final documentation shall be made available to investors at the latest 15 days after closing of the transaction (Article 22 of the SECR);
- The competent national authority shall be informed of STS notification for each labelled transaction (Article 27 of the SECR).

✓ **Good practices**

- When informing the AMF as the competent national authority, including the STS notification sent to ESMA;
- Automating sending of the notification;
- Specifying in a procedure the operational conditions and time frames for notification to ESMA and for informing the competent national authority.

3.1.4. Performance of verifications on STS transactions

In order to investigate and assess the operational implementation of the requirements and arrangements mentioned above in greater detail, the inspection task force performed tests in order to check that certain STS criteria are replicated in the legal documentation of the transactions.

For firms having less than ten transactions labelled STS,²⁶ the tests covered all the transactions. In the other cases, a random selection was made by the inspection task force to form a sample comprising 10 or 11²⁷ transactions.²⁸

The tests were carried out in two phases:

- First, they concerned the materiality of the STS analysis. The inspection task force checked that all the STS criteria had been taken into consideration to ensure the compliance of a transaction with the label requirements;
 - Then, the inspection task force selected several criteria relating to simplicity, transparency and standardisation, which could apply to all STS transactions, irrespective of their nature (public or private, ABCP or non-ABCP), and checked the information indicated in the STS notification sent to ESMA for each of the selected criteria, against at least the prospectus for public transactions and the legal documentation for private transactions. This information was also compared with the report of the third-party verifier when the firm has chosen to use one, or with the gap analysis where it exists.
- **For the simplicity criteria:**
 - Article 20.6 (non-ABCP transactions) or 24.6 (ABCP transactions) of Regulation (EU) 2017/2402: *"The seller shall provide representations and warranties that, to the best of its knowledge, the underlying exposures included in the securitisation are not encumbered or otherwise in a condition that can be foreseen to adversely affect the enforceability of the true sale or assignment or transfer with the same legal effect";*
 - Article 20.7 (non-ABCP transactions) or 24.7 (ABCP transactions) of Regulation (EU) 2017/2402: *"The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis";*
 - Article 20.8 (non-ABCP transactions) or 24.15 ([ABCP transactions]) of Regulation (EU) 2017/2402: *"The securitisation shall be backed [The ABCP transactions shall be backed] by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the specific characteristics relating to the cash flows of the asset type, including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall comprise only one asset type";*
 - Article 20.9 (non-ABCP transactions) or 24.8 (ABCP transactions) of Regulation (EU) 2017/2402: *"The underlying exposures shall not include any securitisation position".*

²⁶ ISPs A, B and C.

²⁷ The initial sample was 10 transactions. One extra transaction was added. This was an ABCP transaction for which the ISP is sponsor, and which was unable to be selected for another ISP in the sample group which is the originator of this transaction. As a reminder, only the sponsor is liable for the STS notification of an ABCP transaction.

²⁸ Transactions having undergone a withdrawal of the label were not excluded from the inspected sample.

- **For the transparency criteria:**
 - Article 22.1 (non-ABCP transactions) or 24.14 ([ABCP transactions]) of Regulation (EU) 2017/2402: *"The originator and the sponsor shall make available data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Those data shall cover a period of at least five years [All such data shall cover a period no shorter than five years, except for data relating to trade receivables and other short-term receivables, for which the historical period shall be no shorter than three years]"*.

- **For the standardisation criteria:**
 - Article 21.1 (non-ABCP transactions) or 25.5 ([ABCP transactions]) of Regulation (EU) 2017/2402: *"The originator, sponsor or original lender shall satisfy the risk-retention requirement in accordance with Article 6" ["The seller, at the level of a transaction, or the sponsor, at the level of the ABCP programme, shall satisfy the risk-retention requirement referred to in Article 6"];*
 - Article 21.2 (non-ABCP transactions) or 24.12 (ABCP transactions) of Regulation (EU) 2017/2402: *"The interest-rate and currency risks arising from the securitisation shall be appropriately mitigated and any measures taken to that effect shall be disclosed.";*
 - Article 21.9 (non-ABCP transactions) or 24.13 (ABCP transactions) of Regulation (EU) 2017/2402: *"The transaction documentation shall set out in clear and consistent terms definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge offs, recoveries and other asset performance remedies"*.

It should be noted that these tests did not aim to give an opinion on the compliance of the transactions in question with all the STS label requirements, but to check that the information contained in the analysed documents was consistent with that provided in the notification sent to ESMA, and met the requirements of the relevant regulatory provisions regarding these tests.

The verifications performed led to the following findings:

- The inspection noted, for four of the five ISPs, that the information appearing in the analysed documents was consistent with that provided in the notification sent to ESMA, and met the requirements of the aforementioned regulatory provisions.
- For the fifth ISP, the inspection task force also concluded that the information found in the analysed documents was consistent with that provided in the notification sent to ESMA. For two transactions, however, the inspection task force noted that the STS label had been granted even though they did not have a securitisation special purpose entity. This is a common finding for nine securitisation transactions that underwent a withdrawal of the label for this reason following discussions with the AMF before initiating the inspection. **It should therefore be reiterated that in accordance with Article 24.1 of the SECR,²⁹ all securitisation transactions labelled STS must have a securitisation special purpose entity.**

✓ **Regulatory reminder**

- A traditional STS securitisation transaction must have a securitisation special purpose entity (SSPE), which acquires the title to the underlying exposures by means of a true sale or assignment or transfer with the same legal effect (Article 24.1 of the SECR).

²⁹ And Recitals 22 and 24 of the SECR.

3.2. Control system

The inspection analysed the control system supervising the subject of STS securitisation (content, conditions), based on Articles 22 of Delegated Regulation 2017/565, L.533-10 of the Monetary and Financial Code and 312-1 of the AMF General Regulation. A distinction is made between controls implemented ahead of and following STS notification and granting of the label.

The entry into force of the SECR caused an uneven change in the control system of the firms in the sample group, irrespective of the number of securitisation transactions benefiting from the label.

| | Type of control | ISP A | ISP B | ISP C | ISP D | ISP E |
|-------------------------|-----------------|------------------|-------|-------|------------------|-------|
| Ex-ante controls | Level one | KO ³⁰ | KO | OK | OK | OK |
| | Level two | KO | KO | KO | KO | KO |
| | Level three | KO | KO | KO | KO | KO |
| Ex-post controls | Level one | KO | KO | OK | OK | KO |
| | Level two | KO | KO | KO | KO | KO |
| | Level three | KO | KO | KO | KO ³¹ | KO |

Disparities were therefore noted with regard to the control system.

Generally speaking, it appears that monitoring of the compliance of securitisation transactions with the requirements of the STS label during their life is not very satisfactory. Despite the dynamic nature of certain criteria,³² the control systems of the firms in the sample group could not guarantee the detection of an event liable to call into question the labelling of a transaction.

3.2.1. Controls implemented ahead of notification

The inspection task force noted that the implementation of controls ahead of the STS notification to ensure that the transaction complies with the label requirements was not systematic:

- Three ISPs implement ex-ante controls, but these are confined to level-one controls;
- The other two ISPs implement no ex-ante control. As a reminder, the ISP remains liable for the STS notification and for the transaction's compliance with the label requirements. Accordingly, and contrary to what some firms in the sample group suggested, the use of a third-party verifier or the drawing up of a gap analysis by an outside law firm could not justify the fact that no control is implemented by them.

So, no firm in the sample group implements a level-two control before granting the STS label.

One of the firms in the sample group has acquired an IT tool in which it can enter information making it possible to verify that the transaction complies satisfactorily with the STS criteria by providing an answer to 42 questions, in chart form. This tool is associated with its control system, because it enables one of the teams of the Risk Department that did not fill in the chart in the IT tool to check this data. An automatic check is also made on the compliance of the answers.

³⁰ The inspection has indicated "KO" in the table where no control has been performed, and "OK" where control(s) has/have been performed (the quality of the controls is not taken into consideration here).

³¹ However, an inspection was underway in the firm during the control, concerning, in particular, the process for granting the label.

³² For instance, the homogeneity or credit quality of the debt securities may change when the debts of the securitisation are rolled over.

From the procedural viewpoint, it appears that the controls implemented are generally provided for in a procedure; only one of the firms implementing level-one controls before granting the label has no procedure setting out those controls formally. However, the inspection task force was able to get an idea of their materiality via a scoring chart filled in by the team tasked with structuring the transaction and which implies answering various questions covering both the general framework and the specific STS framework of the SECR. On the other hand, the ISPs implementing no ex-ante control have no procedure along these lines.

3.2.2. Controls implemented following notification

The controls implemented following STS notification are designed to ensure that the STS securitisation transactions remain in compliance with the label requirements throughout their life. This is because the dynamic nature of certain criteria could potentially call into question the transaction's compliance with the STS criteria during its life and thus require that ESMA be notified immediately and that the competent authority³³ be informed.

In this regard, it appears that the ex-post control system of the inspected ISPs is partially satisfactory:

- Only two ISPs implement controls following granting of the label. However, these are merely level-one controls which, in one case, are based solely on the legal documentation of the transactions;
- The other three ISPs perform no control taking into account the specific features of the label once it has been granted. Therefore, the absence of control governing the granting of the label is liable to hinder the detection of events which could call into question the compliance of a transaction with STS criteria.

Therefore, no ISP in the sample group implements a level-two control once the STS label has been granted.

The ISP is also liable for the transaction's compliance with the requirements of the label after it has been granted. Accordingly, if the servicer implements various control points as part of its function as legal representative of the SSPE, these controls cannot substitute for those implemented by the firm. Specifically, one of the ISPs in the sample group merely checked, for certain control points implemented by the servicer, that the data from the Management Report were in compliance with the Regulation (e.g. checking that the Management Report indicates a level of risk retention in compliance with the Regulation), without itself verifying said control points.

From the procedural viewpoint, only the firms implementing ex-post controls have procedures setting out these controls formally. The procedural corpuses are therefore consistent with the operating practices observed by the inspection task force, except for one of the firms which provides, in one of its procedures, for the implementation of level-two controls which are not implemented in practice.

✓ Regulatory reminders

- The originator, sponsor or SSPE can use a third-party verifier. However, the entity remains liable for the securitisation transaction's compliance with the requirements of the STS label (Article 27 of the SECR);
- Investment firms shall establish and maintain a permanent and effective compliance function (Article 22 of DR 2017/565). Compliance with these provisions is especially pertinent for dynamic transactions (e.g. for revolving transactions).

³³ SECR, Article 27(4).

✓ **Good practice**

- Having an IT tool making it possible not only to verify the transaction's compliance with the STS criteria but also to monitor these data;

✓ **Poor practices**

- Not reviewing the verification report or the gap analysis;
- Monitoring only the data coming from the reports produced by the servicer (in particular the Management Report), without verifying the various control points.

3.3. Arrangements for label withdrawal and monitoring

Article 27 of the SECR stipulates that the originator or sponsor must immediately notify ESMA and inform the competent authorities whenever a securitisation transaction no longer complies with the requirements of the STS label. ESMA then updates the list of transactions benefiting from the label.

Two of the five ISPs considered³⁴ that some of their transactions no longer met the label requirements: the first of them performed "delabelling" of 13 of its 31 STS transactions during the inspection period due to Brexit (3 transactions), the absence of an SSPE (9 transactions), or the end of life of the transaction (one transaction); the second one notified the non-compliance of two transactions out of 101 due to Brexit.

Regarding the arrangements for withdrawal and monitoring of the label, major disparities were noted within the sample group, regardless of the scale of STS securitisation and the number of transactions having become ineligible for the label.

In general, it was noted that:

- Three of the five firms have made arrangements for withdrawal and monitoring of the label, including the two ISPs that had to inform ESMA of the non-compliance of some of their transactions with the label requirements;
- The other two ISPs have no arrangements for withdrawal and monitoring of the label. The first one considers that this case is unlikely to occur due to the static nature of several criteria, while the second one justifies the absence of arrangements by the small number of labelled transactions.

More specifically, regarding the ISPs that have made arrangements for withdrawal and monitoring of the label:

- The ISP that notified ESMA that 13 of its securitisation transactions no longer met the label requirements has made arrangements for reviewing the STS criteria during the life of the transactions. The STS label of each transaction is re-examined during annual reviews or in the case of events that could alter the previously approved criteria. The business teams refer to the STS committee established by the ISP for the label review, notably in the case of regulatory changes that could have an impact on the transaction's compliance with the label requirements. The STS committee determines whether the transaction is now ineligible with regard to the STS criteria; in the event of non-compliance, a notification of cancellation shall be sent to ESMA, and the AMF shall be informed.

Following confirmation by ESMA of withdrawal of the label, a team is tasked with sending to the line personnel in charge of the transaction the communications between the firm and ESMA, and with keeping an audit trail. The other competent authorities are then informed using the format required by them. The middle office

³⁴ As a reminder, the inspection task force did not verify the compliance of transactions labelled STS. Moreover, as already mentioned, the firms' control systems are not very satisfactory and could not guarantee the detection of an event liable to call into question the labelling of a transaction.

updates the firms' application systems. However, the firm has no plans for informing the other stakeholders in the transaction of the loss of the label, and in particular the originators.

- The ISP that notified ESMA that two of its securitisation transactions were no longer in compliance with the STS criteria plans that if personnel in the Securitisation Department, the Legal Department or the Risk Department learn information that could invalidate the transaction's compliance, they should inform the team tasked with the transaction and a process of label validation is then started again, identical to the process for granting the label during the arrangement of a transaction. The front office analyses the transaction's compliance with the STS criteria, if necessary with the support of the legal teams, and submits the analysis to its bespoke IT tool, together with a new assessment of the credit risk. It is then up to the Risk Department's personnel to validate the STS analysis and the credit application, if necessary with the support of the legal teams. If the transaction fails to comply with the STS criteria, a notification shall be sent to ESMA by the Risk Department.

From the procedural viewpoint, the firm has training material dedicated to analysis of the STS criteria, and a document describing in detail the process of withdrawal of the STS label.

- Until now the third ISP has never considered that one of its transactions was no longer in compliance with the STS label requirements and has therefore never notified ESMA along these lines. However, a change in one of the STS criteria liable to call into question the labelling of a transaction would be detected when implementing the level-one controls which, according to the firm, are designed to verify that the label requirements are still complied with, throughout the life of the transaction. Although the loss of the label is at present a hypothetical case for this ISP, it has already set out the aforementioned arrangements formally in a procedure. This procedure provides that if a transaction were to become ineligible for the label, the Asset/Liability Committee would be informed of this. In addition to the procedure, the firm stated that the Chief Financial Officer and the Chief Risk Officer would meet to discuss the factors explaining the ineligibility of the transaction. However, this is mainly a reporting committee: analysis of the transaction and of the failure to comply with one of the criteria should be performed ahead of the committee meeting by the personnel tasked with the transaction, if necessary with the support of the Risk Department and the legal teams. The procedure also provides that if the Asset/Liability Committee confirms the failure of the transaction to comply with the label requirements, the team tasked with the transaction should notify ESMA and inform the competent authorities along these lines. Verification of the effective withdrawal of the STS label should be materialised by adding the transaction in question to the ESMA register designed for the purpose; conversely, it should no longer appear on the ESMA register listing the labelled transactions. Withdrawal of the STS label would be monitored by the team tasked with the transaction in question.

As regards the ISPs having no arrangements for withdrawal and monitoring of the label, and having until now never notified ESMA of the failure of one of their transactions to comply with the label requirements, disparities could also be noted:

- One of the ISPs was unable to identify situations liable to call into question the labelling of a transaction, and states that such a case would be a matter for a crisis management unit. During the inspection period, the firm had therefore absolutely not anticipated the possibility of losing the STS label, as confirmed by the lack of a procedure in this respect.
- The second firm, although it does not have a procedure setting out formally the arrangements for the withdrawal and monitoring of the label, has nevertheless established a guide which shows the process of notification of ESMA if a transaction were to become ineligible for the label, as well as a verification of the ESMA registers to ensure withdrawal of the label. This scenario has therefore been considered by the firm. However, the preliminary decision-making process to decide on the current ineligible nature of a transaction, and formal presentation in a committee, do not appear in this guide.

In both cases, the absence of arrangements for the withdrawal and monitoring of the STS label is especially worrying in that these ISPs have no control system making it possible to detect an event which could call into question the compliance of the securitisation transactions with the label requirements during their life.

| | ISP A | ISP B | ISP C | ISP D | ISP E |
|--|-------|-------|-------|-------|-------|
| Number of transactions that underwent a withdrawal of the label | 0 | 0 | 0 | 13 | 2 |
| Arrangements for label withdrawal and monitoring | KO | KO | OK | OK | OK |
| Procedural corpus or documentation | KO | OK | OK | OK | OK |

✓ **Regulatory reminders**

- When a securitisation transaction no longer meets the requirements of either Articles 19 to 22 or Articles 23 to 26, the originator and sponsor shall immediately notify ESMA and inform their competent authority. (Article 27(4) of the SECR);
- ISPs shall establish rules and procedures enabling them to ensure compliance with the measures applicable to them (Article L.533-10 of the MFC).

✓ **Good practices**

- Identifying and presenting formally events that could lead to a withdrawal of the label;
- Having a specific committee for STS securitisation transactions in which to determine whether a transaction is at present ineligible.

✓ **Poor practice**

- In the event of losing the label, not informing the other participants in a transaction, including the originators.