



European Securities and
Markets Authority

Response form for the Consultation Paper on STS notification



Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on Draft technical standards on content and format of the STS notification under the Securitisation Regulation (ESMA33-128-33). Responses are most helpful if they:

- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all responses received by 19 March 2018.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESMA_QUESTION_STS_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your response, name your response form according to the following convention: ESMA_STS_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_STS_ABCD_RESPONSEFORM.
- Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open consultations” → “Draft technical standards on content and format of the STS notification under the Securitisation Regulation”).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. **Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed.** A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.





Data protection

Information on data protection can be found at www.esma.europa.eu under the heading “Data protection”.

Who should read the Consultation Paper

This consultation paper will be of interest to key parties in a securitisation including originators, sponsors, SSPE and institutional investors in securitisation.



General information about respondent

Name of the company / organisation	True Sale International GmbH
Activity	Other Financial service providers
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_STS_1>

We welcome ESMA's approach to create three distinct categories in terms of the necessary degree of details.

Furthermore, we also endorse the distinction between public and private securitisations and within the private securitisation the differentiation between a set of information for prudential reporting and for public disclosure.

However, in both cases, certain details should be worked out further which we address in our answers to the questions below.<ESMA_COMMENT_STS_1>

Q1 : Do you agree that some general information elements will facilitate the identification of the securitisation and are thus needed to be included in the STS notification?

<ESMA_QUESTION_STIS_1>

In general, we agree to the proposal. However, it should be considered that in ABCP securitisations there are several layers of securitisation exposures: on the transactions level (e.g. the liquidity facility), and on program level (e.g. the ABCP). Although both exposures are considered private securitisations (as the ABCPs do not fall under the prospectus directive), the counterparts, risk features and confidentiality aspects differ fundamentally. Also, as stated in Art 23 STS-Reg some liquidity facilities within an ABCP program may comply with the STS criteria where others do not, and/or the ABCP paper itself may or may not be STS compliant. Therefore the general information elements for STS notifications should take into account the different characteristics of STS-eligible liquidity lines on one side and STS-eligible ABCP on the other side.

<ESMA_QUESTION_STIS_1>

Q2 : Do you agree that the list of items in paragraph 15 should be included in the STS notification? Do you have any further proposals? If yes, please also state the reasons.

<ESMA_QUESTION_STIS_2>

pre-remark: we understand Q2 as a reference to para 13 - as mentioned in the CP (and not para 15 as above)

In ABCP transactions typically real economy enterprises act as originators. These entities usually do not have LEI numbers. Likewise, the liquidity facility between the SPV and the Sponsor (acting as liquidity bank) is a bilateral credit agreement without an ISIN. Hence, these securitisation exposures (i.e. the liquidity lines) neither have a originator LEI nor an ISIN. This should be considered when the identification of such exposure is regarded. Furthermore in the second bullitpoint, it is to clear to us if the originator LEI (if any – see above) or the sponsor LEI is meant.

In case of STS-eligible ABCP, such paper is backed by all receivables of the programme. Hence, no distinct originator name can be mentioned. We propose that in this case the sponsor name and LEI should be sufficient. Furthermore, as ABCP paper is issues regularly several times a day/week, each with its own ISIN, there is no specific date or ISIN code that can be used. We advocate, that in such cases the programme as such is the subject of the STS notification and not the single ABCP issued under the programme. Otherwise, given the short tenor of the paper, the ABCP might already be matured before the STS notification is made public. This means, that no ISIN or issuance date can be given on programme level.

Considering the above, it may make sense that concerning the type of securitisation a distinction between ABCP program level and ABCP transaction level is made. So possible types would be: non-ABCP, ABCP-programme level, ABCP-transaction level.

<ESMA_QUESTION_STIS_2>

Q3 : Do you agree that the proposed list of items in paragraph 17 should be published on ESMA public website?

<ESMA_QUESTION_STIS_3>

pre-remark: we understand Q3 as a reference to para 15 - as mentioned in the CP (and not para 17 as above)

The type of underlying exposures should not be described in the case the STS exposure is of the type of an ABCP programme level because there will be multiple types. With respect to the issuance date of the ABCP see Q2.

<ESMA_QUESTION_STIS_3>



Q4 : Do you agree with the proposal to have three different explanation types in the STS notification, depending on the nature of the criteria?

<ESMA_QUESTION_STS_4>

Yes

<ESMA_QUESTION_STS_4>

Q5 : Do you agree with the proposal of cross-referring in a STS notification between the STS elements and those from Prospectus, where available, or otherwise other securitisation documentation? If not, please also state the reasons.

<ESMA_QUESTION_STS_5>

Yes, a cross-reference to existing documentation should be possible in order to avoid unintentional conflicting statements. Cross-references should also be possible to summaries or overviews under Art 7 (1)(c) STS-Reg.

<ESMA_QUESTION_STS_5>

Q6 : Do you agree that for the list of items in table 2 only a confirmation should be required in the STS notification, accompanied by the cross reference to the relevant section in prospectus or other securitisation documentation? If not, please state your reasons and any further suggestion.

<ESMA_QUESTION_STS_6>

In principle, the list of items in table 2 is clear but in our view not complete. Please see Q7 for additional items.

However, the cross reference-approach needs further explanation with regard to private transactions where no prospectus has been set up. Especially it is unclear how underlying documentation shall be integrated in the notification. Underlying docs are comprehensive and complex. We strongly advocate that underlying documentation shall not be submitted to ESMA as it would by no means be feasible to review 10.000s of pages of underlying docs. The format for cases where a simple confirmation and cross-reference is sufficient, should just name the referenced document and the relevant page range. No documentation identifier and no delivery of docs shall be necessary (see Annex III STSA23-77).

<ESMA_QUESTION_STS_6>

Q7 : Do you agree that for the list of items in Table 3 a concise explanation shall be required in the STS notification, accompanied by the cross reference to the relevant section in prospectus or other securitisation documentation? If not, please state your reason and any further suggestion.

<ESMA_QUESTION_STS_7>

With regard to cross-reference to securitisation documentation please see Q 6.

Concise explanation should only be required for items that are not digital (yes/no) or where several option may be used. Therefore the following items should be transferred in table 2:

Subject matter	Non-ABCP	ABCP Transaction article	ABCP Programme article	ABCP Sponsor article	ESMA comments regarding the expected content of the STS notification	reason

Transfer of the underlying exposures by true sale or assignment	Article 20(1)	Article 24(1)	Article 26(1), same requirement as under Articles 20(1) and 24(1)	N/A	The STS notification shall confirm and include a concise explanation on 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 explanation shall specify whether the transfer of the underlying exposures is made by means of true sale	Yes/No
No severe clawback provisions	Article 20 (2)	Article 24(2)	No severe clawback provisions	N/A	The STS notification shall include a concise explanation that none of the situations referred to in Article 20 (2) (a) and (b) or Article 24(2) are found in the securitisation, unless the requirements laid down in Article 20 (3) or 24 (3) apply. Such explanation must include cross-reference to Item 3.3 of Annex 11.	Yes/No
Clawback provisions in national insolvency laws	Articles 20(3)	Article 24(3)	Article 26(1), same requirement as under Articles 20(3) and 24(3);	N/A	The STS notification shall include a concise explanation on which of the clawback provisions in national insolvency laws form an exception to the severe clawback provisions as provided for in Article 20(2) of the Securitisation Regulation.	Yes/No
Standard reference rates.	Article 21(3)	Article 24(16)	Article 26(1), same requirement as under Article 21(3) and 24(16)	N/A	STS notification shall include a concise explanation on whether and how the referenced interest rates used under the securitisation assets and liabilities are calculated by reference to generally used market interest rates, which are considered to be “acceptable” in comparison with unconventional or exotic (and hard to calculate) rates (expected cross-references with the Prospectus includes Items 2.2.2 and 2.2.13 of Annex 11).	Yes/No
No trapping of cash following enforcement or acceleration notice	Article 21(4);	Article 24(17)	Article 26(1), same requirement as under Article 21(4) and 24(17);	N/A	The STS notification shall include a concise explanation on how the requirement is met, including explanation of cases where cash may be trapped in the SSPE (expected cross-references with the Prospectus: Item 3.4.6 of Annex 11).	Yes/No
Drawn down of liquidity facility, where funding commitments of the liquidity facility are not renewed by the sponsor:	N/A	N/A	N/A	Article 25(7)	In conjunction with Article 26(7)(f) of the Securitisation Regulation, the STS notification shall include a concise explanation from the sponsor of an ABCP programme on whether the liquidity facility is drawn down and the maturing securities are repaid in the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry.	Yes/No
ABCP programme fully supported by a sponsor	N/A	N/A	Article 26(3)	N/A	The STS notification shall include a confirmation and a concise explanation from the sponsor on whether and how the ABCP programme is fully supported by a sponsor.	Yes/No

Furthermore, one item is redundant and should be deleted from the list:

The seller (at transaction level) or the sponsor (at the level of the ABCP programme) shall satisfy with the risk retention requirements referred to in Article 6	N/A	N/A	N/A	Article 25(5)	The STS notification shall include a concise explanation from the seller (ABCP transaction) or sponsor (ABCP programme) on how each of them comply with the risk retention requirements along the lines described under Article 21(1).	delete, already covered by item “compliance with risk retention requirements”
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<ESMA_QUESTION_STS_7>

Q8 : Do you agree that for the list of items in table 4 a detailed explanation shall be required in the STS notification, accompanied by the cross reference to the relevant section in prospectus or other securitisation documentation? If not, please state your reason and any further suggestion.

<ESMA_QUESTION_STS_8>

With regard to cross-reference to securitisation documentation please see Q 6.

Furthermore the following items should be transferred in table 3 (concise explanation) because they can be answered either with Y/N and/or by cross-reference to the securitisation documentation.

Subject matter	Non-ABCP	ABCP Transaction article	ABCP Programme article	ABCP Sponsor article	ESMA comments regarding the expected content of the STS notification	reason
Soundness of the underwriting standard	Article 20(10)	Article 24(18)	Article 26(1)	N/A	The STS notification shall confirm and provide a detailed explanation as to whether the underlying exposures were originated in the lender's ordinary course of business and include a description of any material changes from prior underwriting standards. Such explanation should specify whether the applied underwriting standard were no less stringent than those applied to exposures that were not securitised (expected cross-references with the Prospectus: Item 2.2.7 of Annex 11).	concise with cross reference to docs should suffice
Repayment of the holders of the securitisation positions do not depend predominantly on sale of assets	Article 20(13)	Article 24(11)	N/A	N/A	ESMA considers that the STS notification shall include a detailed explanation on explain the degree of dependence of the prepayments of the holders on the sale of assets securing the underlying exposures. Where applicable such explanation may refer to the use of "residual values limits" in the securitisation, which may vary depending on the nature of the underlying exposures (expected cross-references with the Prospectus: Item 3.4.1 of Annex 11).	concise with cross reference to docs should suffice
Revolving securitisation with early amortisation events for termination of revolving period based on prescribed triggers	Article 21(6)	Article 24(19)	Article 26(1)	N/A	ESMA is of the view that, where applicable, the STS notification shall include a detailed explanation on how each of the early amortisation provisions or listed triggers under the Article 21(6) and Article 24(19) of the Securitisation Regulation are met (expected cross-references with the Prospectus: Item 3.1 of Annex 10 and Items 2.3 and 2.4 of Annex 11). Should the explanation be available in other publicly available underlying documentation, then the STS notification shall indicate how such documentation could be obtained.	concise with cross reference to docs should suffice

<ESMA_QUESTION_STS_8>

Q9 : Do you agree with the proposal to require the use of XML templates for the STS notification notified to the ESMA?

<ESMA_QUESTION_STS_9>

We assume that STS notifications have to be compiled manually. Originators and sponsors need to convert their usual format (e.g. MS Excel or Word) into XML. This may cause additional effort.

Therefore, for private transactions and the version of the STS notification which will not be published via ESMA's website, ESMA might consider to accept other formats as well



<ESMA_QUESTION_STS_9>

Q10 : Do you agree with the format of the proposed notification templates as described in Annexes I and II of the draft ITS?

<ESMA_QUESTION_STS_10>

As in Q9 above, the notification version which is not published should not require the field format of Annex I.

<ESMA_QUESTION_STS_10>

Q11 : Do you agree with the arguments set out in the preliminary CBA? Do you think that other items should be factored into the CBA and if so, for what reasons?

<ESMA_QUESTION_STS_11>

We do not share ESMA's view that the costs generated by the RTS/ITS remain very limited for the originators and sponsors.

Although we strongly support the proportional approach we believe that more item can be shifted from detailed to concise and from concise to confirmation (see Q7 and 8 above).

Especially for ABCP sponsors extra costs can be quite significant, since STS notifications have to be prepared for each STS compliant liquidity facility plus, if applicable, for the programme. Given the fact that ABCP liquidity facilities and ABCP are of private nature and the published information is extremely limited (notwithstanding the point that the regular ABCP reporting anyways points out which transaction is STS compliant), the additional effect of the STS notification for investors is nil. Therefore the costs involved to prepare the STS notification in a fixed format should not be underestimated.

<ESMA_QUESTION_STS_11>