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NOTE

From:	Presidency/General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 *- Presidency compromise*

Delegations will find below the first Presidency compromise on the abovementioned proposal.

With respect to the original Commission proposal, the new text is marked in **underlined bold** and deletions are indicated in ~~strikethrough~~.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

Whereas:

[placeholder]

[1] OJ C , , p. .

HAVE ADOPTED THIS REGULATION:

Chapter 1

General provisions

Article 1

Subject-matter and scope

1. This Regulation lays down a general framework for securitisation. It defines securitisation and establishes due diligence, risk retention and transparency requirements for parties involved in securitisations, such as institutional investors, originators, sponsors, original lenders and ~~s~~**S**ecuritisation ~~s~~**S**pecial ~~p~~**P**urpose ~~e~~**E**ntities. It also provides a framework for Simple, Transparent and Standardised or '~~-~~STS' securitisation.

2. This Regulation applies to institutional investors becoming exposed to securitisation and to originators, ~~original lenders,~~ sponsors**, original lenders** and ~~s~~**S**ecuritisation ~~s~~**S**pecial ~~p~~**P**urpose ~~e~~**E**ntities.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) 'securitisation' means a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranched, having both of the following characteristics:

(a) payments in the transaction or scheme are dependent upon the performance of the exposure~~s~~ or pool of exposures;

(b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme.

An exposure that creates a direct payment obligation for a transaction or scheme used to finance or operate physical assets shall not be considered an exposure to a securitisation, even if the transaction or scheme has payment obligations of different seniority;

(2) 'Securitisation Special Purpose Entity' or 'SSPE' means a corporation, trust or other ~~legal~~ entity, other than an originator or sponsor, established for the **sole** purpose of carrying out one or more securitisations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the SSPE from those of the originator, and in which the holders of the beneficial interests have the right to pledge or exchange those interests without restriction;

(3) 'originator' means an entity which:

(a) itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised; or

(b) purchases a third party's exposures ~~for~~ **on** its own account and then ~~securitises~~ **sells or assigns** them **to an SSPE**;

(4) 're-securitisation' means securitisation where at least one of the underlying exposures is a securitisation position;

(5) 'sponsor' means a credit institution or investment firm as defined in Article 4**, paragraph** ~~(~~1~~)~~**,** points (1) and (2) of Regulation (EU) No **575/**2013~~/575~~**,** other than an originator**,** that establishes and manages**, directly or by delegation,** an asset-backed commercial paper programme or other securitisation ~~transaction or~~ scheme that purchases exposures from third-party entities;

(6) 'tranche' means a contractually established segment of the credit risk associated with an exposure or a pool of exposures, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in another segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments;

(7) 'asset-backed commercial paper (ABCP) programme' or 'ABCP programme' means a programme of securitisations **held in an SSPE, where** the securities issued by **the SSPE under this programme**~~which~~ predominantly take the form of asset-backed commercial paper with an original maturity of one year or less;

(8) 'asset-backed commercial paper (ABCP) transaction' or 'ABCP transaction' means a securitisation within an ABCP programme;

(9) 'traditional securitisation' means a securitisation involving the ~~economic~~ transfer of the **economic interest in the** exposures being securitised~~. This shall be accomplished by~~ **through** the transfer of ownership of the securitised exposures from the originator ~~institution~~ to an SSPE or through sub-participation by an SSPE. The securities issued do not represent payment obligations of the originator ~~institution~~;

(10) 'synthetic securitisation' means a securitisation where the transfer of risk is achieved by the use of credit derivatives or guarantees, and the exposures being securitised remain exposures of the originator;

(11) 'investor' means a person holding ~~securities resulting from a securitisation~~**a securitisation position**;

(12) 'institutional investors' means insurance undertakings as defined in Article 13 (1) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II); reinsurance undertakings as defined in Article 13**,** point (4) of Directive 2009/138/EC; institutions for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council[2] in accordance with Article 2 thereof, unless a Member States has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive; an alternative investment fund manager (AIFM) as defined in Article 4**, paragraph** ~~(~~1~~)~~**, point** (b) of Directive 2011/61/EU of the European Parliament and of the Council[3] that manage and/or market AIFs in the Union; or a UCITS management company as defined in Article 2**, paragraph** ~~(~~1~~)~~**, point** (b) of Directive 2009/65/EC of the European Parliament and of the Council[4]; or an internally managed UCITS, which is an investment company authorised in accordance with Directive 2009/65/EC and which has not designated a management company authorised under that Directive for its management; or credit institutions or investments firms as defined in Article 4**, paragraph** ~~(~~1~~)~~**, points** (1) and (2) of Regulation (EU) No **575/**2013~~/575~~;

(13) 'servicer' means an entity as defined in Article 142**, paragraph** ~~(~~1~~)~~**,** point (8) of Regulation **(EU)** No **575/**2013~~/575/EU~~;

(14) 'liquidity facility' means the securitisation position arising from a contractual agreement to provide funding to ensure timeliness of cash flows to investors;

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[2] Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

[3] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 202 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

[4] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

(15) 'revolving exposure' means an exposure whereby ~~customers~~**borrowers**' outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to an agreed limit;

(16) 'revolving securitisation' means a securitisation where the securitisation structure itself revolves by exposures being added to or removed from the pool of exposures irrespective of whether the exposures revolve or not;

(17) 'early amortisation provision' means a contractual clause in a securitisation of revolving exposures or a revolving securitisation which requires, on the occurrence of defined events, investors' **securitisation** positions to be redeemed before the**ir** originally stated maturity ~~of the securities issued~~;

(18) 'first loss tranche' means the most subordinated tranche in a securitisation that is the first tranche to bear losses incurred on the securitised exposures and thereby provides protection to the second loss and, where relevant, higher ranking tranches**;** ~~.~~

(19) 'securitisation position' means an exposure to a securitisation;

(20) 'original lender' means the entity that concluded the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised.

Chapter 2

Provisions applicable to all securitisation**s**

Article 3

Due diligence requirements for institutional investors

1. An institutional investor shall verify before becoming exposed to a securitisation that:

(a) where the originator or original lender **established in the Union** is not a credit institution or **an** investment firm as defined in Article 4(1), points (1) and (2) of Regulation (EU) No 575/2013, ~~the originator or original lender~~**it** grants all its credits on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply these criteria and processes **in accordance with Article 5a**;

(aa) where the originator or original lender is established in a third country, it grants all its credits on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply these criteria and processes in line with the criteria and processes laid down in Article 5a;

(b) **where** the originator, sponsor or original lender **is established in the Union, it** retains **on an ongoing basis** a material net economic interest in accordance with Article 4 of this Regulation and **that the risk retention is** disclose**d**~~s it~~ to the institutional investor in accordance with Article 5;

(ba) where the originator, sponsor or original lender is established in a third country, it retains on an ongoing basis a material net economic interest which, in any event, shall not be less than 5% determined in line with the methodology laid down in Article 4 of this Regulation and it discloses the risk retention to institutional investors;

(c) the originator, sponsor and SSPE make available the information required by Article 5 of this Regulation in accordance with the frequency and modalities provided in that Article**.**~~;~~

1a. By derogation to paragraph 1, regarding fully supported ABCP transactions, the requirement specified in point (a) of paragraph 1 applies to the sponsor who shall verify that the originator or original lender which is not a credit institution or an investment firm grants all its credits on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply these criteria and processes.

2. Before becoming exposed to a securitisation, institutional investors shall also carry out a due diligence assessment ~~commensurate with~~**which enables them to assess** the risks involved ~~including~~**, and, in light of those risks, consider** at least the following aspects:

(a) the risk characteristics of the individual securitisation position and of the **underlying** exposures ~~underlying it~~;

(b) all the structural features of the securitisation that can materially impact the performance of the securitisation position, such as the contractual priorities of payment and priority of payment-related triggers, credit enhancements, liquidity enhancements, market value triggers, and transaction-specific definitions of default;

(c) with regard to securitisations designated as STS **pursuant to Article 6**, whether the securitisation meets the ~~STS~~ requirements laid down in **Sections 1 and 3 of Chapter 3, or in Sections 2 and 3 of Chapter 3**~~Articles 7 to 10 or Articles 11 to 14~~. Institutional investors may place appropriate reliance on the STS notification pursuant to Article 14**, paragraph** ~~(~~1~~)~~ and on the information disclosed by the originator, sponsor and SSPE on the compliance with the STS requirements**, without mechanistically relying on the prementionned notification or information**.

3. Institutional investors that are exposed to a securitisation- shall at least:

(a) establish **appropriate** written procedures**, with regard to** ~~commensurate with~~ the risk profile of the securitisation position, and ~~appropriate~~ to their trading and non-trading book where relevant, to monitor compliance with paragraphs 1 and 2 and the performance of the securitisation position and the underlying exposures on an ongoing basis.~~.~~ Where ~~appropriate~~**relevant with respect to certain securitisation transactions and types of underlying exposures**, those written procedures shall include monitoring of the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, recovery rates, repurchases, loan modifications, payment holidays, collateral type and occupancy, and frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification, frequency distribution of loan to value ratios with band widths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisations, institutional investors shall also monitor the exposures underlying those securitisations;

(b) **for an exposure to a securitisation other than a fully-supported ABCP transaction,** regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures**, or, as applicable, stress tests on loss assumptions,** that are **appropriate with regard to**~~commensurate with~~ the nature, scale and complexity of the risk of the securitisation position;

(c) ensure ~~that there is an adequate level of~~ internal reporting to their management body so that they are aware of the material risk arising from **each**~~the~~ **of their** securitisation positions and that the risks from those investments are adequately managed;

(d) be able to demonstrate, upon request, to their competent authorities that for each of their securitisation positions they have a comprehensive and thorough understanding of the position and its underlying exposures and that they have implemented written policies and procedures for their risk management and record **keep**ing of the ~~relevant information~~**verifications and due diligence in accordance with paragraphs 1 and 2 and of any other relevant information;**~~.~~

(e) in the case of fully-supported ABCP transactions, be able to demonstrate, upon request, to their competent authorities, that for each of their ABCP securitisation positions they have a comprehensive and thorough understanding of the credit quality of the sponsor and of the terms of the liquidity facility provided.

Article 4

Risk retention

1. The originator, sponsor or ~~the~~ original lender of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of not less than 5 %**, which shall be measured at the origination and shall be determined by the notional value for off-balance sheet items**. Where the originator, sponsor or ~~the~~ original lender have not agreed between them who will retain the material net economic interest, the originator shall retain the material net economic interest. There shall be no multiple applications of the retention requirements for any given securitisation. ~~The material net economic interest shall be measured at the origination and shall be determined by the notional value for off-balance sheet items.~~ The material net economic interest shall not be split amongst different types of retainers and not be subject to any credit risk mitigation or hedging.

For the purposes of this Article, an entity shall not be considered to be an originator where the entity has been established or operates for the sole purpose of securitising exposures.

2. Only the following shall qualify as a retention of a material net economic interest of not less than 5% within the meaning of paragraph 1:

(a) the retention of no**t** less than 5% of the nominal value of each of the tranches sold or transferred to investors;

(b) in the case of revolving securitisations or securitisations of revolving exposures, the retention of the originator's interest of no**t** less than 5% of the nominal value of each of the securitised exposures;

(c) the retention of randomly selected exposures, equivalent to no**t** less than 5% of the nominal value of the securitised exposures, where such non-securitised exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is no**t** less than 100 at origination;

(d) the retention of the first loss tranche and, where such retention does not amount to 5% of the nominal value of the securitised exposures, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total no**t** less than 5% of the nominal value of the securitised exposures; **or**

(e) the retention of a first loss exposure of not less than 5% of every securitised exposure in the securitisation.

3. Where a mixed financial holding company established in the Union within the meaning of Directive ~~No~~ 2002/87/EC, a parent ~~credit~~ institution or a financial holding company established in the Union, or one of its subsidiaries within the meaning of Regulation (EU) No 575/2013, as an originator or ~~a~~ sponsor, securitises exposures from one or more credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirements referred to in paragraph 1 may be satisfied on the basis of the consolidated situation of the related parent ~~credit~~ institution, financial holding company, or mixed financial holding company established in the Union.

The first subparagraph shall apply only where credit institutions, investment firms or financial institutions which created the securitised exposures adhere to the requirements set out in Article 79 of Directive ~~36/~~2013/**36/**EU and deliver the information needed to satisfy the requirements laid down in Article 5 of this Regulation, in a timely manner, to the originator or sponsor and to the EU parent credit institution, financial holding company or mixed financial holding company established in the Union.

4. Paragraph 1 shall not apply where the securitised exposures are exposures on or exposures fully, unconditionally and irrevocably guaranteed by:

(a) central governments or central banks;

(b) regional governments, local authorities and public sector entities within the meaning of Article 4**, paragraph** ~~(~~1~~)~~**,** point (8) of Regulation (EU) No 575/2013 of Member States;

(c) institutions to which a 50% risk weight or less is assigned under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013;

(d) the multilateral development banks listed in Article 117 of Regulation (EU) No 575/2013.

5. ~~Paragraph 1 shall not apply to transactions based on a clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than securitisation positions.~~

6. The European Banking Authority (EBA), in close cooperation with the European Securities and Market Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) shall develop draft regulatory technical standards to specify in greater detail the risk retention requirement, in particular with regards to:

   (a) the modalities of retaining risk pursuant to paragraph 2, including the fulfilment through a synthetic or contingent form of retention;

   (b) the measurement of the level of retention referred to in paragraph 1;

   (c) the prohibition of hedging or selling the retained interest;

   (d) the conditions for retention on a consolidated basis in accordance with paragraph 3~~;~~

   (e) ~~the conditions for exempting transactions based on a clear, transparent and accessible index referred to in paragraph 5~~.

   EBA shall submit those draft regulatory technical standards to the Commission by [*six months after entry into force of this Regulation*].

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 5

Transparency requirements for originators, sponsors and SSPE's

1. The originator, sponsor and SSPE of a securitisation shall, in accordance with paragraph 2, make at least the following information available to holders of a securitisation position and to the competent authorities referred to in Article 15 of this Regulation**:** ~~.~~

(a) information on the **underlying** exposures ~~underlying the securitisation~~ on a quarterly basis~~, or, in the case of ABCP, information on the underlying receivables or credit claims on a monthly basis~~;

(b) **all underlying documentation that is essential for the understanding of the transaction, including but not limited to,** where applicable, the following documents~~, including a detailed description of the priority of payments of the securitisation~~:

(i) the final offering document or the prospectus together with the closing transaction documents, excluding legal opinions;

(ii) for traditional securitisation the asset sale agreement, assignment, novation or transfer agreement and any relevant declaration of trust;

(iii) the derivatives and guarantees agreements and any relevant documents on collateralisation arrangements where the exposures being securitised remain exposures of the originator;

(iv) the servicing, back-up servicing, administration and cash management agreements;

(v) the trust deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms or master trust framework or master definitions agreement or such legal documentation with equivalent legal value;

(vi) any relevant inter-creditor agreements, derivatives documentation, subordinated loan agreements, start-up loan agreements and liquidity facility agreements;

(vii) ~~any other underlying documentation that is essential for the understanding of the transaction;~~

These documents shall include a detailed description of the priority of payments of the securitisation;

(c) where a prospectus has not been drawn up in compliance with Directive 2003/71/EC of the European Parliament and of the Council[5], a transaction summary or overview of the main features of the securitisation, including, where applicable:

(i) details regarding the structure of the deal**, including the structure diagrams containing an overview of the transaction, the cash flows and the ownership structure**;

(ii) details regarding the exposure characteristics, cash flows, credit enhancement and liquidity support features;

(iii) details regarding the voting rights of the holders of a securitisation position and their relationship **to**~~with~~ other secured creditors;

[5] Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

(iv) a list of all triggers and events referred to in the documents provided ~~to~~ in accordance with point (b) that could have a material impact on the performance of the securitisation **position**~~instrument~~;

(v) ~~the structure diagrams containing an overview of the transaction, the cash flows and the ownership structure;~~

(d) in the case of STS securitisations, the STS notification referred to in Article 14**,** **paragraph** ~~(~~1~~)~~ of this Regulation;

(e) quarterly investor reports~~, or, in the case of ABCP, monthly investor reports,~~ containing the following:

(i) all materially relevant data on the credit quality and performance of underlying exposures;

(ii) **in the case of a securitisation which is not an ABCP transaction,** data on the cash flows generated by the underlying exposures and by the liabilities of the securitisation, ~~except for ABCP,~~ and**, in the case of any securitisation,** information on the breach of any triggers implying changes in the priority of payments or replacement of any counterparties;

(iii) information about the risk retained in accordance with Article 4~~ and the information required pursuant to paragraph 3~~**;**~~.~~

(f) **any inside information relating to the securitisation that the originator, sponsor or SSPE is obliged to make public** ~~where applicable, information pursuant to~~**in accordance with** Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council[6] on insider dealing and market manipulation;

[6] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

(g) where ~~subparagraph~~ **point** (f) does not apply, any significant event such as:

(i) a material breach of the obligations laid down in the documents provided in accordance with ~~subparagraph~~ **point** (b), including any remedy, waiver or consent subsequently provided in relation to such a breach;

(ii) a change in the structural features that can materially impact the performance of the securitisation;

(iii) a ~~significant~~ change in the risk characteristics of the securitisation or of the underlying exposures **that can materially impact the performance of the securitisation**;

(iv) in the case of STS securitisations, where the securitisation ceases to meet the STS requirements or where competent authorities have taken remedial or administrative actions;

(v) any material amendment to transaction documents.

The information described in **points** ~~subparagraphs (a),~~ (b), (c) and (d) shall be made available without delay after the closing of the transaction at the latest.

The information described in **points**~~subparagraphs~~ (a) and (e) shall be made available at the same moment each quarter at the latest one month after the due date for the payment of interest **or**~~. With regard to~~ **in the case of** ABCP **transactions, at the latest one month after the end of the period of time the report covers.** ~~securitisations the information described in subparagraphs (a) and (e) shall be made available at the same moment each month, at the latest one month after the due date for the payment of interest.~~

Without prejudice to Regulation (EU) No 596/2014 of the European Parliament and of the Council, t~~T~~he information described in **points**~~subparagraphs~~ (f) and (g) shall be made available without delay.

When complying with this paragraph, the originator, sponsor and SSPE of a securitisation shall comply with national and Union legislation governing the protection of confidentiality of information sources or the processing of personal data in order to avoid potential breaches of such legislation as well as any confidentiality obligation relating to customer, original lender or debtor information, unless such confidential information is anonymised or aggregated. Competent authorities referred to in Article 15 shall be able to request the provision of such confidential information to them to fulfil their duties under this Regulation.

2. The originator, sponsor and SSPE of a securitisation shall designate amongst themselves one entity to fulfil the information requirements pursuant to paragraph 1. The originator, sponsor and SSPE shall ensure that the information is available free of charge to the holder of a securitisation position and competent authorities, in a timely and clear manner. The entity designated -to fulfil the requirements set out in paragraph 1 shall make the information available by means of a website **which may be password protected and** ~~which~~ shall;

(a) **develop**~~include~~ a well-functioning data quality control system;

(b) respect appropriate governance standards and ensure the maintenance and operation of an adequate organisational structure to ensure continuity and orderly functioning;

(c) set up appropriate systems, controls and procedures to ensure that the website can fulfil its function in a reliable and secure manner and to identify sources of operational risk;

(d) **develop**~~include~~ systems to ensure the protection and integrity of the information received and the prompt recording of the information;

(e) ensure that the information will be available for at least 5 years after the maturity date of the securitisation.

The entity **designated to fulfil the requirements set out in paragraph 1,** ~~responsible for reporting the information pursuant to this Article,~~ and the **website**~~location~~ where the information is made available shall be indicated in the **final offering documents or prospectus of**~~documentation regarding~~ the securitisation.

3. ESMA, in close cooperation with EBA and EIOPA, shall develop draft regulatory technical standards to specify**:**

(a) the information that the originator, sponsor and SSPE should provide to comply with their obligations under paragraph 1 **points** (a) and (~~d~~**e**) and the format thereof by means of standardised templates **taking into account the usefulness of information for the holder of the securitisation position, whether the securitisation position is of a short term nature and, in the case of an ABCP transaction, whether it is fully supported by a sponsor**;

(b) the requirements to be met by the website referred to in paragraph 2 on which the information shall be made available to holders of securitisation positions **and to competent authorities**, in particular with regard to:

– the governance structure of the website and the modalities to access information;

– the internal procedures to ensure the well-functioning, operational robustness and integrity of the website and of the stored information;

– the procedures in place in order to ensure quality and accuracy of the information.

ESMA shall submit those draft regulatory technical standards to the Commission by [*one year after entry into force of this Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 5a

Criteria for credit granting

Originators, sponsors and original lenders shall apply the same sound and well-defined criteria for credit granting to exposures to be securitised as they apply to exposures not securitised. To this end the same clearly established processes for approving and, where relevant, amending, renewing and re-financing credits shall be applied. Originators, sponsors and original lenders shall have effective systems in place to apply these criteria and processes which ensure that credit granting is based on a thorough assessment of the obligor's creditworthiness taking appropriate account of factors relevant to verifying the prospect of the obligor to meet his obligations under the credit agreement.

Where an originator purchases a third party's exposures for its own account and then securitises them, such originator shall ensure that the entity that was, directly or indirectly, involved in the original agreement which created the obligations or potential obligations to be securitised fulfills the requirements in accordance with the first subparagraph.

Chapter 3

Simple, transparent and standard**ised** securitisation

Article 6

Use of the designation 'simple, transparent and standardised securitisation'

Originators, sponsors and SSPE~~'~~s shall use the designation "STS" **or "simple, transparent and standardised"** or a designation that refers directly or indirectly to these terms for their securitisation only where the securitisation meets all the requirements of Section 1 or Section 2 of this ~~Regulation~~**Chapter**, and they have notified ESMA pursuant to Article 14**, paragraph** ~~(~~1~~)~~ **and the relevant securitisation has been included in the list referred to in Article 14, paragraph 4**.

SECTION 1

GENERAL REQUIREMENTS FOR STS SECURITISATION

Article 7

Simple, transparent and standardised securitisation

Securitisations, except ABCP **transactions**~~securitisations~~, that meet the requirements in Articles 8, 9 and 10 of this Regulation shall be considered 'STS'.

The originator, sponsor and SSPE involved in a securitisation considered STS shall be established within the Union.

Article 8

Requirement**s** relating to simplicity

1. The **title to the** underlying exposures shall be acquired by ~~a~~ **the** SSPE by means of a **true** sale or assignment **or transfer with the same legal effect** in a manner that is enforceable against the seller or any other third party **and is not subject to any clawback provisions in the event of** ~~including in the event of~~ the seller's insolvency **without prejudice to the conditions laid down under applicable provisions of national insolvency law**~~. The transfer of the underlying exposures to the SSPE shall not be subject to any severe clawback provisions in the event of the seller's insolvency~~. **A legal opinion provided by a qualified legal counsel may confirm the true sale or assignment or transfer with the same legal effect of the underlying exposures and the enforceability of such true sale or assignment or transfer with the same legal effect under the applicable law.**

Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to the seller, whether such true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in the first sub-paragraph.

Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection should, at a minimum, incorporate the following events:

(a) severe deterioration in the seller credit quality standing;

(b) ~~seller default or~~ insolvency **of the seller**; and

(c) unremedied breaches of contractual obligations by the seller**, including the seller's default**.

2. ~~The seller shall provide representations and warranties that, to the best of its knowledge,~~ ~~t~~**T**he underlying exposures included in the securitisation ~~are~~ **shall** not **be** 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**.

3. The underlying exposures transferred from**, or assigned by,** the seller to the SSPE shall meet **unambiguous** predetermined and clearly ~~defined~~ **documented** eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. **Substitution of exposures that are in breach of representations and warranties shall in principle not be considered active portfolio management. Exposures transferred to the SSPE after closing of the transaction shall meet eligibility criteria that are not less strict than those applied to the initial underlying exposures.**

4. The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type**, such as pools of residential loans, pools of commercial loans, leases and credit facilities to undertakings of the same category to finance capital expenditures or business operations, pools of auto loans and leases to borrowers or lessees or loans and pools of credit facilities to individuals for personal, family or household consumption purposes**. **A pool shall only comprise one asset type.** The underlying exposures shall be contractually binding and enforceable obligations with full recourse to debtors, with defined periodic payment streams relating to rental, principal, interest payments, or related to any other right to receive income from assets warranting such payments. The underlying exposures shall not include transferable securities **listed on a trading venue**, as defined in Directive 2014/65/EU.

5. The underlying exposures shall not include **any** securitisation **position**.

6. The underlying exposures shall be originated in the ordinary course of the originator's or ~~the~~ original lender's business pursuant to underwriting standards that are no**t** less stringent than those that the originator or ~~the~~ original lender applie**d**~~s to~~ **at the time of** origination ~~of~~ **to** similar exposures that are not securitised. Material changes in underwriting standards shall be fully disclosed **without undue delay** to potential investors. In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable intermediaries, were made aware that the information provided might not be verified by the lender. The assessment of the borrower's creditworthiness shall meet the requirements set out in paragraphs 1 to 4, 5**, point** (a), and 6 of Article 18 of Directive 2014/17/EU of the European Parliament and of the Council or of Article 8 of Directive 2008/48/EC of the European Parliament and of the Council or**, where applicable,** equivalent requirements in third countries. The originator or original lender shall have ~~expertise~~ **experience** in originating exposures of a similar nature to those securitised. **Any changes in credit-granting policies or criteria shall not lead to material deterioration in underwriting standards. The underwriting standards pursuant to which the underlying exposures are originated and any material changes to them shall be fully disclosed to potential investors.**

7. The underlying exposures, at the time of transfer to the SSPE, shall not include exposures in default within the meaning of Article 178**, paragraph** ~~(~~1~~)~~ of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best knowledge of the originator or original lender:

(a) has declared insolvency~~, agreed with his creditors to a debt dismissal or reschedule~~ or had a court grant his creditors a right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination **or has undergone a debt restructuring process within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if a restructured exposure has not presented new arrears since the date of the restructuring which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE**;

(b) **was, at the time of origination, and where applicable,** ~~is~~ on a ~~official~~ **national** registry of persons with adverse credit history **that is publicly available**;

(c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not be made is significantly higher than for ~~the average debtor for this type of loans in the relevant jurisdiction~~**similar exposures held by the originator which are not securitised**.

8. The debtors or the guarantors shall have, at the time ~~of~~ **where the securitisation is structured**~~transfer of the~~, made at least one payment, except in case of revolving securitisations backed by personal overdraft facilities, credit card receivables, trade receivables and dealer floorplan finance loans **or securitisation backed by**~~or~~ exposures payable in a single instalment.

9. The repayment of the holders of the securitisation positions shall not depend, ~~substantially~~**predominantly**, on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced.

Article 9

Requirements relating to standardisation

1. The originator, sponsor or ~~the~~ original lender shall satisfy the risk retention requirement in accordance with Article 4 of this Regulation.

2. Interest rate and currency **mismatches**~~risks~~ arising **at transaction level**~~from the securitisation~~ shall be **appropriately** mitigated and ~~the~~ **any** measures taken to that effect shall be disclosed. The ~~underlying exposures shall not include~~**SSPE shall not enter into** derivatives, unless for the purpose of hedging currency risk and interest rate risk. Those derivatives shall be underwritten and documented according to common standards in international finance.

3. Any referenced interest payments under the securitisation assets and liabilities shall be based on generally used market interest rates **or sectoral rates reflective of ~~a~~ the cost of funds** and shall not reference complex formulae or derivatives.

4. Where the securitisation has been set up without a revolving period or the revolving period has terminated and where an enforcement or an acceleration notice has been delivered**:**

(a) ~~,~~ no ~~substantial~~ amount of cash shall be trapped in the SSPE **beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitisation, unless exceptional circumstances require that trapped amount is used, in the best interests of investors, for expenses that will avoid the deterioration in the credit quality of the underlying exposures;**

(b) ~~and~~ principal receipts from the underlying exposures shall be passed to investors via sequential amortisation of the securitisation positions, as determined by the seniority of the securitisation position**.** Repayment of the securitisation positions shall not be reversed with regard to their seniority**. Transactions which feature non-sequential priority of payments shall include** ~~and~~**triggers relating to the** performance~~-related triggers shall be included in transactions which feature non-sequential priority of payments~~ **of the underlying exposures resulting in the priority of payments reverting to sequential payments in order of seniority. Such performance-related triggers shall**~~,~~ includ~~ing~~**e** at least the deterioration in the credit quality of the underlying exposures below a pre-determined threshold**;**~~.~~ **and**

(c) ~~T~~ **t**here shall be no provisions requiring automatic liquidation of the underlying exposures at market value.

5. The transaction documentation shall include appropriate early amortisation events or triggers for termination of the revolving period where the securitisation has been set up with a revolving period, including at least the following:

(a) a deterioration in the credit quality of the underlying exposures to or below a pre-determined threshold;

(b) the occurrence of an insolvency-related event with regard to the originator or the servicer;

(c) the value of the underlying exposures held by the SSPE falls below a pre-determined threshold (early amortisation event);

(d) a failure to generate sufficient new underlying exposures that meet the pre-determined credit quality (trigger for termination of the revolving period).

6. The transaction documentation shall clearly specify:

(a) the contractual obligations, duties and responsibilities of the servicer ~~and its management team, who shall have expertise in servicing the underlying exposures, and, where applicable, of the trustee~~ and**, where applicable,** other ancillary service providers **and the trustee**;

(b) the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;

(c) provisions that ensure the replacement of derivative counterparties, liquidity providers and the account bank upon their default, insolvency, and other specified events, where applicable.

6a. The servicer shall have experience in servicing exposures of a similar nature to those securitised and shall have well documented ~~P~~**p**olicies, procedures and risk management controls **relating to the servicing of exposures**~~shall be well documented and effective systems shall be in place~~.

7. The transaction documentation shall **clearly set out** ~~include~~ definitions, remedies and actions relating to **the performance of the underlying exposures.**~~delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge-offs, recoveries and other asset performance remedies in clear and consistent terms.~~ Th**e**~~at~~ **transaction** documentation shall clearly specify the ~~payment~~ priorit**ies of payment**~~y~~, **events which** trigger~~s,~~ changes in **such**~~payment~~ priorit**ies**~~y~~ **of payment** ~~following trigger events~~ as well as the obligation to report such events. Any change in the ~~payment~~ priority **of payments** shall be reported **to investors**~~at~~ **without undue delay**~~the time of its occurrence~~.

8. The transaction documentation shall include clear provisions that facilitate the timely resolution of conflicts between different classes of investors, voting rights shall be clearly defined and allocated to noteholders and the responsibilities of the trustee and other entities with fiduciary duties to investors shall be clearly identified.

Article 10

Requirements relating to transparency

1. The originator, sponsor, and SSPE shall provide access to data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised to the **potential** investor before **pricing**~~investing~~. Those data shall cover a period no shorter than ~~seven years for non-retail exposures and~~ five years**, except** ~~for retail exposures~~ **for trade receivables amd other short term receivables for which the historical period shall be no shorter than a period of three years**. The **sources of the data and the** basis for claiming similarity shall be disclosed.

2. A sample of the underlying exposures shall be subject to external verification prior to issuance of the securities resulting from the securitisation by an appropriate and independent party**, such as a statutory auditor as defined in Directive 2006/43/EC,** including verification that the data disclosed in respect of the underlying exposures is accurate, with a confidence level of 95%.

3. The originator or sponsor shall provide **or procure** a liability cash flow model to investors, both before the pricing of the securitisation and on an ongoing basis.

4. The originator, sponsor and SSPE shall be jointly responsible for compliance with Article 5 of this Regulation and shall make all information required by Article 5**, paragraph** ~~(~~1~~)~~**, point** (a) available to potential investors before pricing. The originator, sponsor and SSPE shall make the information required by Article 5**, paragraph** ~~(~~1~~)~~**, points** (b) to (e) available before pricing at least in draft or initial form, where permissible under Article 3 of Directive 2003/71/EC. The originator, sponsor and SSPE shall make the final documentation available to investors at the latest 15 days after closing of the transaction.

SECTION 2

REQUIREMENTS FOR ABCP SECURITISATION

Article 11

Simple, transparent and standardised ABCP **s**~~S~~ecuritisation~~s securitisation~~

An ABCP **transaction**~~securitisations~~ shall be considered ~~'~~STS~~'~~ where **it** ~~the ABCP programme~~ complies with the **transaction level** requirements in Article 1**2**~~3 of this Regulation~~**. An ABCP programme shall be considered STS where it complies with the requirements in Article 13 and the sponsor of the** ~~and all transactions within that~~ ABCP programme **complies with**~~fulfil~~ the requirements in Article 12**a**.

For the purpose of this section, a "seller" means "originator" or "original lender".

Article 12

Transaction level requirements

1. A transaction within an ABCP programme shall meet the requirements **in this Article to be considered as STS.** ~~of Section 1 of this Chapter, except for Articles 7, Article 8 (4) and (6), Article 9 (3), (4), (5), (6) and (8) and Article 10 (3). For the purposes of this Section, the terms "originator" and "original lender" under Article 8(7) shall be considered the seller.~~

1a. The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party and is not subject to any clawback provisions in the event of the seller's insolvency without prejudice to the conditions laid down under applicable provisions of national insolvency law. A legal opinion provided by a qualified legal counsel may confirm the true sale or assignment or transfer with the same legal effect of the underlying exposures and the enforceability of such true sale or assignment or transfer with the same legal effect under the applicable law.

Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to the seller, whether such true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in the first sub-paragraph.

Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection should, at a minimum, incorporate the following events:

(a) severe deterioration in the seller credit quality standing;

(b) insolvency of the seller; and

(c) unremedied breaches of contractual obligations by the seller, including the seller's default.

1b. The underlying exposures included in the securitisation shall not be 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.

1c. The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet unambiguous predetermined and clearly documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. Substitution of exposures that are in breach of representations and warranties shall in principle not be considered active portfolio management. Exposures transferred to the SSPE after closing of the transaction shall meet eligibility criteria that are not less strict than those applied to the initial underlying exposures.

1d. The underlying exposures shall not include any securitisation position.

1e. The underlying exposures, at the time of transfer to the SSPE, shall not include exposures in default within the meaning of Article 178, paragraph 1 of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best knowledge of the originator or original lender:

(a) has declared insolvency or had a court grant his creditors a right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt restructuring process within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if a restructured exposure has not presented new arrears since the date of the restructuring which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE;

(b) was, at the time of origination, and where applicable, on a national registry of persons with adverse credit history that is publicly available;

(c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not be made is significantly higher than for similar exposures held by the originator which are not securitised.

1f. The debtors or the guarantors shall have, at the time of where the securitisation is structured, made at least one payment, except in case of revolving securitisations backed by personal overdraft facilities, credit card receivables, trade receivables and dealer floorplan finance loans or securitisation backed by exposures payable in a single instalment.

1g. The repayment of the holders of the securitisation positions shall not depend, predominantly, on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced.

1h. Interest rate and currency mismatches arising at transaction level shall be appropriately mitigated. The SSPE shall not enter into derivatives, unless for the purpose of hedging currency risk and interest rate risk. Those derivatives shall be underwritten and documented according to common standards in international finance.

1i. The transaction documentation shall clearly set out definitions, remedies and actions relating to the performance of the underlying exposures. The transaction documentation shall clearly specify the priorities of payment, events which trigger changes in such priorities of payment as well as the obligation to report such events. Any change in the priority of payments shall be reported to investors without undue delay.

1j. The originator, sponsor, and SSPE shall provide access to data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised to the potential investor before pricing. Where the sponsor does not have access to such data, it shall obtain from the seller access to data on a static or dynamic basis, historical performance, such as delinquency and default data, for substantially similar exposures to those being securitised. Those data shall cover a period no shorter than five years, except for trade receivables and other short term receivables for which the historical period shall be no shorter than a period of three years. The sources of the data and the basis for claiming similarity shall be disclosed.

2. Transactions within an ABCP programme shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type**, such as pools of commercial loans, leases and credit facilities to undertakings of the same category to finance capital expenditures or business operations, pools of auto loans and leases to borrowers or lessees or loans and pools of credit facilities to individuals for personal, family or household consumption purposes. A pool shall only comprise one asset type. The pool** ~~and~~ shall have a remaining weighted average life of no more than two years and none shall have a residual maturity of longer than three years**,** ~~.~~ **except for auto loans, auto leases and equipment lease transactions which shall have a remaining exposure weighted average life of no more than [X] years and none shall have a residual maturity of longer than [Y] years.** The underlying exposures shall not include loans secured by residential or commercial mortgages or fully guaranteed residential loans, as referred to in paragraph 1**, point** (e) of Article 129 of Regulation (EU) No 575/2013. The underlying exposures shall contain contractually binding and enforceable obligations with full recourse to debtors with defined payment streams relating to rental, principal, interest, or related to any other right to receive income from assets warranting such payments. The underlying exposures shall not include transferable securities **listed on a trading venue**, as defined in Directive 2014/65/EU.

3. Any referenced interest payments under the **ABCP**~~securitisation~~ transaction's assets and liabilities shall be based on generally used market interest rates, but shall not reference complex formulae or derivatives. **Payments on the liabilities of the ABCP transaction may include interest rates reflective of an ABCP programme's cost of funds.**

4. Following the seller's default or an acceleration event, no substantial amount of cash shall be trapped in the SSPE **beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitisation.** ~~and p~~**P**rincipal receipts from the underlying exposures shall be passed to investors holding a securitisation position via sequential payment of the securitisation positions, as determined by the seniority of the securitisation position**, unless exceptional circumstances requires that trapped amount is used, in the best interests of investors, for expenses that will avoid the deterioration in the credit quality of the underlying exposures**. There shall be no provisions requiring automatic liquidation of the underlying exposures at market value.

5. The underlying exposures shall be originated in the ordinary course of the seller's business pursuant to underwriting standards that are no**t** less stringent than those that the seller applies to origination of similar exposures that are not securitised. Material changes in underwriting standards shall be ~~fully~~ disclosed to ~~potential investors~~ **the sponsor and other parties directly exposed to the ABCP transaction without undue delay**. ~~In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable intermediaries, were made aware that the information provided might not be verified by the lender.~~ The seller shall have exper**ience**~~tise~~ in originating exposures of a similar nature to those securitised.

6. **Where an ABCP transaction is a revolving securitisation,** ~~T~~**t**he transaction documentation shall include triggers for termination of the revolving period, including at least the following:

(a) a deterioration in the credit quality of the underlying exposures to or below a pre-determined threshold;

(b) the occurrence of an insolvency-related event with regard to the seller or the servicer.

~~a failure to generate sufficient new underlying exposures that meet the pre-determined credit quality;~~

7. The transaction documentation shall clearly specify:

(a) the contractual obligations, duties and responsibilities of the sponsor, the servicer ~~and its management team who shall have expertise in servicing the underlying exposures,~~ and~~,~~ where applicable, the trustee and other ancillary service providers;

(b) the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;

(c) provisions that ensure the replacement of derivative counterparties and the account bank upon their default, insolvency or other specified events, where applicable;

(d) **how the sponsor meets the requirements of Article 12a, paragraph 3**~~The sponsor shall perform its own due diligence and verify that the seller meets sound underwriting standards, servicing capabilities and collection processes that meet the requirements specified in points (i) to (m) of Article 259 (3) of Regulation (EU) No 575/2013 or equivalent requirements in third countries~~.

~~Policies, procedures and risk management controls shall be well documented and effective systems shall be in place.~~

Article 12a

Sponsor of an ABCP programme

1. The sponsor of the ABCP programme shall be a credit institution supervised under Directive 2013/36/EU.

2. The sponsor of an ABCP programme 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 dilution risks of the securitised exposures as well as any other transaction costs and programme-wide costs with such support. The sponsor shall disclose a description of the support provided at transaction level to the investors including a description of the liquidity facilities provided.

3. The sponsor of the ABCP programme shall verify before becoming exposed to an ABCP transaction that, the seller grants all its credits on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply these criteria and processes. The sponsor shall perform its own due diligence and verify that the seller meets sound underwriting standards, servicing capabilities and collection processes that meet the requirements specified in points (i) to (m) of Article 259, paragraph 3 of Regulation (EU) No 575/2013 or equivalent requirements in third countries. Policies, procedures and risk management controls shall be well documented and effective systems shall be in place.

4. The seller, at the level of a transaction, or the sponsor, at the level of the ABCP programme, shall satisfy the risk retention requirement in accordance with Article 4 of this Regulation.

5. Article 5 of this Regulation shall apply to ABCP programmes. The sponsor of the ABCP programme shall be responsible for compliance with Article 5 and shall :

(a) make all aggregated information required by Article 5, paragraph 1, point (a), available to investors, such information being updated on a quarterly basis ;

(b) make the information required by Article 5, paragraph 1, points (b) to (e) available, where permissible under Article 3 of Directive 2003/71/EC, in a timely manner.

6. In case the sponsor does not renew the funding commitment of the liquidity facility before or within 30 days of its expiry, the liquidity facility shall be drawn down and the maturing securities shall be repaid.

Article 13

Programme level requirements

1. **At all times, at least [Z%] of the aggregate amount of all** ~~All~~ transactions within an ABCP programme shall fulfil the requirements of Article 12 of this Regulation.

2. ~~The originator, sponsor or the original lender shall satisfy the risk retention requirement in accordance with Article 4 of this Regulation.~~

2a. The ABCP programme shall be fully supported by a sponsor in accordance with Article 12a, paragraph 2.

3. The ABCP programme shall not **contain any**~~be a~~ re-securitisation and the credit enhancement shall not establish a second layer of tranching at the programme level.

4. ~~The sponsor of the ABCP programme shall be a credit institution supervised under Directive 2013/36/EU. The sponsor shall be a liquidity facility provider and shall support all securitisation positions at transaction level within the ABCP programme and cover all liquidity and credit risks and any material dilution risks of the securitised exposures as well as any other transaction costs and programme-wide costs.~~

5. The securities issued by an ABCP programme shall not include call options, extension clauses or other clauses**, at the discretion of the originator, sponsor or SSPE** that have an effect on their final maturity.

6. Interest rate and currency **mismatches**~~risks~~ arising at ABCP programme level shall be **appropriately** mitigated and **any**~~the~~ measures taken to that effect shall be disclosed. Derivatives shall only be used at programme level for the purpose of hedging currency risk and interest rate risk. Such derivatives shall be documented according to common standards in international finance.

7. The documentation relating to the **ABCP** programme shall clearly specify:

   (a) **where applicable,** the responsibilities of the trustee and other entities with fiduciary duties to investors;

   (b) provisions that facilitate the timely resolution of conflicts between the sponsor and the holders of securitisation positions;

   (c) contractual obligations, duties and responsibilities of the sponsor~~, and its management team,~~ who shall have **experience**~~expertise~~ in credit underwriting~~,~~ **and, where applicable,** trustee and other ancillary service providers;

   (d) processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;

(e) provisions for replacement of derivative counterparties, and the account bank at ABCP programme level upon their default, insolvency and other specified events, where applicable.

(f) that upon specified events, default or insolvency of the sponsor remedial steps shall be provided for to achieve, as appropriate, collateralisation of the funding commitment or replacement of the liquidity facility provider. ~~In case the liquidity facility provider does not renew the funding commitment within 30 days of its expiry, the liquidity facility shall be drawn down, the maturing securities shall be repaid and the transactions shall cease to purchase exposures while amortising the existing underlying exposures.~~

7a. The servicer shall have experience in servicing exposures of a similar nature to those securitised and shall have ~~Policies, procedures and risk management controls shall be~~ well documented **policies, procedures and risk management controls relating to the servicing of exposures.** ~~and effective systems shall be in place.~~

8. ~~The originator, sponsor and SSPE shall be jointly responsible for compliance at ABCP programme level with Article 5 of this Regulation and shall make all information required by Article 5(1) (a) available to potential investors before pricing. The originator, sponsor and SSPE shall make the information required by Article 5 (1) (b) to (e) available before pricing at least in draft or initial form, where permissible under Article 3 of Directive 2003/71/EC. The originator, sponsor and SSPE shall make the final documentation available to investors at the latest 15 days after closing of the transaction~~

SECTION 3

STS NOTIFICATION

OPTION 1

[*Article 14*

*STS notification ~~and due diligence~~**requirements and ESMA website***

1. **The o**~~O~~riginators~~,~~ sponsors~~,~~ and SSPE's~~'~~ shall jointly notify ESMA by means of the template referred to in paragraph 5 of this Article that the securitisation meets the requirements of Articles 7 to 10 or Articles 11 to 13 of this Regulation ('STS notification'). **The STS notification shall include a concise justification by the originator, sponsor and SSPE regarding the compliance with each of the STS criteria set out in Articles 8 to 10 or Articles 12 and 13.** ESMA shall publish the STS notification on its official website pursuant to paragraph 4. **The originator, sponsor and SSPE**~~They~~ shall also inform their competent authority. The originator, sponsor and SSPE of a securitisation shall designate amongst themselves one entity to be the first contact point for investors and competent authorities.

2. Where the originator or original lender is not a credit institution or investment firm as defined in Article 4**, paragraph** ~~(~~1~~)~~**,** points (1) and (2) of Regulation No 575/2013 **established in the Union,** the notification pursuant to paragraph 1 shall be accompanied by the following:

   (a) confirmation by the originator or original lender that its credit-granting is done on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing credits and that the originator or original lender has effective systems in place to apply such processes.

(b) a declaration on whether the elements mentioned in ~~subparagraph~~ **point** (a) are subject to supervision.

3. The originator, sponsor and SSPE shall immediately notify ESMA and their competent authority when a securitisation no longer meets the requirements of either Articles 7 to 10 or Articles 11 to 13 of this Regulation.

4. ESMA shall maintain a list of all securitisations for which the originators, sponsors and SSPEs have notified that they meet the requirements of Articles 7 to 10 or Articles 11 to 13 of this Regulation on its official website. ESMA shall update the list where the securitisations are no longer considered to be STS following a decision of competent authorities or a notification by the originator, sponsor or SSPE. Where the competent authority has imposed administrative sanctions or remedial measures in accordance with Article 17, it shall immediately notify ESMA thereof. ESMA shall immediately indicate on the list that a competent authority has imposed administrative sanctions or remedial measures in relation to the securitisation concerned.

5. ESMA, in close cooperation with EBA and EIOPA, shall develop draft ~~regulatory~~ **implementing** technical standards that specify the information that the originator, sponsor and SSPE provide to comply with their obligations under paragraph 1 and shall provide the format by means of standardised templates.

ESMA shall submit those draft ~~regulatory~~ **implementing** technical standards to the Commission by [~~*twelve*~~ ***six*** *months after entry into force of this Regulation*].

Power is delegated to the Commission to adopt the ~~regulatory~~ **implementing** technical standards referred to in this paragraph in accordance with the procedure laid down in Article~~s 10 to 14~~**15** of Regulation (EU) No 1095/2010.**]**

Option 2

[*Article 14*

STS notification ~~*and due diligence*~~***requirements and ESMA website***

1. **The o**~~O~~riginators~~,~~ sponsors~~ and~~ SSPE's~~ shall jointly notify ESMA by means of the template referred to in paragraph 5 of this Article that the securitisation meets the requirements of Articles 7 to 10 or Articles 11 to 13 of this Regulation ('STS notification'). **The STS notification shall include a concise justification by the originator, sponsor and SSPE regarding the compliance with each of the STS criteria set out in Articles 8 to 10 or Articles 12 and 13.** ESMA shall publish the STS notification on its official website pursuant to paragraph 4. **The originator, sponsor and SSPE**~~They~~ shall also inform their competent authority. The originator, sponsor and SSPE of a securitisation shall designate amongst themselves one entity to be the first contact point for investors and competent authorities.

1a. Where the originator, sponsor and SSPE rely on a third party authorised pursuant to Article 14a to check that a securitisation complies with Articles 7 to 10 or Articles 11 to 13 of this Regulation, the STS notification shall include a statement that the compliance with the STS criteria was checked by that third party. The notification shall include the name of the third party, its place of establishment [OPTION 2B: and the name of the competent authority that authorised it].

2. Where the originator or original lender is not a credit institution or investment firm as defined in Article 4**, paragraph** ~~(~~1~~)~~**,** points (1) and (2) of Regulation No 575/2013 **established in the Union** the notification pursuant to paragraph 1 shall be accompanied by the following:

(a) confirmation by the originator or original lender that its credit-granting is done on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing credits and that the originator or original lender has effective systems in place to apply such processes.

(b) a declaration on whether the elements mentioned in ~~subparagraph~~ **point** (a) are subject to supervision.

3. The originator, sponsor and SSPE shall immediately notify ESMA and their competent authority when a securitisation no longer meets the requirements of either Articles 7 to 10 or Articles 11 to 13 of this Regulation.

4. ESMA shall maintain a list of all securitisations for which the originators, sponsors and SSPEs have notified that they meet the requirements of Articles 7 to 10 or Articles 11 to 13 of this Regulation on its official website. ESMA shall update the list where the securitisations are no longer considered to be STS following a decision of competent authorities or a notification by the originator, sponsor or SSPE. Where the competent authority has imposed administrative sanctions or remedial measures in accordance with Article 17, it shall immediately notify ESMA thereof. ESMA shall immediately indicate on the list that a competent authority has imposed administrative sanctions or remedial measures in relation to the securitisation concerned.

5. ESMA, in close cooperation with EBA and EIOPA, shall develop draft ~~regulatory~~ **implementing** technical standards that specify the information that the originator, sponsor and SSPE provide to comply with their obligations under paragraph 1 and shall provide the format by means of standardised templates.

ESMA shall submit those draft ~~regulatory~~ **implementing** technical standards to the Commission by [~~*twelve*~~ ***six*** *months after entry into force of this Regulation*].

Power is delegated to the Commission to adopt the ~~regulatory~~ **implementing** technical standards referred to in this paragraph in accordance with the procedure laid down in Article~~s 10 to 14~~**15** of Regulation (EU) No 1095/2010.

Article 14a

Third party verifying STS compliance

1. A third party referred to in Article 14 paragraph 1a shall be authorised by [OPTION 2A: ESMA][OPTION 2B: the competent authority] to assess the compliance of securitisations with the STS criteria laid down in Articles 7 to 10 or Articles 11 to 13 of this Regulation. [OPTION 2A: ESMA][OPTION 2B: the competent authority] shall grant the authorisation if the following conditions are met:

(a) the third party operates on a not-for-profit basis. It may only charge non-discriminatory and cost-based fees to the originators, sponsors or SSPEs involved in the securitisations which the third party examines, sufficient to cover the expenditure relating to the assessment of the compliance with STS criteria;

(b) the third party is established for the sole purpose of assessing the compliance with STS criteria;

(c) the members of the management body of the third party have professional qualifications, knowledge and experience that are adequate for the task of the third party and they are of good repute and integrity;

(d) the management body of the third party includes a majority of independent directors representing experts and investors in the STS securitisation market;

(e) the third party takes all necessary steps to ensure that the verification of STS compliance is not affected by any existing or potential conflicts of interest or business relationship involving the third party, its shareholders or members, managers, employees or any other natural person whose services are placed at the disposal or under the control of the third party. To that end, the third party shall establish, maintain, enforce and document an effective internal control system governing the implementation of policies and procedures to prevent and mitigate possible conflicts of interest and to ensure the independence of the verification of STS compliance. The third party shall periodically monitor and review those policies and procedures in order to evaluate their effectiveness and assess whether they should be updated.

[OPTION 2A: ESMA][OPTION 2B: The competent authority] may withdraw the authorisation when an third party no longer complies with the above conditions.

2. [OPTION 2A: ESMA][OPTION 2B: the competent authority] may charge cost-based fees to the third party referred to in paragraph 1, in order to cover necessary expenditure relating to the assessment of applications for authorisation and to the subsequent monitoring of the compliance with the conditions set out in paragraph 1.]

Article 14b

Liability in connection with STS notification

The originator, sponsor and SSPE shall be jointly liable for any losses or damages resulting from a notification based on an incorrect assessment of the STS criteria. [OPTION 2: Where the originator, sponsor and SSPE rely on a third party in accordance with Article 14, paragraph 1a to assess the STS criteria, the third party shall be jointly liable with the originator, sponsor and SSPE for an incorrect assessment of the STS criteria, except where the third party can prove that its assessment of the STS criteria was based on fraudulent or incorrect materials submitted to its examination.]

Chapter 4

Supervision

Article 15

Designation of competent authorities

1. Compliance with the obligations set out in Article 3 of this Regulation shall be ensured by the following competent authorities in accordance with the powers granted by the relevant legal acts:

(a) for insurance and reinsurance undertakings, the competent authority designated according to Article 13 (10) of Directive 2009/138/EC;

(b) for alternative investment fund managers, the competent authority ~~responsible~~ designated according to Article 44 of Directive 2011/61/EU;

(c) for UCITS and UCITS management companies, the competent authority designated according to Article 97 of Directive 2009/65/EC;

(d) for institutions for occupational retirement provision, the competent authority designated according to Article 6 (g) of Directive 2003/41/EC;

(e) for credit institutions or investments firms, the competent authority designated according to Article 4 of Directive 2013/36/EU~~, including the ECB in accordance with Council Regulation (EU) No 1024/2013~~.

2. Competent authorities responsible for the supervision of sponsors in accordance with Article 4 of Directive 2013/36/EU~~, including the ECB in accordance with Council Regulation (EU) No 1024/2013~~, shall ensure that sponsors comply with the obligations set out in Articles 4 **and 5**~~to 14~~ of this Regulation.

3. Where originators, original lenders and SSPEs are supervised entities in accordance with Directive 2013/36/EU~~, Regulation (EU) No 1024/2013~~, Directive 2009/138/EC, Directive 2003/41/EC, Directive 2011/61/EU or Directive 2009/65/EC, the relevant competent authorities designated according to those acts~~, including the ECB in accordance with Council Regulation (EU) No 1024/2013~~, shall ensure compliance with the obligations set out in Articles 4 **and 5**~~to 14~~ of this Regulation.

4. For **originators, original lenders and SSPEs**~~entities~~ not covered by the Union legislative acts referred to in paragraph 3, Member States shall designate one or more competent authorit**ies**~~y~~ to ensure compliance with Articles 4 **and 5**~~to 14~~ of this Regulation. Member States shall inform the Commission **and**~~,~~ ESMA~~, EBA and EIOPA and the competent authorities of other Member States~~ of the designation of competent authorities pursuant to this paragraph **by [*one year after the entry into force of this Regulation*]**.

4a. Member States shall designate one or more competent authorities to ensure compliance with Articles 6 to 14 [OPTION 2B: and 14a] of this Regulation. Member States shall inform the Commission and ESMA of the designation of competent authorities pursuant to this paragraph by [*one year after the entry into force of this Regulation*].

4b. Paragraph 4a shall not apply with regard to corporates selling receivables under an ABCP programme or another securitisation transaction or scheme. In such case the originator or sponsor shall verify that those corporates fulfil the relevant obligations set out in Articles 6 to 14 of this Regulation.

5. ESMA shall publish and keep up-to-date on its **official** website a list of the competent authorities referred to in this Article.

Article 16

Powers of the competent authorities

1. Each Member State shall ensure that the competent authority, designated in accordance with Article 15 (~~2~~**1**) to (4**a**) has the supervisory, investigatory and sanctioning powers necessary to fulfil its duties under this Regulation.

2. The competent authority shall regularly review the arrangements, process and mechanisms implemented by originators, sponsors, SSPE's and original lenders to comply with this Regulation.

For all securitisations the review pursuant to the first subparagraph shall in particular include the processes and mechanisms to correctly measure and retain the material net economic interest on an ongoing basis, the gathering and timely disclosure of all information to be made available in accordance with Article 5 and the credit granting criteria in accordance with Article 5a.

For STS securitisations which are not a securitisation within an ABCP programme the review pursuant to the first subparagraph shall in addition particularly include the processes and mechanisms to ensure compliance with Article 8, paragraphs 3 and 8, Article 9, paragraph 6 and Article 10.

For STS securitisations which are securitisations within an ABCP programme the review pursuant to the first subparagraph shall in addition particularly include the processes and mechanisms to ensure with regard to ABCP transactions the fulfilment of the requirements of Article 12 and with regard to ABCP programmes the requirements in accordance with Article 13, paragraphs 7 and 8.

3. Competent authorities shall ensure that risks arising from securitisation transactions, including reputational risks, are evaluated and addressed through appropriate policies and procedures of originators, sponsors, SSPE's and original lenders.

Article 17

Administrative sanctions and remedial measures

1. Without prejudice to the right for Member States to provide for and impose criminal sanctions pursuant to Article 19 of this Regulation, Member States shall lay down rules establishing appropriate administrative sanctions and remedial measures applicable **at least** to situations where:

(a) an originator, sponsor or original lender has failed to meet the requirements of Article 4;

(b) an originator, sponsor and SSPE have failed to meet the requirements of Article 5;

(ba) an originator, sponsor and SSPE have failed to meet the requirements of Article 6;

(c) an originator, sponsor and SSPE have failed to meet the requirements of Articles 7 to 10 or Articles 11 to 13 of this Regulation~~.~~**;**

(d) an orginiator or original lender has failed to meet the requirements of Article 14, paragraph 2;

(e) an originator, sponsor and SSPE have failed to meet the requirements of Article 14, paragraph 3.

(f) [OPTION 2] A third party authorised pursuant to Article 14a has failed to check properly the compliance of a securitisation with Articles 7 to 10 or Articles 11 to 13 of this Regulation.

Member States shall also ensure that administrative sanctions and/or remedial measures are effectively implemented.

Those sanctions and measures shall be effective, proportionate and dissuasive.

2. **Member States shall confer on competent authorities the power to apply at least the following** ~~Those~~ sanctions and measures **in the event of the breaches referred to in paragraph 1**~~shall be effective, proportionate and dissuasive and shall include, at least the following~~:

(a) a public statement, which indicates the identity of the natural or legal person and the nature of the infringement in accordance with Article 22;

(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(c) a temporary ban against any member of the originator's, sponsor's or SSPE's management body or any other natural person, who is held responsible, **from**~~to~~ exercis**ing**~~e~~ management functions in such undertakings;

(d) in case of the infringement referred to in the paragraph 1**, point (ba) or** ~~(c)~~ of this Article a temporary ban for the originator, sponsor and SSPE to **notify**~~self-attest~~ **under Article 14, paragraph 1** that a securitisation meets the requirements set out in Articles 7 to 10 or Articles 11 to 13 of this Regulation;

(e) **in the case of a natural person,** maximum administrative **pecuniary sanctions**~~fines~~ of at least EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on [*date of entry into force of this Regulation*]

(f) ~~or~~ in the case of a legal person, ~~the~~ maximum administrative **pecuniary sanctions**~~fines~~ **of at least EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on [date of entry into force of this Regulation]**~~referred to in point (e)~~ or of up to 10 % of the total annual **net** turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

(g) maximum administrative **pecuniary sanctions**~~fines~~ of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points (e) and (f)**;**

(h) [OPTION 2] in case of the infringement referred to in paragraph 1, point (f) of this Article, a temporary withdrawal of the authorisation referred to in Article 14a for the third party to check the compliance of a securitisation with Articles 7 to 10 or Articles 11 to 13 of this Regulation.

3. Where the provisions referred to in the first paragraph apply to legal persons, Member States shall **provide for** ~~also ensure that~~ competent authorities **the power to** apply the administrative sanctions and remedial measures set out in paragraph 2**, subject to the conditions laid down in national law,** to members of the management body, and to other individuals who under national law are responsible for the infringement.

4. Member States shall ensure that any decision imposing administrative sanctions or remedial measures set out in paragraph 2 is properly reasoned and is subject to **a**~~the~~ right of appeal ~~before a tribunal~~.

Article 18

Exercise of the power to impose administrative sanctions and remedial measures

1. Competent authorities shall exercise the powers to impose administrative sanctions and remedial measures referred to in Article 17 of this Regulation in accordance with their national legal frameworks:

(a) directly;

(b) in collaboration with other authorities;

(ba) under their responsibility by delegation to such authorities;

(c) by application to the competent judicial authorities.

2. Competent authorities, when determining the type and level of an administrative sanction or remedial measure imposed under Article 17 of this Regulation, shall take into account all relevant circumstances, including **whether the infringement is intentional or results from a factual error, and** where appropriate:

(a) the materiality, gravity and the duration of the infringement;

(b) the degree of responsibility of the natural or legal person responsible for the infringement;

(c) the financial strength of the responsible natural or legal person, as indicated **for example** ~~in particular~~ by the total turnover of the responsible legal person or the annual income ~~and net assets~~ of the responsible natural person;

(d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;

(e) the losses for third parties caused by the infringement, insofar as they can be determined;

(f) **t**he level of cooperation of the responsible natural or legal person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(g) previous infringements by the responsible natural or legal person.

Article 19

Provision of criminal sanctions

1. Member States may decide not to lay down rules for administrative sanctions or remedial measures for infringements which are subject to criminal sanctions under their national law.

2. Where Member States have chosen, in accordance with paragraph 1, to lay down criminal sanctions for the infringement referred to Article 17 (1) of this Regulation, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for the infringements referred to in Article 17 (1), and to provide the same information to other competent authorities and ESMA; EBA and EIOPA to fulfil their obligation to cooperate for the purposes of this Regulation.

Article 20

Notification duties

Member States shall notify the laws, regulations and administrative provisions implementing this Chapter, including any relevant criminal law provisions, to the Commission, ESMA, EBA and EIOPA by [*one year after entry into force of this Regulation*]. Member States shall notify the Commission, ESMA, EBA and EIOPA without undue delay of any subsequent amendments thereto.

Article 21

Cooperation between competent authorities and the European Supervisory Authorities

1. The competent authorities referred to in Article 15 of this Regulation and ESMA, EBA and EIOPA shall cooperate closely with each other and exchange information to -carry out their duties pursuant to Article 16 to 19~~, in particular to identify and remedy infringements of this Regulation~~.

1a. Competent authorities shall closely coordinate their supervision in order to identify and remedy infringements of this Regulation, develop and promote best practice, facilitate collaboration, aid the consistency of interpretation and provide cross-jurisidictional assessments in case of any disagreements.

2. ~~Competent authorities may also cooperate with competent authorities of third countries~~y authorities with respect to the exercise of their sanctioning powers and to facilitate the recovery of pecuniary sanctions.

3. Where a competent authority finds that this Regulation has been infringed or has reason to believe so, it shall inform the competent **authority**~~supervisor~~ of the **entity suspected of such infringement**~~originator, sponsor, original lender, SSPE or investor~~ of its findings in a sufficient detailed manner. ~~The competent authorities concerned shall closely coordinate their supervision and ensure consistent decisions.~~

4. Where the infringement referred to in paragraph 3 concerns, in particular, an incorrect or misleading notification pursuant to Article 14**, paragraph** ~~(~~1~~)~~ of this Regulation, the competent authority finding that infringement shall ~~also~~ notify without delay**, the competent authority of the originator, sponsor and SSPE, as well as** ESMA, EBA and EIOPA of its findings.

5. Upon reception of the information referred to in paragraph 3, the competent authority shall take any necessary action to address the infringement identified and notify the other competent authorities concerned, in particular those of the originator, ~~the~~ sponsor **and**~~,~~ SSPE and the competent authorities of the holder of a securitisation position, when known.

5a. Where one or more of the competent authorities concerned from different Member States disagree with the decision under paragraph 5, they shall notify the competent authority who has taken the action under paragraph 5 of their findings in a sufficiently detailed manner. At the same time they shall notify ESMA, EBA and EIOPA thereof. The competent authority who has taken the action under paragraph 5 shall take due consideration of such notification, including whether to revise the decision made under paragraph 5.

5b. In case of **persistence of** disagreement between ~~the~~ competent authorities, **the competent authority of the entity suspected of an infringement referred to in paragraph 3 shall make its own decision.**

By derogation to the first subparagraph, where such an infringement concerns an incorrect or misleading notification pursuant to Article 14, paragraph 1 of this Regulation, the decision of the competent authority of the entity referred to in Article 14, paragraph 1, last sentence shall apply.

5c. In case any of the competent authorities concerned disagrees with the decision made in accordance with paragraph 5b, it may refer the matter ~~may be referred~~ to ESMA and the procedure of Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010 shall apply. **ESMA shall take its decision within one month. In the absence of an ESMA decision within one month, the decision of the competent authority referred to in paragraph 5b shall apply.**

5d. During the decision process referred to in paragraphs 1 to 5c, a securitisation appearing on the list maintained by ESMA pursuant to Article 14 shall continue to be considered as STS pursuant to Chapter 3 of this Regulation.

6. ESMA shall, in close cooperation with EBA and EIOPA, develop draft regulatory technical standards to specify the general cooperation obligation and the information to be exchanged under paragraph 1 and the notification obligations pursuant to paragraph**s** ~~(~~3~~)~~ and ~~(~~4~~)~~.

ESMA shall, in close cooperation with EBA and EIOPA submit those draft regulatory technical standards to the Commission [*twelve months after entry into force of this Regulation*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulations (EU) No 1095/2010.

Article 22

Publication of administrative sanctions and remedial measures

1. Member States shall ensure ~~-~~that competent authorities publish without undue delay on their official websites **at least** any decision imposing an administrative sanction ~~or remedial measure~~ **against which there is no appeal and which are imposed** for infringement of Articles 4, 5 or 14**, paragraph** ~~(~~1~~)~~ of this Regulation after the addressee of the sanction ~~or measure of the sanction or measure~~ has been notified~~-~~ of that decision.

2. The publication referred to in paragraph 1 shall include information on the type and nature of the infringement and the identity of the persons responsible and the sanctions ~~or measures~~ imposed.

3. Where the publication of ~~the identity, in case of legal persons, or the identityand the~~ personal data, in the case of natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment, or where the competent authority considers that the publication jeopardises the stability of financial markets or an on-going **criminal** investigation, **or where the publication would cause, insofar as it can be determined disproportionate damages to the person involved,** Member States shall ensure that competent authorities~~-~~ either:

   (a) defer the publication of the decision imposing the administrative sanction ~~or remedial measure~~ until the moment where the reasons for non-publication cease to exist; or

   (b) publish the decision imposing ~~-~~the administrative sanction ~~or remedial, omitting for a reasonable period of time the identity and personal data of the addressee, if it is envisaged that within that period the reasons for~~ **on an** anonymous **basis, in accordance with national law** ~~publication shall cease to exist and provided that such anonymous publication ensures an effective protection of the personal data concerned~~; or

(c) not publish at all the decision to impose the administrative sanction ~~or remedial measure~~ in the event that the options set out in points (a) and (b) are considered to be insufficient to ensure:

(i) that the stability of financial markets would not be put in jeopardy;

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

4. In the case of a decision to publish a sanction ~~or measure~~ on an anonymous basis, the publication of the relevant data may be postponed**.** Where a **competent authority publishes a** decision imposing an administrative sanction ~~or remedial measure~~**against which there** is ~~subject to~~ an appeal before the relevant judicial authorities, competent authorities shall also immediately add on their official website that -information and any subsequent information on the outcome of such appeal. Any judicial decision annulling a decision imposing an administrative sanction ~~or a remedial measure~~ shall also be published.

5. Competent authorities shall ensure that any publication referred to in paragraphs 1 to 4 shall remain on their official website for at least five years after its publication. Personal data contained in the publication shall only be kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.

6. Competent authorities shall inform ESMA~~, EBA and EIOPA~~ of all administrative sanctions ~~and remedial measures~~ imposed, including, where appropriate, any appeal in relation thereto and the outcome thereof. ~~Member States shall ensure that competent authorities receive information and the final judgement in relation to any criminal sanction imposed and submit it to ESMA, EBA or EIOPA.~~

7. ESMA~~, EBA and EIOPA~~ shall ~~jointly~~ maintain a central database of administrative sanctions ~~and remedial measures~~ communicated to **it**~~them~~. That database shall be only accessible to **ESMA, EBA, EIOPA and the** competent authorities and shall be updated on the basis of the information provided by the competent authorities in accordance with paragraph 6.

Chapter 5~~TITLE III~~

Amendments~~AMENDMENTS~~

Article 23

Amendment to Directive 2009/65/EC

Article 50a of Directive 2009/65/EC is repealed

Article 24

Amendment to Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

(1) in Article 135, paragraphs 2 and 3 are replaced by the following

"2. The Commission shall adopt delegated acts in accordance with Article 301a laying down the specifications for the circumstances under which a proportionate additional capital charge may be imposed when the requirements laid down in Articles 3 and 4 of Regulation [the securitisation Regulation] have been breached, without prejudice to Article 101(3).

3. In order to ensure consistent harmonisation in relation to paragraph 2, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the methodologies for the calculation of a proportionate additional capital charge referred to therein.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010."

(2) Article 308b(11) is repealed.

Article 25

Amendment to Regulation (EC) No 2009/1060

Regulation (EC) No 2009/1060 is amended as follows:

(1) In recitals 22 and 41, in Articles **8b and** 8c and in Annex II, point 1, "structured finance instrument" is replaced by "securitisation instrument".

(2) In recitals 34 and 40, in Articles 8(4), 8c, 10(3), 39(4) as well as in Annex I, section A, point 2, paragraph 5, Annex I, section B, point 5, Annex II (title and point 2), Annex III, Part I, points 8, 24 and 45, Annex III, Part III, point 8, "structured finance instruments" is replaced by "securitisation instruments".

(3) in Article 1 the second subparagraph is replaced by the following

"This Regulation also lays down obligations for issuers and related third parties established in the Union regarding securitisation instruments."

(4) in Article 3, point (l) is replaced by the following:

"(l) 'securitisation instrument' means a financial instrument or other assets resulting from a securitisation transaction or scheme referred to in Article 2 (1) of Regulation [this Regulation];"

Article 26

Amendment to Directive 2011/61/EU

Article 17 of Directive 2011/61/EU is repealed

Article 27

Amendment to Regulation (EU) 648/2012

Regulation 648/2012/EU is amended as follows:

(1) in Article 2 points 30 and 31 are added:

"(30) “covered bond” means a bond meeting the requirements of Article 129 of Regulation (EU) No 575/2013."

(31) “covered bond entity” means the covered bond issuer or cover pool of a covered bond."

(2) in Article 4 the following paragraphs 5 and 6 are added:

"5. Article 4(1) shall not apply with respect to OTC derivative contracts that are concluded by covered bond entities in connection with a covered bond, or by a Securitisation Special Purpose Entity in connection with a securitisation, within the meaning of Regulation [the Securitisation Regulation] provided that:

(a) in the case of Securitisation Special Purpose Entities, the Securitisation Special Purpose Entity shall solely issue securitisations that meet the requirements of Articles 7 to 10 or Articles 11 to 13 and Article 6 of Regulation [the Securitisation Regulation];

(b) the OTC derivative contract is used only to hedge interest rate or currency mismatches under the covered bond or securitisation; and

(c) the arrangements under the covered bond or securitisation adequately mitigate counterparty credit risk with respect to the OTC derivative contracts concluded by the covered bond entity or Securitisation Special Purpose Entity in connection with the covered bond or securitisation.

6. In order to ensure consistent application of this Article, and taking into account the need to prevent regulatory arbitrage, the ESAs shall develop draft regulatory technical standards specifying criteria for establishing which arrangements under covered bonds or securitisations adequately mitigate counterparty credit risk, within the meaning of paragraph 5.

The ESAs shall submit those draft regulatory technical standards to the Commission by [*six months after entry into force of th**~~e~~is*** ***Securitisation*** *Regulation*].
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010."

(3) in Article 11 paragraph 15 is replaced by the following:

"15. In order to ensure consistent application of this Article, the ESAs shall develop common draft regulatory technical standards specifying:

(a) the risk-management procedures, including the levels and type of collateral and segregation arrangements, required for compliance with paragraph 3;

(b) the procedures for the counterparties and the relevant competent authorities to be followed when applying exemptions under paragraphs 6 to 10;

(c) the applicable criteria referred to in paragraphs 5 to 10 including in particular what should be considered as practical or legal impediment to the prompt transfer of own funds and repayment of liabilities between the counterparties.

The level and type of collateral required with respect to OTC derivative contracts that are concluded by covered bond entities in connection with a covered bond, or by a Securitisation Special Purpose Entity in connection with a securitisation within the meaning of [this Regulation] and meeting the conditions of **Artice 4** paragraph ~~4~~(5~~)~~ of this Regulation and the requirements of Articles 7 to 10 or Articles 11 to 13 and Article 6 of Regulation [the Securitisation Regulation] shall be determined taking into account any impediments faced in exchanging collateral with respect to existing collateral arrangements under the covered bond or securitisation.

The ESAs shall submit those draft regulatory technical standards to the Commission by [*six months after entry into force of th~~e~~**e*** ~~is~~ ***Securitisation*** *Regulation.*]

Depending on the legal nature of the counterparty, power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with either Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 or (EU) No 1095/2010."

Chapter 6

Transitional provisions, review and entry into force

Article 28

Transitional provisions

1. This Regulation shall apply to securitisations the securities of which are issued on or after [*date of entry into force of this Regulation*], subject to paragraphs 2 to 6.

2. In respect of securitisation positions outstanding as of [*date of entry into force of this Regulation*], originators, sponsors and SSPEs may use the designation 'STS' **or 'simple, transparent and standardised'** or a designation that refers directly or indirectly to these terms only where the requirements set out in Article 6 of this Regulation are complied with.

3. In respect of securitisations the securities of which were issued on or after 1 January 2011 and ~~to~~ **in respect of** securitisations issued before that date~~,~~ where new underlying exposures have been added or substituted after 31 December 2014, Article 3 of this Regulation shall apply.

4. In respect of securitisation positions outstanding as of [*date of entry into force of this Regulation*] credit institutions or investment firms as defined in Article 4(1) and (2) of Regulation (EU) No **575/**2013~~/575~~, insurance undertakings as defined in Article 13 (1) of Directive 2009/138/EC, reinsurance undertakings as defined in Article 13 point (4) of Directive 2009/138/EC and alternative investment fund managers (AIFM) as defined in Article 4(1)(b) of Directive 2011/61/EU shall continue to apply Article 405 of Regulation (EU) No 575/2013 and to chapter 1, 2 and 3 and Article 22 of Commission Delegated Regulation (EU) No 625/2014, Articles 254 and 255 of Commission Delegated Regulation (EU) 2015/35 and Article 51 of Commission Delegated Regulation (EU) No 231/2013, respectively, in the version applicable on [*day before date of entry into force of this Regulation*].

5. Until the moment that the regulatory technical standards to be adopted by the Commission pursuant Article 4 (6) of this Regulation are of application originators, sponsors or the original lender shall for the purposes of the obligations set out in Article 4 of this Regulation, apply the provisions in Chapters 1, 2 and 3 and Article 22 of Commission Delegated Regulation (EU) No 625/2014 to securitisations the securities of which are issued on or after [*date of entry into force of this Regulation*].

6. Until the moment that the regulatory technical standards to be adopted by the Commission pursuant to Article 5 (3) of this Regulation are of application, originators, sponsors and SSPE's shall, for the purposes of the obligations set out in points a) and e) of Article 5 (1) of this Regulation, make the information mentioned by Annexes I to VIII of Commission Delegated Regulation (EU) No 2015/3 available to the website referred to in Article 5 (2).

Article 29

Reports

1. By [*two years after entry into force of this Regulation*] and every three years thereafter, EBA, in close cooperation with ESMA and EIOPA, shall publish a report on the implementation of the STS requirements as laid down by Articles 6 to 14 of this Regulation.

2. The report shall also contain an assessment of the actions that competent authorities have undertaken, on material risks and new vulnerabilities that may have materialised and on the actions of market participants to further standardise securitisation documentation.

3. By [*three years after entry into force of this Regulation*] ESMA, in close cooperation with EBA and EIOPA, shall publish a report on the functioning of the **due diligence requirements in Article 3, the risk retention requirements in Article 4, and the** transparency requirements in Article 5 of this Regulation and the level of transparency of the securitisation market in the Union**.**

Article 29a

Synthetic securitisations

1. By [6 *months after entry into force of this Regulation*], the EBA, in close cooperation with ESMA and EIOPA, shall publish a report on the determination of the STS criteria for synthetic securitisations.

2. By [1 *year after entry into force of this Regulation*], the Commission, taking into consideration the report referred to in paragraph 1, shall submit a report to the European Parliament and the Council on the eligibility of synthetic securitisations as STS securitisation together with a legislative proposal if appropriate.

Article 30

Review

By [*four years after entry into force of this Regulation*] the Commission shall present a report to the European Parliament and the Council on the functioning of this Regulation, accompanied, where appropriate, by a legislative proposal. **The report shall take into consideration international developments in the area of securitisation, notably initiatives on simple, transparent and comparable securitisations, and assess whether in the area of STS securitisations an equivalence regime could be introduced for third country originators, sponsors and SSPEs.**

Article 31

Entry into Force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*