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**NOTE**

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From: Presidency/General Secretariat of the Council  
To: Delegations

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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*

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

With respect to the second compromise proposal (ST 14493/15), the new text is marked in **underlined bold** and deletions are indicated in ~~striketrough~~.

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<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Securitisation involves transactions that enable a lender or a creditor – typically a credit institution or a corporate – to refinance a set of loans, exposures or receivables, such as loans for immovable property, auto leases, consumer loans, credit cards or trade receivables, by transforming them into tradable securities. The lender pools and repackages a portfolio of its loans, and organises them into different risk categories for different investors, thus giving investors access to investments in loans and other exposures to which they normally would not have direct access. Returns to investors are generated from the cash flows of the underlying loans.

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<sup>1</sup> OJ C , , p .

- (2) In the Investment Plan for Europe presented on 26 November 2014, the Commission announced its intention to restart high quality securitisation markets, without repeating the mistakes made before the 2008 financial crisis. The development of a simple, transparent and standardised securitisation market constitutes a building block of the Capital Markets Union (CMU) and contributes to the Commission's priority objective to support job creation and a return to sustainable growth.
- (3) The European Union does not intent to weaken the legislative framework implemented after the financial crisis to address the risks inherent in highly complex, opaque and risky securitisation. It is essential to ensure that rules are adopted to better differentiate simple, transparent and standardised products from complex, opaque and risky instruments and apply a more risk-sensitive prudential framework.
- (4) Securitisation is an important element of well-functioning financial markets. Soundly structured securitisation is an important channel for diversifying funding sources and allocating risk more efficiently within the Union financial system. It allows for a broader distribution of financial sector risk and can help to free up originator's balance sheets to allow for further lending to the economy. Overall, it can improve efficiencies in the financial system and provide additional investment opportunities. Securitisation can create a bridge between credit institutions and capital markets with an indirect benefit for businesses and citizens (through, for example, less expensive loans and business financing, credits for immovable property and credit cards).
- (5) Establishing a more risk-sensitive prudential framework for simple, transparent and standardised ("STS") securitisations requires that the Union clearly defines what a STS securitisation is, since otherwise the more risk-sensitive regulatory treatment for credit institutions and insurance companies would be available for different types of securitisations in different Member States. This would lead to an un-level playing field and to regulatory arbitrage.

- (6) It is appropriate to provide, in line with the existing definitions in Union sectoral legislation, definitions of all the key concepts of securitisation. In particular, a clear and encompassing definition of securitisation is needed to capture any transaction or scheme whereby the credit risk associated with an exposure or pool of exposures is tranching. An exposure that creates a direct payment obligation for a transaction or scheme used to finance or operate physical assets should not be considered an exposure to a securitisation, even if the transaction or scheme has payment obligations of different seniority.
- (6a) A sponsor should be able to delegate tasks to a servicer, but should remain responsible of the risk management. In particular a sponsor should not transfer the risk retention requirement to his servicer. The servicer should be a regulated asset manager such as a UCITS manager, an AIFM, or a MIFID entity.
- (7) At both the international and European level, much work has already been done to identify STS securitisation and in Commission Delegated Regulations (EU) 2015/61<sup>2</sup> and (EU) 2015/35<sup>3</sup>, criteria have already been set out for simple, transparent and standardised securitisation for specific purposes, to which a more risk sensitive prudential treatment is attached.
- (8) Based on the existing criteria, on the BCBS-IOSCO criteria adopted on 23 July 2015 for identifying simple, transparent and comparable securitisations and in particular the EBA Advice on qualifying securitisation published on 7 July 2015, it is essential to establish a general and cross-sectorally applicable definition of STS securitisation.

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<sup>2</sup> Commission Delegated Regulation of 10 October 2014 to supplement Regulation (EU) No 575/2013 with regard to liquidity coverage requirement for Credit Institutions (*OJ L 11, 17.1.2015, p; 1*).

<sup>3</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (*OJ L 12, 17.1.2015, p. 1*).

- (9) Implementation of the STS criteria throughout the EU should not lead to divergent approaches. Those approaches would create potential barriers for cross-border investors by constraining them to enter into the details of the Member State frameworks and thus undermining investor confidence in the STS criteria.
- (10) It is essential that competent authorities work closely together to ensure a common and consistent understanding of the STS requirements throughout the Union and to address potential interpretation issues. In the light of this objective the three ESAs should, in the framework of the Joint Committee of the European Supervisory Authorities, coordinate their work and that of the competent authorities to ensure cross-sectoral consistency and assess practical issues which might arise with regards to STS securitisations. In doing so, the views of market participants should also be requested and taken into account to the extent possible. The outcome of these discussions should be made public on the websites of the ESAs so as to help originators, sponsors, SSPEs and investors assess STS securitisations before issuing or investing in such positions. Such a coordination mechanism would be particularly important in the period leading to the implementation of this Regulation.
- (11) Investments in or exposures to securitisations will not only expose the investor to credit risks of the underlying loans or exposures, but the structuring process of securitisations could also lead to other risks such as agency risks, model risk, legal and operational risk, counterparty risk, servicing risk, liquidity risk and concentration risk. Therefore, it is essential that institutional investors are subject to proportionate due diligence requirements ensuring that they properly assess the risks arising from all types of securitisations, to the benefit of end investors.

Due diligence can thus also enhance confidence in the market and between individual originators, sponsors and investors. It is necessary that investors also exercise appropriate due diligence with regard to STS securitisations. They can inform themselves with the information disclosed by the securitising parties, in particular the STS notification and the related information disclosed in this context, which should provide investors with all the relevant information on the way STS criteria are met. Institutional investors should be able to place appropriate reliance on the STS notification and the information disclosed by the originator, sponsor and SSPE on whether a securitisation meets the STS requirements. They should however not solely and mechanically rely on such a notification and information.

- (12) It is important that the interests of originators, sponsors and original lenders that transform exposures into tradable securities and investors are aligned. To achieve this, the originator, sponsor or original lender should retain a significant interest in the underlying exposures of the securitisation. It is therefore important for the originator, sponsor or original lender to retain a material net economic exposure to the underlying risks in question. More generally, securitisation transactions should not be structured in such a way so as to avoid the application of the retention requirement. That requirement should be applicable in all situations where the economic substance of a securitisation is applicable, whatever legal structures or instruments are used. There is no need for multiple applications of the retention requirement. For any given securitisation, it suffices that only the originator, the sponsor or the original lender is subject to the requirement. Similarly, where securitisation transactions contain other securitisations positions as underlying exposures, the retention requirement should be applied only to the securitisation which is subject to the investment. The STS notification indicate to investors that the originator, sponsor or original lender is retaining a material net economic exposure to the underlying risks. Certain exceptions should be made for cases when securitised exposures are fully, unconditionally and irrevocably guaranteed by in particular public authorities. In case support from public resources provided in the form of guarantees or by other means, any provisions in this Regulation are without prejudice to State aid rules.

- (13) The ability of investors and potential investors to exercise due diligence and thus make an informed assessment of the creditworthiness of a given securitisation instrument depends on their access to information on those instruments. Based on the existing acquis, it is important to create a comprehensive system under which investors and potential investors will have access to all the relevant information. Over the entire life of the transactions, continuous, easy and free access to reliable information on securitisations for investors should be facilitated and reporting tasks for originators, sponsors and SSPEs reduced, where possible.
- (13a) ~~Due to the potential level of risks and their inherent complexity, s~~Securitisation instruments are not appropriate for retail investors within the meaning of Directive 2014/65/UE.
- (14) Originators, sponsors and SSPE's should make all materially relevant data on the credit quality and performance of underlying exposures available in the investor report, including data allowing investors to clearly identify delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, repurchases, payment holidays, losses, charge offs, recoveries and other asset performance remedies in the pool of underlying exposures. Data on the cash flows generated by underlying exposures and by the liabilities of the securitisation issuance, including separate disclosure of the securitisation position's income and disbursements, that is scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges and any data relating to the breach of any triggers implying changes in the priority of payments or replacement of any counterparties as well as data on the amount and form of credit enhancement available to each tranche should also be made available in the investor report.

- (14a) Originators, sponsors and original lenders should apply to exposures to be securitised the same sound and well-defined criteria for credit-granting which they apply to non-securitised exposures. However, to the extent that trade receivables are not originated in the form of a loan, credit-granting criteria need not be met with respect to trade receivables.
- (14b) Although securitisations that are simple, transparent and standardised have in the past performed well, the satisfaction of any STS requirements does not mean that the securitisation position is free of risks, nor does it indicate anything about the credit quality underlying the securitisation. Instead, it should be understood to indicate that a prudent and diligent investor will be able to analyse the risks involved in the securitisation.
- (14c) There should be two types of STS requirements: one for long-term securitisations and one for short-term securitisations (ABCP), which should be subject to a large extent to similar requirements with specific adjustments to reflect the structural features of these two market segments. The functioning of these markets are different with ABCP programmes relying on a number of ABCP transactions consisting of short term exposures which need to be replaced once matured. In addition, STS criteria need also to reflect the specific role of the sponsor providing liquidity support to the ABCP programme, especially for fully supported ABCP programmes.
- (15) This proposal only allows for 'true sale' securitisations to be designated as STS. In a true sale securitisation, the ownership of the underlying exposures is transferred or effectively assigned to an issuer entity which is a securitisation special purpose entity (SSPE). The transfer or assignment of the underlying exposures to the SSPE should not be subject to ~~severe~~ clawback provisions in the event of the seller's insolvency, **without prejudice to provisions of national insolvency laws under which the sale of underlying exposures concluded within a certain period before the declaration of the seller's insolvency can, under strict conditions, be invalidated.**

~~Such severe clawback provisions include but should not be limited to provisions under which the sale, assignment or transfer of the underlying exposures can be invalidated by the liquidator of the seller, without prejudice to legal provisions of public order.~~



- (15a) A legal opinion provided by a qualified legal counsel might confirm the true sale or assignment or transfer with the same legal effect of the underlying exposures and the enforceability of that true sale or assignment or transfer with the same legal effect under the applicable law.
- (16) In securitisations which are not 'true sale', the underlying exposures are not transferred to such an issuer entity, but rather the credit risk related to the underlying exposures is transferred by means of a derivative contract or guarantees. This introduces an additional counterparty credit risk and potential complexity related in particular to the content of the derivative contract. To date, no analysis on an international level or Union level has been sufficient to identify STS criteria for those types of securitisation instruments. An assessment in the future of whether some synthetic securitisations that have performed well during the financial crisis and are simple, transparent and standardised are therefore eligible to qualify as STS would be essential. On this basis, the Commission will assess whether securitisations which are not 'true sale' should be covered by the STS designation in a future proposal. The Commission should present a report and if appropriate a legislative proposal to the European Parliament and to the Council on the eligibility of synthetic securitisations as STS securitisation by one year after entry into force of this Regulation.
- (17) The underlying exposures transferred from the seller to the SSPE should meet predetermined and clearly defined 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 should in principle not be considered active portfolio management.

- (17a) Underlying exposures should not include exposures in default. A prudent approach should apply to exposures which have been non-performing and have subsequently been restructured. The inclusion of the latter in the pool of underlying exposure should however not be excluded in case such exposures have 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. In such case adequate disclosure should ensure full transparency.
- (18) To ensure that investors perform robust due diligence and to facilitate the assessment of underlying risks, it is important that securitisation transactions are backed by pools of exposures that are homogenous in asset type, such as pools of residential loans, pools of corporate 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 of underlying exposures should only comprise one asset type. **The underlying exposures shall not include transferable securities, as defined in article 4(1), point 44 of Directive 2014/65/EU of the European Parliament and of the Council. To cater for the situation of certain Member States where it is common practice for credit institutions to use bonds instead of loan agreements to provide credit to non-financial corporates, it should be possible to include such bonds, provided that they are not listed on a trading venue.**

- (19) It is essential to prevent the recurrence of ‘originate to distribute’ models. In those situations lenders grant credits applying poor and weak underwriting policies as they know in advance that related risks are eventually sold to third parties. Thus, the exposures to be securitised should be originated in the ordinary course of the originator’s or original lender’s business pursuant to underwriting standards that should not be less stringent than those the originator or original lender applies to origination of similar exposures which are not securitised. Material changes in underwriting standards should be fully disclosed to potential investors, or in the case of fully supported ABCP programmes to the sponsor and other parties directly exposed to the ABCP transaction. The originator or original lender should have sufficient experience in originating exposures of a similar nature to those which have been securitised. In the case of securitisations where the underlying exposures are residential loans, the pool of loans should 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 should also meet where applicable, the requirements set out in Directives 2014/17/EU or 2008/48/EC of the European Parliament and of the Council or equivalent requirements in third countries.
- (19a) A strong reliance of the repayment of securitisation positions on the sale of assets securing the underlying assets creates vulnerabilities as illustrated by the poor performance of parts of the CMBS market during the financial crisis. Therefore, CMBS should not be considered as STS securitisations.

- (20) Where originators, sponsors and SSPE's would like their securitisations to use the STS designation, they should notify investors, competent authorities and ESMA that the securitisation meets the STS requirements. The notification should include an explanation on how each of the STS criteria has been complied with. ESMA should then publish it on a list of transactions made available on its website for information purposes. The inclusion of a securitisation issuance in ESMA's list of notified STS securitisations does not imply that ESMA or other competent authorities have certified that the securitisation meets the STS requirements. The compliance with the STS requirements remains solely the responsibility of the originators, sponsors and SSPEs. This will ensure that originators, sponsors and SSPE's take responsibility for their claim that the securitisation is STS and that there is transparency on the market.
- (21) Where a securitisation no longer meets the STS requirements, the originator, sponsor and SSPE should immediately notify ESMA and the competent authority. Moreover, where a competent authority has imposed administrative sanctions with regard to a securitisation notified as being STS, that competent authority should immediately notify ESMA for its indication on the STS notifications list allowing investors to be informed about such sanctions and about the reliability of STS notifications. It is therefore in the interest of originators, sponsors and SSPE's to make well-considered notifications due to reputational consequences.
- (22) Investors should perform their own due diligence on investments commensurate with the risks involved but they should be able to rely on the STS notifications and on the information provided by the originator, sponsor and SSPE on STS compliance. They should however not solely and mechanically rely on such a notification and information.

- (23) The involvement of third parties in helping to check compliance of a securitisation with the STS requirements may be useful for investors, originators, sponsors and SSPE's and could contribute to increase confidence in the market for STS securitisations. Originators, sponsors and SSPEs might also use the services of a third party authorised in accordance with this regulation to assess whether their securitisation complies with the STS criteria. Those third parties should be subject to authorisation by competent authorities. The notification to ESMA and the subsequent publication on ESMA's website should mention whether STS compliance was confirmed by an authorised third-party. However, it is essential that investors make their own assessment, take responsibility for their investment decisions and do not mechanically rely on such third parties.
- (24) Member States should designate competent authorities and provide them with the necessary supervisory, investigative and sanctioning powers. Administrative sanctions should, in principle, be published. Since investors, originators, sponsors, original lenders and SSPEs can be established in different Member States and supervised by different sectoral competent authorities close cooperation between relevant competent authorities and with the ESAs should be ensured by the mutual exchange of information and assistance in supervisory activities.
- (25) Competent authorities should closely coordinate their supervision and ensure consistent decisions, especially in case of infringements of this Regulation. Where such an infringement concerns an incorrect or misleading notification, the competent **of the entity designated as the first contact point should coordinate the actions to be taken with the other competent authorities concerned and shall also inform the ESAs. The competent authorities shall do everything within their powers to reach a joint decision on the measures to be taken. In the exceptional cases where such a joint decision cannot be reached, ESMA shall try to mediate between competent authorities within one month. Only where such mediation does not lead to any agreement between the competent authorities concerned,** authority finding that infringement should also inform the ESAs and the relevant competent authorities of the Member States concerned, so that ESMA, and, where appropriate, the Joint-Committee of the European Supervisory Authorities, should be able to exercise their binding mediation powers.

- (26) This Regulation promotes the harmonisation of a number of key elements in the securitisation market without prejudice to further complementary market-led harmonisation of processes and practices in securitisation markets. For that reason, it is essential that market participants and their professional associations continue working on further standardising market practices, and in particular the standardisation of documentation of securitisations. The Commission will carefully monitor and report on the standardisation efforts made by market participants.
- (27) The UCITS Directive, the Solvency II Directive, the CRA Regulation, the AIFM Directive and EMIR are amended accordingly to ensure consistency of the EU legal framework with this Regulation on provisions related to securitisation the main object of which is the establishment and functioning of the internal market, in particular by ensuring a level playing field in the internal market for all institutional investors.
- (28) As regards the amendments to Regulation (EU) No 648/2012, over-the-counter ("OTC") derivative contracts entered into by securitisation special purpose entities should not be subject to the clearing obligation provided that certain conditions are met. This is because counterparties to OTC derivative contracts entered into with securitisation special purpose vehicles are secured creditors under the securitisation arrangements and adequate protection against counterparty credit risk is usually provided for. With respect to non-centrally cleared derivatives, the levels of collateral required should also take into account the specific structure of securitisation arrangements and the protections already provided for therein.
- (29) There is a degree of substitutability between covered bonds and securitisations. Therefore, in order to prevent the possibility of distortion or arbitrage between the use of securitisations and covered bonds because of the different treatment of OTC derivative contracts entered into by covered bond entities or by SSPEs, Regulation (EU) No 648/2012 should also be amended to exempt covered bond entities from the clearing obligation and to ensure that covered bond entities are subject to the same bilateral margins.

- (30) In order to specify the risk-retention requirement, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adoption of regulatory technical standards laying down the modalities of retaining risk, the measurement of the level of retention, certain prohibitions concerning the retained risk, the retention on a consolidated basis and the exemption for certain transactions. In view of the expertise of EBA, in defining the delegated acts, the Commission should make use of that expertise on the preparation of the delegated acts. EBA should consult closely with the other two European Supervisory Authorities.
- (31) In order to facilitate investors continuous, easy and free access to reliable information on securitisations, the same power to adopt acts should be delegated to the Commission in respect of the adoption of regulatory technical standards for comparable information on underlying exposures and regular investor reports and for the requirements to be met by the website on which the information is made available to holders of securitisation positions. In view of the expertise of ESMA, in defining the delegated acts, the Commission should make use of that expertise on the preparation of the delegated acts. ESMA should consult closely with the other two European Supervisory Authorities.
- (31a) In order to specify the terms of the cooperation and exchange of information obligation of competent authorities, the same power to adopt acts should be delegated to the Commission in respect of the adoption of regulatory technical standards laying down the information to be exchanged and the content and scope of the notification obligations. In view of the expertise of ESMA, in defining the delegated acts, the Commission should make use of that expertise on the preparation of the delegated acts. ESMA should consult closely with the other two European Supervisory Authorities.

- (32) In order to facilitate the process to investors, originators, sponsors and SSPE's, the power to adopt acts in accordance with Article 291 of the Treaty on the Functioning of the European Union should be ~~conferred~~~~delegated~~ to the Commission in respect of the adoption of implementing technical standards regarding the template for STS notifications that will provide investors and competent authorities with sufficient information for their assessment of compliance with the STS requirements. In view of the expertise of ESMA, in ~~drafting~~~~defining~~ the implementing acts, the Commission should make use of that expertise on the preparation of the implementing acts. ESMA should consult closely with the other two European Supervisory Authorities.
- (33) *deleted*
- (34) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (35) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States given that securitisation markets operate globally and that a level playing field in the internal market for all institutional investors and entities involved in securitisation should be ensured but, by reason of their scale and effects, can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.



- (36) This Regulation should apply to securitisations the securities of which are issued on or after the entry into force of this Regulation.
- (37) For securitisation positions outstanding as of the date of entry into force of this Regulation, originators, sponsors and SSPEs may use the designation 'STS' provided that the securitisation complies with applicable STS requirements. Therefore, originators, sponsors and SSPEs should be able to submit an STS notification pursuant to Article 14 (1) of this Regulation to ESMA.
- (38) Existing due diligence requirements should continue to apply to securitisations issued on or after 1 January 2011 but before the entry into force of this regulation and to securitisations issued before 1 January 2011, where new underlying exposures have been added or substituted after 31 December 2014. The relevant articles of Commission Delegated Regulation (EU) No 625/2014 that specify the risk retention requirements for credit institutions and investments firms as defined in Article 4(1) points (1) and (2) of Regulation (EU) No 2013/575 should remain applicable until the moment that the regulatory technical standards on risk retention pursuant to this Regulation become of application. For reasons of legal certainty, credit institutions or investment firms, insurance undertakings, reinsurance undertakings and alternative investment fund managers should, for securitisation positions outstanding as of the entry into force of this Regulation; continue to be subject to 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 order to ensure that originators, sponsors and SSPE's comply with their transparency obligations , until the moment that the regulatory technical standards to be adopted by the Commission pursuant to this Regulation apply, make the information mentioned by Annexes I to VIII of Delegated Regulation 2015/3/EU available to the website referred to in Article 5 (4) of this Regulation.

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 securitisation special purpose entities. It also provides a framework for simple, transparent and standardised ('STS') securitisation.
2. This Regulation applies to institutional investors becoming exposed to securitisation and to originators, sponsors, original lenders and securitisation special purpose entities.

## Article 2

### Definitions

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

- (1) 'securitisation' means a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranching, having both of the following characteristics:
  - (a) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures;
  - (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme.
- (2) 'securitisation special purpose entity' or 'SSPE' means a corporation, trust or other 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 on its own account and then sells or assigns them to an SSPE or transfers the risk of those exposures by the use of credit derivatives or guarantees;
- (4) 're-securitisation' means securitisation where the risk associated with an underlying pool of exposures is tranching and at least one of the underlying exposures is a securitisation position;
- (5) 'sponsor' means a credit institution or investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, other than an originator, that establishes and manages an asset-backed commercial paper programme or other securitisation scheme that purchases exposures from third-party entities. For the purpose of this definition a sponsor shall also be considered to manage a securitisation transaction or scheme where that scheme or transaction involves day-to-day active portfolio management which is delegated to an entity authorised to perform such activity in accordance with Directive 2014/65/EU, Directive 2011/61/EU or Directive 2009/65/EC ;
- (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 programme' or 'ABCP programme' means a programme of securitisations the securities issued by which predominantly take the form of asset-backed commercial paper with an original maturity of one year or less;
- (8) 'asset-backed commercial paper transaction' or 'ABCP transaction' means a securitisation within an ABCP programme;
- (9) 'traditional securitisation' means a securitisation involving the transfer of the economic interest in the exposures being securitised through the transfer of ownership of the securitised exposures from the originator to an SSPE or through sub-participation by an SSPE. The securities issued do not represent payment obligations of the originator;
- (10) 'synthetic securitisation' means a securitisation other than a traditional 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 a securitisation position;
- (12) 'institutional investors' means an investor which is:
- (a) an insurance undertaking 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);
  - (b) a reinsurance undertaking as defined in Article 13, point (4) of Directive 2009/138/EC;

- (c) an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council<sup>4</sup> 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 or the delegate of an institution for occupational retirement provision as defined in Article 19(1) of Directive 2003/41/EC;
  - (d) 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<sup>5</sup> that manage and/or market AIFs in the Union;
  - (e) 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<sup>6</sup>;
  - (f) 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
  - (g) a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013;
- (13) 'servicer' means an entity as defined in point (8) of Article 142(1) of Regulation (EU) No 575/2013;
- (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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<sup>4</sup> 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).

<sup>5</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 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).

<sup>6</sup> 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 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 their originally stated maturity;
- (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;
- (21) 'fully-supported ABCP programme' means an ABCP programme which is supported by a sponsor providing a liquidity facility which covers 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;
- (22) 'fully-supported ABCP transaction' means an ABCP transaction within a fully-supported ABCP programme.

An exposure that meets the criteria listed in Article 147, paragraph 8, points (a) to (c) of Regulation (EU) No 2013/575 and is used to operate physical assets shall not be considered an exposure to a securitisation.

## Chapter 2

### Provisions applicable to all securitisations

#### *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 points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, the originator or original lender 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 those criteria and processes in accordance with Article 5a(1) of this Regulation;
  - (aa) where the originator or original lender is established in a third country, the originator or original lender 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 those criteria and processes in line with the criteria and processes laid down in Article 5a(1);
  - (b) if established in the Union, the originator, sponsor or original lender retains on an ongoing basis a material net economic interest in accordance with Article 4 and the risk retention is disclosed to the institutional investor in accordance with Article 5;



- (ba) if established in a third country, the originator, sponsor or original lender 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 and discloses the risk retention to institutional investors;
  - (c) the originator, sponsor and SSPE **have, where applicable, made** ~~make~~ available the information required by Article 5 in accordance with the frequency and modalities provided in that Article.
- 1a. By derogation from paragraph 1, as regards fully-supported ABCP transactions, the requirement specified in point (a) of paragraph 1 **shall apply** to the sponsor, which 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 those criteria and processes.
2. Before becoming exposed to a securitisation, institutional investors shall also carry out a due diligence assessment which enables them to assess the risks involved, 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;
  - (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;
- (ba) By derogation from points **(a) and** (b), in case of a fully-supported ABCP **programme** ~~transaction~~, institutional investors in the relevant commercial papers shall consider the features of the ABCP programme and the liquidity support by the sponsor.

- (c) with regard to securitisations designated as STS pursuant to Article 6, whether the securitisation meets the requirements laid down in Sections 1 and 3 of Chapter 3, or in Sections 2 and 3 of Chapter 3. Institutional investors may place appropriate reliance on the STS notification pursuant to Article 14(1) and on the information disclosed by the originator, sponsor and SSPE on the compliance with the STS requirements, without solely or mechanically relying on that notification or information.

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

- (a) establish appropriate written procedures with regard to the risk profile of the securitisation position and appropriate and proportionate to their trading and non-trading book where relevant, in order to monitor compliance with paragraphs 1 and 2, the performance of the securitisation position and the underlying exposures on an ongoing basis. Where 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 **an exposure to 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 the nature, scale and complexity of the risk of the securitisation position;

**(ba) in the case of fully-supported ABCP transactions, regularly perform stress tests on the creditworthiness of the liquidity facility provider rather than on the securitised exposures;**

- (c) ensure internal reporting to their management body so that they are aware of the material risk arising from each 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 documentation of the verifications and due diligence in accordance with paragraphs 1 and 2 and of any other relevant information;
- (e) in the case of **exposures to** 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.

**4. Where an institutional investor has given another institutional investor authority to make investment management decisions that might expose it to a securitisation, the institutional investor may instruct that managing party to fulfil its obligations under this Article in respect of any exposure to a securitisation arising from those decisions. Member States shall ensure that where an institutional investor is instructed under this paragraph to fulfil the obligations of another institutional investor and fails to do so, any sanction that may be imposed for the purposes of Article 17 and 18 of this Regulation, can be imposed on the managing institutional investor and not the institutional investor who is exposed to the securitisation.**

## Article 4

### Risk retention

1. The originator, sponsor or 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 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 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 not 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 not less than 5% of the nominal value of each of the securitised exposures;
  - (c) the retention of randomly selected exposures, equivalent to not 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 not 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 not 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 2002/87/EC, a parent 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 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 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 2013/36/EU of the European Parliament and of the Council 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 point (8) of Article 4(1) 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.

Transparency requirements for originators, sponsors and SSPE's

1. The originator, sponsor and SSPE of a securitisation shall, in accordance with paragraph 2 of this Article, make at least the following information available to holders of a securitisation position, to the competent authorities referred to in Article 15 and, **upon request**, to potential investors:
  - (a) information on the underlying exposures 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:
    - (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) *deleted*

Those 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<sup>7</sup>, 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 other secured creditors;

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<sup>7</sup> 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 in accordance with point (b) that could have a material impact on the performance of the securitisation position;
- (v) *deleted*
- (d) in the case of STS securitisations, the STS notification referred to in Article 14 (1);
- (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, 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;
- (f) any inside information relating to the securitisation that the originator, sponsor or SSPE is obliged to make public in accordance with Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council<sup>8</sup> on insider dealing and market manipulation;

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<sup>8</sup> 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 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 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 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.

**In the case of ABCP, the information described in points (a), (c)(ii) and (e)(i) shall be made available in aggregate form to holders of securitisation position and, upon request, to potential investors. Loan level data shall be made available to the sponsor and, upon request, to competent authorities.**

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

The information described in points (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 in the case of ABCP transactions, at the latest one month after the end of the period of time the report covers.

Without prejudice to Regulation (EU) No 596/2014, the information described in points (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 law governing the protection of confidentiality of information and 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. In particular, with regard to the information referred to in point (b) the originator, sponsor and SSPE may provide a ~~summary-up~~ summary of the concerned documentation. Competent authorities referred to in Article 15 shall be able to request the provision of such confidential information to them in order 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 made available free of charge to the holder of a securitisation position, competent authorities and, upon request, to potential investors, 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 shall;
  - (a) develop 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 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, and the website where the information is made available shall be indicated in the final offering documents or prospectus of 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 shall provide in order to comply with their obligations under points (a) and (e) of paragraph 1 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

- 1.** Originators, sponsors and original lenders shall apply to exposures to be securitised the same sound and well-defined criteria for credit-granting which they apply to non-securitised exposures. 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 those criteria and processes in order to 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.
  
- 2.** Where an originator purchases a third party's exposures for its own account and then securitises them, that originator shall ~~verify~~**ensure** that the entity which 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 paragraph.

## Chapter 3

### Simple, transparent and standardised securitisation

#### *Article 6*

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

Originators, sponsors and SSPEs may only use the designation "STS" or "simple, transparent and standardised" or a designation that refers directly or indirectly to these terms for their securitisation where:

- (a) the securitisation meets all the requirements of Section 1 or Section 2 of this Chapter, and they have notified ESMA pursuant to Article 14(1); **and**
- (b) the relevant securitisation ~~has been~~ **is** included in the list referred to in Article 14(4).

Where points (a) and (b) are satisfied, a securitisation shall be considered STS.

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

## SECTION 1

### REQUIREMENTS FOR NON-ABCP STS SECURITISATION

#### *Article 7*

Simple, transparent and standardised securitisation

Securitisations, except ABCP transactions, that meet the requirements in Articles 8, 9 and 10 shall be considered STS. ~~The originator, sponsor and SSPE involved in a securitisation considered STS shall be established within the Union.~~

#### *Article 8*

Requirements relating to simplicity

1. 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~~ **It shall** ~~is not~~ **be** subject to severe clawback provisions in the event of the seller's insolvency, **which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller's insolvency or provisions where the SSPE can only prevent such invalidation if it can prove that it was not aware of the insolvency of the seller at the time of sale. Clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in case of fraudulent transfers, unfair prejudice to creditors or of transfers intended to improperly favour particular creditors over others, shall not constitute severe clawback provisions.**

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 that 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 shall, 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.
2. 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.
3. 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 the 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 corporate 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 of underlying exposures shall only comprise one asset type. The underlying exposures shall be contractually legal, valid, binding and enforceable obligations with full recourse to debtors and, where applicable, guarantors. The underlying exposures shall have defined periodic payment streams relating to rental, principal, interest payments, or related to any other right to receive income from assets supporting such payments. The underlying exposures shall not include transferable securities ~~listed on a trading venue~~, as defined in **Article 4(1), point 44 of** Directive 2014/65/EU of the European Parliament and of the Council **other than corporate bonds, provided that they are not listed on a trading venue.**
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 original lender's business pursuant to underwriting standards that are not less stringent than those that the originator or original lender applied at the time of origination to similar exposures that are not securitised. 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, where applicable, meet the requirements set out in paragraphs 1 to 4, point (a) of paragraph 5, and paragraph 6 of Article 18 of Directive 2014/17/EU or of Article 8 of Directive 2008/48/EC or, where applicable, equivalent requirements in third countries.

The originator or original lender shall have 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 without undue delay to potential investors.

7. The underlying exposures, at the time of transfer or assignment to the SSPE, shall not include exposures in default within the meaning of Article 178(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 been declared insolvent or had a court grant his creditors a final non-appealable 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 with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:
    - (i) a restructured underlying 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; and
    - (ii) the information provided by the originator, sponsor and SSPE in accordance with Article 5, paragraph 1, points (a) and (e)(i) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring;

- (b) was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or other credit registry that is available to the originator or original lender;
  - (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.
8. The debtors shall have, at the time of transfer of the exposures, 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 securitisations backed by exposures payable in a single instalment.
9. 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.

## Article 9

### Requirements relating to standardisation

1. The originator, sponsor or original lender shall satisfy the risk retention requirement in accordance with Article 4.
2. Interest rate and currency mismatches arising at transaction level shall be appropriately mitigated and any measures taken to that effect shall be disclosed. The SSPE shall not enter into derivatives, unless for the purpose of hedging currency risk or 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 the cost of funds and shall not reference complex formulae or derivatives.
4. Where an enforcement or an acceleration notice has been delivered:
  - (a) no 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 amount is trapped in order to be used, in the best interests of investors, for expenses that will avoid the deterioration in the credit quality of the underlying exposures;

- (b) 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; and
- (c) there shall be no provisions requiring automatic liquidation of the underlying exposures at market value.

Transactions which feature non-sequential priority of payments shall include triggers relating to the performance of the underlying exposures resulting in the priority of payments reverting to sequential payments in order of seniority. Such performance-related triggers shall include at least the deterioration in the credit quality of the underlying exposures below a pre-determined threshold.

5. The transaction documentation shall include appropriate early amortisation events or triggers for termination of the revolving period where the securitisation is a revolving securitisation, 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, 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 which may include a replacement clause which enables the replacement of the servicer in case of default or insolvency in the servicing contract;
  - (c) provisions that ensure the replacement of derivative counterparties, liquidity providers and the account bank upon their default or insolvency.
- 6a. The servicer shall have experience in servicing exposures of a similar nature to those securitised and shall have well documented policies, procedures and risk management controls relating to the servicing of exposures.
7. 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.

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 potential investors before pricing. Those data shall cover a period no shorter than five 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 potential investors, before the pricing of the securitisation and after pricing shall provide such a model to investors on an ongoing basis and to potential investors upon request.
4. The originator, sponsor and SSPE shall comply with Article 5 of this Regulation. They shall make all information on underlying exposures transferred or assigned to the SSPE available to potential investors before pricing **on their request**. The originator, sponsor and SSPE shall make the information required by points (b) to (de) of Article 5(1) of this Regulation available before pricing at least in draft or initial form. 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 STS SECURITISATION

#### *Article 11*

##### Simple, transparent and standardised ABCP securitisation

An ABCP transaction shall be considered STS where it complies with the transaction level requirements in Article 12.

An ABCP programme shall be considered STS where it complies with the requirements in Article 13 and the sponsor of the ABCP programme complies with the requirements in Article 12a.

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.



- 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. It shall ~~and is not~~ be subject to severe clawback provisions in the event of the seller's insolvency, **which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller's insolvency or provisions where the SSPE can only prevent such invalidation if it can prove that it was not aware of the insolvency of the seller at the time of sale. Clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in case of fraudulent transfers, unfair prejudice to creditors or of transfers intended to improperly favour particular creditors over others, shall not constitute severe clawback provisions.**

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 that 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 that perfection shall, 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(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 been declared insolvent or had a court grant his creditors a final non-appealable 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 with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:
    - (i) a restructured underlying 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; and
    - (ii) the information provided by the originator, sponsor and SSPE in accordance with Article 5, paragraph 1, points (a) and (e)(i) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring;

- (b) was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or other credit registry that is available to the originator or original lender;
  - (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 shall have, at the time of transfer of the exposures, made at least one payment, except in the case of revolving securitisations backed by personal overdraft facilities, credit-card receivables, trade receivables and dealer floorplan finance loans or securitisations 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 or interest rate risk. Those derivatives shall be underwritten and documented in accordance with 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 exposures substantially similar to those being securitised to potential investors 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 exposures substantially similar 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 trade receivables, pools of corporate 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 of underlying exposures shall only comprise one asset type.

The pool of underlying exposures shall have a remaining weighted average life of not more than one year and none of the underlying exposures shall have a residual maturity of longer than three years, except for pools of auto loans, auto leases and equipment lease transactions which shall have a remaining exposure weighted average life of not more than **three and a half**~~four~~ years and none of the underlying exposures shall have a residual maturity of longer than ~~seven~~ **six** years.

The underlying exposures shall not include loans secured by residential or commercial mortgages or fully guaranteed residential loans, as referred to in point (e) of Article 129(1) 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 **Article 4(1), point 44 of Directive 2014/65/EU other than corporate bonds, provided that they are not listed on a trading venue.**

3. Any referenced interest payments under the ABCP 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 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. Principal 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 require that amount is trapped in order to be 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 not less stringent than those that the seller applies to origination of similar exposures that are not securitised. Material changes in underwriting standards shall be disclosed to the sponsor and other parties directly exposed to the ABCP transaction without undue delay. The seller shall have experience in originating exposures of a similar nature to those securitised.

6. Where an ABCP transaction is a revolving securitisation, the 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.
  
7. The transaction documentation shall clearly specify:
  - (a) the contractual obligations, duties and responsibilities of the sponsor, the servicer 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.

## 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 those 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(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.

5. Article 5 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 point (a) of Article 5(1), available to investors, such information being updated on a quarterly basis ;
  - (b) make the information required by points (b) to (e) of Article 5(1) of this Regulation, available, ~~where permissible under Article 3 of Directive 2003/71/EC, in a timely manner.~~
6. In the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry, the liquidity facility shall be drawn down and the maturing securities shall be repaid.



## Article 13

### Programme level requirements

1. All transactions within an ABCP programme shall fulfil the requirements of Article 12 (1a), (1b), (1c), (1d), (1h), (1i), (1j), (3), (4), (5), (6) and (7).

At all times, at least ~~98~~**95**% of the aggregate amount of the exposures underlying the ~~of~~ all transactions within an ABCP programme and which are funded by the programme shall fulfil the requirements of Article 12 (1e), (1f), (1g) and (2).

For the purpose of the second subparagraph, a sample of the underlying exposures shall regularly be subject to external verification of compliance by an appropriate and independent party, such as a statutory auditor as defined in Directive 2006/43/EC, with a confidence level of 95%.

- 1a. The remaining weighted average life of the underlying exposures of an ABCP programme shall not be more than two years.
2. *deleted*
- 2a. The ABCP programme shall be fully supported by a sponsor in accordance with Article 12a (2).
3. The ABCP programme shall not contain any re-securitisation and the credit enhancement shall not establish a second layer of tranching at the programme level.
4. *deleted*
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 arising at ABCP programme level shall be appropriately mitigated and any 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 who shall have experience 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.
- 7a. The servicer shall have experience in servicing exposures of a similar nature to those securitised and shall have well documented policies, procedures and risk management controls relating to the servicing of exposures.
8. *deleted*

## SECTION 3

### *STS notification*

#### *Article 14*

##### *STS notification requirements and ESMA website*

1. The originator, sponsor and SSPE 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 ('STS notification'). The STS notification shall include an explanation by the originator, sponsor and SSPE of how each of the STS criteria set out in Articles 8 to 10 or Articles 12 and 13 has been complied with. ESMA shall publish the STS notification on its official website pursuant to paragraph 4 of this Article. The originator, sponsor and SSPE shall also inform their competent authorities and shall designate amongst themselves one entity to be the first contact point for investors and competent authorities.
  - 1a. Where the originator, sponsor and SSPE use the service of a third party authorised pursuant to Article 14a to assess whether a securitisation complies with Articles 7 to 10 or Articles 11 to 13, the STS notification shall include a statement that the compliance with the STS criteria was confirmed by that authorised third party. The notification shall include the name of the authorised third party, its place of establishment 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 points (1) and (2) of Article 4(1) of Regulation No 575/2013 established in the Union, the notification pursuant to paragraph 1 of this Regulation 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 in accordance with Article 5a of this Regulation.
  - (b) confirmation by the originator or original lender as to whether the elements mentioned in 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.
4. ESMA shall maintain a list of all securitisations for which the originators, sponsors and SSPEs have notified that **the securitisation** ~~they~~ meets the requirements of Articles 7 to 10 or Articles 11 to 13 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 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 in relation to the securitisation concerned.

5. ESMA, in close cooperation with EBA and EIOPA, shall develop draft implementing technical standards specifying the format which the information referred to in paragraph 1 and shall provide the format by means of standardised templates.

ESMA shall submit those draft implementing technical standards to the Commission by [three months after entry into force of this Regulation].

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

*Article 14a*

Third party verifying STS compliance

1. A third party referred to in Article 14(1a) shall be authorised **by** 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. The competent authority shall grant the authorisation if the following conditions are met:
  - (a) the third party only charges non-discriminatory and cost-based fees to the originators, sponsors or SSPEs involved in the securitisations which the third party assesses without differentiating fees depending on, or correlated to, the results of its assessment;
  - (b) the third party is **neither** a regulated entity as defined in Article 2(4) of Directive 2002/87/EC **nor a credit rating agency as defined in Article 3(1) point (b) of Regulation (EC) No 1060/2009**, and the performance of the third party's other activities shall not compromise the independence or integrity of its assessment;
  - (ba) the third party shall not provide any form of advisory, audit or equivalent service to the originator, sponsor or SSPE involved in the securitisations which the third party assesses;
  - (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 at least one third, but no less than two, independent directors;
- (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 identify and prevent potential conflicts of interest. Potential or existing conflicts of interest which have been identified shall be eliminated or mitigated and disclosed without delay. The third party shall establish, maintain, enforce and document adequate procedures and processes to ensure the independence of the assessment of STS compliance. The third party shall periodically monitor and review those policies and procedures in order to evaluate their effectiveness and assess whether it is necessary to update them; and
- (f) the third party can demonstrate that it has proper operational safeguards and internal processes that enable it to assess STS compliance.

The competent authority shall withdraw the authorisation when **it considers the** ~~an~~ third party **to be materially non-compliant** ~~no longer complies~~ with the above conditions.

- 1a. A third party authorised in accordance with paragraph 1 shall notify its competent authority without delay of any material changes to the information provided under that paragraph, or any other changes that could reasonably be considered to affect the assessment of its competent authority.

2. 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.
3. ESMA shall develop draft regulatory technical standards specifying the information to be provided to the competent authorities in the application for the authorisation of a third party in accordance with paragraph 1.

ESMA 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 1095/2010.



## Chapter 4

### Supervision

#### *Article 15*

##### Designation of competent authorities

1. Compliance with the obligations set out in Article 3 of this Regulation shall be supervised 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 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 point (g) of Article 6 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.

2. Competent authorities responsible for the supervision of sponsors in accordance with Article 4 of Directive 2013/36/EU shall supervise compliance by sponsors with the obligations set out in Articles 4, 5 and 5a of this Regulation.
3. Where originators, original lenders and SSPEs are supervised entities in accordance with Directive 2013/36/EU 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 shall supervise compliance with the obligations set out in Articles 4, 5 and 5a of this Regulation.
4. For originators, original lenders and SSPEs **established in the Union and** not covered by the Union legislative acts referred to in paragraph 3, Member States shall designate one or more competent authorities to supervise compliance with Articles 4, 5 and 5a. 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*]. **This obligation shall not apply with regard to corporates selling exposures under an ABCP programme or another securitisation transaction or scheme.**
- 4a. Member States shall designate one or more competent authorities to supervise compliance **of originators, sponsors and SSPEs** with Articles 6 to 14, and **compliance of third parties with Article** 14a. 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 of this Article shall not apply with regard to corporates selling **receivables exposures** under an ABCP programme or another securitisation transaction or scheme. In such a case, the originator or sponsor shall verify that those corporates fulfil the relevant obligations set out in Articles 6 to 14.
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 (1) to (4a) has the supervisory, investigatory and sanctioning powers necessary to fulfil its duties under this Regulation.
2. The competent authority shall ~~ensure~~**require** a regular review of 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 securitisations 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(3) to (8), Article 9(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(7) and (8).

3. Competent authorities shall require 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, 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 ~~or~~ and SSPE ~~has~~ve failed to meet the requirements of Article 6;
  - (bb) an originator, sponsor or original lender has failed to meet the requirements of Article 5a;
  - (c) an originator, sponsor and SSPE have failed to meet the requirements of Articles 7 to 10 or Articles 11 to 13;
  - (d) an orginiator or original lender has failed to meet the requirements of Article 14(2);
  - (e) an originator, sponsor and SSPE have failed to meet the requirements of Article 14(3).
  - (f) A third party authorised pursuant to Article 14a has failed to notify material changes to the information provided under Article 14a(1), or any other changes that could reasonably be considered to affect the assessment of its competent authority.

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 sanctions and measures in the event of the breaches referred to in paragraph 1:
  - (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 exercising management functions in such undertakings;
  - (d) in case of the infringement referred to in point (ba) or (c) of paragraph 1 of this Article a temporary ban for the originator, sponsor and SSPE to notify under Article 14(1) that a securitisation meets the requirements set out in Articles 7 to 10 or Articles 11 to 13;
  - (e) in the case of a natural person, maximum administrative pecuniary sanctions 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) in the case of a legal person, maximum administrative pecuniary sanctions 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] 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 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) 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.
3. Where the provisions referred to in the first paragraph apply to legal persons, Member States shall provide for 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 right of appeal.

## 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 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, shall take into account all relevant circumstances, including the extent to which 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 by the total turnover of the responsible legal person or the annual income 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) the 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 of this Article, to lay down criminal sanctions for the infringement referred to Article 17(1), 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 as well as 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 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.
- 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-jurisdictional assessments in case of any disagreements.
2. *deleted*
3. Where a competent authority finds that **one or more of the requirements under Articles 4 to 14 of** this Regulation ~~have~~ been infringed or has reason to believe so, it shall inform the competent authority of the entity or entities suspected of such infringement of its findings in a sufficiently detailed manner.

4. Where the infringement referred to in paragraph 3 of this Article concerns, in particular, an incorrect or misleading notification pursuant to Article 14(1) of this Regulation, the competent authority finding that infringement shall notify without delay, the competent authority **of the entity designated as the first contact point under Article 14(1) of its findings. The competent authority of the entity designated as the first contact point under Article 14(1) shall in turn inform**~~of the originator, sponsor and SSPE, as well as ESMA, EBA and EIOPA of its findings.~~ **and shall inform and ensure coordination with the other competent authorities concerned in line with paragraphs 5 to 5d.**

5. Upon receipt of the information referred to in paragraph 3, the competent authority **of the entity suspected of the infringement** shall take within 15 working days any necessary action to address the infringement identified and notify the other competent authorities concerned, in particular those of the originator, sponsor and SSPE and the competent authorities of the holder of a securitisation position, when known.

**By derogation to the first subparagraph, where paragraph 4 applies, the competent authority of the entity designated as the first contact point shall assess with the other competent authorities concerned, in particular those of the originator, sponsor and SSPE and the competent authorities of the holder of a securitisation position when known, what action is necessary with regard to any of the entities having made the notification in accordance with article 14(1) and the competent authorities of those entities shall take the necessary actions within 15 working days. The competent authority of the entity designated as the first contact point shall ensure that the other competent authorities concerned are informed without delay of the measures taken.**

In case the ~~concerned~~ competent authorities **concerned** agree that the infringement is related to non-compliance with Article 6 in good faith, they may decide to grant the originator, sponsor and SSPE a period of up to 3 months to remedy the identified infringement, starting from the day the originator, sponsor and SSPE were informed of the infringement by the competent authority. During this period, 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 and shall be maintained on such list.

In case one or more of the competent authorities concerned is of the opinion that the infringement is not appropriately remedied within the period set out in subparagraph 23, subparagraph 1 shall apply.

- 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 within 5 working days. Within the same period 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 within an additional 15 working days.

**By derogation to the first subparagraph, where paragraph 4 applies, 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 of the entity designated as the first contact point of their findings in a sufficiently detailed manner within 5 working days. The competent authority of the entity designated as the first contact point shall inform without delay the other competent authorities concerned as well as ESMA, EBA and EIOPA. 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 within an additional 15 working days.**

- 5b. In case of persistence of disagreement between competent authorities, the competent authority of the entity suspected of an infringement **and the other competent authorities concerned shall do everything within their powers to reach a joint decision on the measures to be taken.**

**In the absence of a joint decision within 15 working days, the competent authority of the entity or entities suspected of such infringement** referred to in paragraph 3 shall make its own decision.

By derogation to ~~the first subparagraph 2~~, where such an infringement concerns an incorrect or misleading notification pursuant to Article 14( ~~paragraph 1~~) of this Regulation, **in the absence of a joint decision within 15 working days**, the decision of the competent authority of the entity referred to in the last sentence of **designated as the first contact point under** Article 14(1) shall apply.

- 5c. In the event that any of the competent authorities concerned disagrees with the decision made in accordance with paragraph 5b of this Article, it may refer the matter to ESMA and the procedure of Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010 shall apply.

**A conciliation period of 1 month shall apply in accordance with Article 19(2) of Regulation (EU) No 1095/2010.**

**If the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in subparagraph 2,** 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 of this Article, a securitisation appearing on the list maintained by ESMA pursuant to Article 14 shall continue to be considered as STS pursuant to Chapter 3 **and shall be maintained on such list.**
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 paragraphs 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

1. Member States shall ensure that competent authorities publish without undue delay on their official websites at least any decision imposing an administrative sanction against which there is no appeal and which are imposed for infringement of Articles 4, 5, 5a or 14(1) of this Regulation after the addressee of the sanction 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 imposed.
3. Where the publication of the identity, in case of legal persons, or of the identity and 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 until the moment where the reasons for non-publication cease to exist; or
  - (b) publish the decision imposing the administrative sanction on an anonymous basis, in accordance with national law; or

- (c) not publish at all the decision to impose the administrative sanction 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 on an anonymous basis, the publication of the relevant data may be postponed. Where a competent authority publishes a decision imposing an administrative sanction against which there is 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 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 of all administrative sanctions imposed, including, where appropriate, any appeal in relation thereto and the outcome thereof.
- 7. ESMA shall maintain a central database of administrative sanctions communicated to it. 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

### Amendments

#### *Article 23*

Amendment to Directive 2009/65/EC

Article 50a of Directive 2009/65/EC is replaced by the following:

UCITS management companies or internally managed UCITS shall act in the best interest of the investors in the relevant UCITS and take corrective action, if appropriate, where they discover, after the assumption of an exposure to a securitisation, that the securitisation does not meet the requirements laid down in Regulation [STS], especially that the determination and disclosure of the retained interest did not meet the requirements laid down in Regulation [STS].

#### *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 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];".

(5) Article 8b is repealed.

(6) In Articles 4(3)(b) and 5(6)(b) the reference to Article 8b is deleted.

(7) In Article 39(5), point (a) is deleted.

### *Article 26*

#### Amendment to Directive 2011/61/EU

Article 17 of Directive 2011/61/EU is replaced by the following:

"AIFMs shall act in the best interest of the investors in the relevant AIF and take corrective action, if appropriate, where they discover, after the assumption of an exposure to a securitisation, that the securitisation does not meet the requirements laid down in Regulation [STS], especially that the determination and disclosure of the retained interest did not meet the requirements laid down in Regulation [STS]."

## 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 the 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 a 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 Article 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 the 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 are complied with, subject to the following:
  - (a) in Article 10, paragraph 2 “prior to issuance” shall be deemed to read “prior to notification under Article 14, paragraph 1”;
  - (b) in Article 10, paragraph 3 “before the pricing of the securitisation” shall be deemed to read “prior to notification under Article 14, paragraph 1”;
  - (c) in Article 10, paragraph 4 the first instance of “before pricing” shall be deemed to read “prior to notification under Article 14, paragraph 1”. The reference to “before pricing at least in draft or initial form” shall be deemed to read “prior to notification under Article 14, paragraph 1” and the requirement contained in the final sentence shall not apply. References to compliance with the requirements of Article 5 shall be construed as if Article 5 applied to those securitisations notwithstanding Article 28, paragraph 1.

3. In respect of securitisations the securities of which were issued on or after 1 January 2011 but before the entry into force of this regulation and in respect of securitisations issued before 1 January 2011 where new underlying exposures have been added or substituted after 31 December 2014, the due diligence requirements as laid down in Regulation (EU) No 575/2013, Commission Delegated Regulation (EU) 2015/35 and Commission Delegated Regulation (EU) No 231/2013 respectively shall continue to apply in the version applicable on [day before date of entry into force of this Regulation].
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), points (1) and (2) of Regulation (EU) No 575/2013, 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 point (b) of Article 4(1) 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*].

During the transition period referred to in subparagraph 1, 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 shall not be repealed.

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 SSPEs 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.
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 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 considering the eligibility of synthetic securitisations as STS securitisations and, as the case may be, shall set out in that report 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 [three years after entry into force of this Regulation] **at the latest**, 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.

**In addition, the report shall in particular assess the appropriateness of the third party verification regime as laid down in Articles 14 and 14a, and whether the authorisation regime for third parties in Article 14a fosters sufficient competition among third parties and has not created oligopolistic structures, ensures an appropriate alignment of liabilities and considers whether changes in the supervisory framework should be introduced in order to ensure financial stability.**



*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*

*The President*

*For the Council*

*The President*

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