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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)

{SWD(2015) 185 final}
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EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Reasons for and objectives of the proposal

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[1]. A high-quality framework for EU securitisation can promote integration of EU financial markets, help diversify funding sources and unlock capital, making it easier for credit institutions and lenders to lend to households and businesses.

In its Work Programme for 2015[2], the European Commission set out focused actions with 10 priorities and announced as part of the priority to develop a deeper and fairer Internal Market with a strengthened industrial base that it would put in place an EU framework for simple, transparent and standardised securitisation. In the Investment Plan for Europe presented by the Commission on 26 November 2014, creating a sustainable market for securitisation, without repeating the mistakes made before the crisis, was identified as one of the five areas where short-term action was needed[3].

Securitisation refers to transactions that enable a lender or other originator of assets – typically a credit institution – to refinance a set of loans or assets (e.g. mortgages, auto leases, consumer loans, credit cards) by converting them into securities. The lender or originator organises a portfolio of its loans into different risk categories, tailored to the risk/reward appetite of investors. Returns to investors are generated from the cash flows of the underlying loans. These markets are not aimed at retail investors.

Securitisation is an important element of well-functioning capital markets. Soundly structured securitisation can be an important channel for diversifying funding sources and allocating risk more efficiently within the EU financial system. It allows for a broader distribution of financial sector risk and can help to free up credit institutions' 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 finance mortgages and credit cards) and provide relevant investors with exposure to asset classes decoupled from the credit risk of the originator.

Following the US subprime crisis in 2007-08, public authorities took a number of steps to make securitisation transactions safer and simpler, and to ensure that appropriate incentives are in place to manage risk – including through higher capital requirements, due diligence and conduct of business requirements as well as and mandatory risk retention requirements to ensure that securitised products are not being created solely for the purpose of distribution to investors, as was prevalent in the run-up to the 2008 financial crisis (a so-called 'originate to distribute' model).[4] These reforms were necessary to ensure financial stability. As a result of these reforms, all securitisations in the EU are now strictly regulated.

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1 See President Juncker's political guidelines, available at http://ec.europa.eu/priorities/docs/pg_en.pdf

2 COM(2014) 910 final.

3 COM/2014/0903 final.

4 Since 2011, EU credit institutions and investment firms acting as investors have been obliged to check that originating banks or sponsors of securitisations have retained an economic interest in the

Since the beginning of the financial crisis, European securitisation markets have remained subdued. This is in contrast to markets in the US which have recovered. This is despite the fact that unlike the US, EU securitisation markets withstood the crisis relatively well, with realised losses on instruments originated in the EU having been very low compared to the US. For example, AAA-rated US securitisation instruments backed by residential mortgages (RMBS) reached default rates of 16% (subprime) and 3% (prime). By contrast, default rates of EU RMBS never rose above 0.1%. The divergence is even bigger for BBB-rated products where US RMBS' default rates peaked at 62% and 46% (subprime and prime, respectively) while EU products' default rates peaked at 0.2%.

While securitisation markets in the US have different characteristics to those in the EU and the individual national constituent markets, which each have varying degrees of fragmentation and efficiency, their stronger recovery is at least in part due to the role of public sponsorship. Almost 80% of securitisation instruments in the US benefit from public guarantees from the US Government Sponsored Enterprises (e.g. Fannie Mae and Freddy Mac). Banks investing in these products consequently also benefit from lower capital charges under the US regulatory regime.

This proposal is based on what has been put in place in the EU to address the risks inherent in highly complex, opaque and risky securitisation. Focusing on better differentiation and the development of transparent, simple and standardised securitisation is a natural next step to build a sustainable EU market for securitisation, supporting both EU investment and proper risk management. Thus this legislative proposal aims to:

(1) restart markets on a more sustainable basis, so that simple, transparent and standardised securitisation can act as an effective funding channel to the economy;

(2) allow for efficient and effective risk transfers to a broad set of institutional investors as well as banks;

(3) allow securitisation to function as an effective funding mechanism for some longer term investors as well as banks;

(4) protect investors and manage systemic risk by avoiding a recurrence of the flawed "originate to distribute" models.

In terms of building a market for simple, transparent and standardised securitisation, the first step is to identify sound instruments based on clear eligibility criteria. The second step is to adjust the regulatory framework to allow a more risk-sensitive approach.

There is no intention to undo what has been put in place in the EU to address the risks inherent in highly complex, opaque and risky securitisation. However, this proposal will help to better differentiate simple, transparent and standardised products. This framework should provide confidence to investors and a high standard for the EU, to help parties evaluate the risks relating to securitisation (both within and across products). However, a new EU framework does not replace the need for investors to conduct thorough due diligence. It also does not control for credit risk in the securitised loans – investors have the full range of investment possibilities to suit their risk-reward preferences available to them. The concept of 'simple, transparent and standardised' (STS) refers to the process by which the securitisation is structured and not the underlying credit quality of the assets involved. It therefore does not

transaction equivalent to at least 5% of the securitised assets. This approach was subsequently extended to the insurance sector and part of the asset management sectors.

mean that some non STS securitisations, for instance implying less simple structures, could not be formed of underlying exposures with appropriate credit quality features.

In its conclusions of its meeting of 25 and 26 June 2015, the European Council noted that securitisation can provide an effective mechanism to transfer risk from credit institutions to non- credit institutions, thus increasing the former's capacity to lend, but also to channel non-credit institution financing towards the working capital of companies. The European Council called on the Commission to propose a framework for STS securitisation, building on the numerous ongoing initiatives at European and international levels, as a matter of priority at the latest by the end of 2015.

In its July 2015 Resolution on CMU of the European economy, the European Parliament noted that the development of simple, transparent and standardised securitisation should be exploited better and welcomed the initiative to establish a sustainable, transparent securitisation market by developing a specific regulatory framework with a uniform definition of high-quality securitisation, combined with effective methods for monitoring, measuring and managing risk. This proposed Regulation distinguishes between provisions applicable to STS securitisations and those applicable to STS and non-STS securitisations.

Consistency with existing policy provisions in the policy area

Currently, the framework for EU securitisation is determined by a large number of EU legal acts. These include the Capital Requirements Regulation for banks[5], the Solvency II Directive[6] for insurers, and the UCITS[7] and AIFMD[8] directives for asset managers. Legal provisions, notably on information disclosure and transparency, are also laid down in the Credit Rating Agency Regulation[9] (CRAIII) and in the Prospectus Directive[10]. There are also elements related to the prudential treatment of securitisation in Commission legislative proposals currently under negotiation (Bank Structural Reform and Money Markets Funds).

Provisions are also included in delegated acts. The EU has already taken steps to create a differentiated regulatory treatment in two delegated acts covering the prudential requirements for insurers (under the Solvency II Directive[11]), and the liquidity of credit institutions (through the Liquidity Coverage Ratio Regulation[12]). This approach helps to better differentiate simple, transparent and standardised products from the more opaque and

5 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (*OJ L 176, 27.6.2013, p. 1*).

6 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) (*OJ L 335, 17.12.2009, p. 1*).

7 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).*

8 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).*

9 Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, *(OJ L 302, 9 17.11.2009, p. 1).*

10 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. 64–89).*

11 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*).

12 Commission Delegated Regulation of 10 October 2014 to supplement Regulation (EU) 575/2013 with regard to liquidity coverage requirement for Credit Institutions *(OJ L 11, 17.1.2015, p; 1).*

complex. This can make some securitisations more attractive by lowering barriers to the securitisation process and by improving liquidity and market depth. However, this differentiation does not replace the need for investors' due diligence. The adoption of these delegated acts in 2014 were preliminary steps that now need to be complemented by further action, building on the range of EU and international initiatives towards convergence of regulatory standards.

A substantial amount of policy work has recently been devoted to securitisation by a number of international and European public authorities. This proposal builds on those initiatives.

At the global level, the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) have been jointly leading a cross-sectorial Task Force on the impediments to securitisation. Its main task has been to develop criteria to identify simple, transparent and comparable securitisation instruments. The group issued a set of global criteria on 23 July 2015[13].

In December 2014, the BCBS published revised standards related to the capital treatment of banks investing in securitisation. The Committee will also consider in the coming months if and how to incorporate the criteria being developed by the BCBS-IOSCO Task Force for simple and transparent securitisation into the securitisation capital framework.

At the EU level, in response to the slow recovery of securitisation markets, a number of public authorities have been looking at the issue. For example, the European Central Bank (ECB) and the Bank of England (BoE) launched a public consultation in May 2014 on the case for a better functioning securitisation market in the European Union.

Following a request from the Commission in January 2014, the European Banking Authority (EBA) finalised on 7 July 2015 an advice to the Commission on a framework for qualifying securitisation. It proposes criteria for defining simple, standard and transparent securitisation transactions including a specific set of elements for short term securitisations, asset backed commercial paper (ABCP). The EBA also suggested a more risk-sensitive prudential treatment for long-term securitisation instruments, as well as for ABCP adjusting the capital charges proposed in the 2014 Basel securitisation framework to recognise the relative lower riskiness of STS securitisation, while keeping regulatory capital within the perimeter of a prudential surcharge.

Finally, the Joint Committee of the European Supervisory Authorities looked at the existing EU framework with respect to disclosure requirements and obligations relating to due diligence, supervisory reporting and risk retention. The Joint Committee also examined possible inconsistencies in the current framework. A detailed report was published on 12 May 2015.

Consistency with other Union policies

This proposed Securitisation Regulation supports the Investment Plan for Europe put forward by the Commission in 2014 and to address the main obstacles to investment. This new approach would help address the current shortage of real economy financing in the EU.

This initiative is part of the CMU action plan adopted by the European Commission today. The CMU is one of the Commission's priorities to ensure that the financial system supports

[13] Available at http://www.bis.org/bcbs/publ/d332.htm

jobs and growth and helps with the demographic challenges that Europe faces. It aims at better link savings with growth and provide more options and better returns for savers and investors. It intends to offer businesses more funding choices at different stages of their development and to channel investment to where it can be used most productively, increasing the opportunities for Europe's companies and infrastructure projects.

The Commission published a Green Paper on Building the CMU consulting from 18 February to 13 May 2015. The feedback of the majority of respondents confirmed the areas identified in the Green Paper for boosting Europe's capital markets.[14] Developing an EU framework to promote simple and transparent securitisation was also endorsed by stakeholders and detailed views were put forward as part of a separate consultation.

Aside from the Investment Plan for Europe and financial regulatory initiatives, several EU institutions and bodies have taken initiatives to restart securitisation markets and increase confidence from a market functioning perspective. The Commission, in association with the European Investment Bank and the European Investment Fund, is working to help finance SMEs, for example under the COSME programme and the joint Commission-EIB initiatives through the use of securitisation vehicles.

In the second half of 2014, the ECB launched an Asset-Backed Securities Purchase Programme (ABSPP) that aims to further enhance the transmission of monetary policy. Taken together with other monetary measures (Targeted Longer-Term Refinancing Operations (TLTRO), Covered Bond Purchasing Programme (CBPP), the Public Sector Purchase Programme (PSPP) intends to facilitate credit provision to the euro area economy. The operational details of the programme, adopted on 2 October 2014, set out what ABS the ECB can buy. The criteria mainly reflect the ECB's existing collateral framework for refinancing operations. They are broadly consistent with the current criteria of the Commission delegated acts, and with this proposal.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

This proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU) which is the legal basis for measures for the approximation of provisions laid down by law, regulation or administrative action in Member States which have their object the establishment and functioning of the internal market.

This legal basis has also been used by the EU legislator for the adoption of the Capital Requirements Regulation (CRR) (Regulation (EU) No 575/2013), the Credit Rating Agencies Regulation (CRAIII) (Regulation (EU) 1060/2009), and Regulation (EU) 648/2012 (on OTC derivatives, central counterparties and trade repositories), the provisions of which are included in or amended by this Regulation.

This proposal also amends certain provisions of the Solvency II Directive and repeals provisions of the UCITS and the AIFM Directives. These Directives are based on Article 53 in combination with Article 62 of the Treaty. Although the legal basis of these provisions is not, as for this proposal, Article 114 of the Treaty, if the provisions at stake would have been adopted separate from these Directive, their legal basis would have been Article 114 TFEU. Their main object is the establishment and functioning of the internal market, in particular by

[14] See [link to feedback statement to be inserted].

ensuring a level playing field in the internal market for investors and issuers dealing with securitisation.

Subsidiarity (for non-exclusive competence)

The objective of this proposal is to restart a sustainable securitisation market that will improve the financing of the EU economy, while ensuring financial stability and investor protection. To do this the market the proposal aims to provide a regulatory platform upon which investor confidence can be built, to create more consistency and standardisation in the market and to put in place a more risk-sensitive regulatory framework (via amendment of the CRR and the Solvency II delegated act).

Securitisation products are part of EU financial markets that are open and integrated. Securitisation links financial institutions from different Member States and non-Member States: often banks originate the loans that are securitised, while financial institutions such as insurers and investment funds invest in these products and they do so across European borders, but also globally. The securitisation market is therefore international in nature.

Member States cannot by themselves take action sufficient to restart securitisation markets. The EU has advocated for standards at international level to identify simple, transparent and standardised (STS) securitisation. Such standards will help investors to identify categories of securitisations whose underlying risks can more easily and transparently be analysed.

Implementation of these international standards by Member States could lead to divergent approaches, creating a de facto barrier for cross-border investors and undermine investor confidence in the STS standard. Moreover, a more risk-sensitive prudential framework for STS securitisation requires the EU to define what STS securitisation is, since otherwise the more risk sensitive regulatory treatment for banks and insurance companies could be available for different types of securitisations in different Member States. This would lead to an un-level playing field and to regulatory arbitrage. As regards the lack of consistency and standardisation EU law has already harmonised a number of elements on securitisation, in particular definitions, rules on disclosure, due diligence, risk retention and prudential treatment for regulated entities investing in these products. Those provisions have been developed in the framework of different legal acts (CRR, Solvency II, UCITS, CRA Regulation, and AIFMD) which has led to certain discrepancies in the requirements that apply to different investors. Increasing their consistency and further standardisation of these provisions can only be achieved at Union level.

The action sends a clear and consistent signal throughout the EU that certain securitisations performed well even during the financial crisis, that they can be useful investments for different types of professional investors for which regulatory barriers (lack of an appropriate prudential treatment, inconsistent treatment across financial sectors) should be removed. Action at national level cannot effectively create a more risk-sensitive treatment for securitisations, since the prudential treatment is already laid down in EU law, nor can it ensure consistency and standardisation of those provisions that are currently covered by different EU legal acts such as those regarding disclosure, due diligence and risk retention.

Proportionality

The policy options chosen are the introduction of criteria for STS securitisation that apply to long and short term (including ABCP) securitisation. The responsibility for ensuring compliance with these criteria lies primarily with originators and sponsors who should ensure that an STS securitisation meets the STS criteria notified to ESMA. Investors should perform

appropriate due diligence before investing in STS securitisations, placing appropriate reliance on the STS notification and on the information disclosed by the originator, sponsor and the Securitisation Special Purpose Entity (SSPE). The approach is reinforced by supervisory oversight, cross border supervisory coordination and a sanctioning mechanism. The EU framework will provide rules on transparency, due diligence and risk retention rules.

At the same time, market participants are not obliged to issue and invest in STS securitisations: originators can still create non-STS securitisations or securitisations that are more simple, transparent and standardised then the STS criteria require. The drafting of the STS criteria has sought to align them with the existing criteria in the Liquidity Coverage Ratio (LCR) and the Solvency II delegated acts[15] and that of the BCBS/IOSCO and EBA.

As regards compliance with the STS requirements the most suitable mechanism identified is to ensure responsibility rests with originators and investors, kept in check by supervisory oversight. The latter are able to monitor market developments and check that a transaction fulfils all STS requirements and impose sanctions, where needed. On the one hand the financial crisis has shown that in the past investors have relied too much on third parties, such as credit rating agencies. This overreliance on third parties weakened due diligence by investors. This was also partially the result of regulatory reference to third parties ('hardwiring'), which should therefore be avoided. In this proposal, although third parties can on a voluntary basis still play an important role, the onus of due diligence remains on originators and investors. On the other hand, an ex-ante regulatory involvement of supervisors stating that a securitisation meets the STS requirements would shift the responsibility to public authorities leading to moral hazard risks, whereas originators, sponsors and SSPEs should take the responsibility.

Finally, the EU securitisation framework is drafted where relevant in line with the existing definitions and provisions in Union law on disclosure, due diligence and risk retention. This will ensure that the market can continue to function on the basis of the existing legal framework where that framework is not amended, so to not unnecessarily increase costs and create regulatory disruption. It will also continue to ensure investor protection, financial stability, while contributing to the maximum extent possible to the financing of the EU economy. Where necessary for the purpose of creating a harmonised EU framework changes have been made.

The harmonisation of the existing legal framework at EU level cannot by itself standardise all processes and practises in securitisation markets. For that reason the proposal calls upon market participants to work on further standardisation of market practices. For example, the public consultation revealed that further standardisation of documentation of securitisations by market participants themselves, as for instance done by the Dutch Securitisation Association (DSA), is promising. This approach could be extended to other Member States and asset classes in order to further standardise securitisation practices and thus decrease costs for all market participants as well as facilitate investments in securitisations. The Commission calls on market participants and their professional associations to start work on further standardisation and it will monitor and provide assistance where necessary.

In the Impact assessment proportionality is further discussed in particular in section 4.4.

[15] See note 16 and 17

Choice of the instrument

This proposal aims at creating a sustainable market for STS securitisation. To this end the proposal stipulates the criteria to be met by securitisations and provides the necessary supervisory framework and brings together the existing provisions in EU law on securitisation related to risk retention, disclosure and due diligence.

The STS criteria should be uniform across the EU. Comparable criteria with a more limited scope are currently in place in two delegated regulations adopted by the Commission (the LCR and Solvency II delegated acts). In addition, the substantial rules on disclosure, risk retention and due diligence are laid down in a number of different EU regulations (CRR, Solvency II delegated act, the CRA delegated Regulation and the AIFM delegated Regulation).

Article 114(1) TFEU provides the legal basis for a Regulation creating uniform provisions aimed at improving the functioning of the internal market. The criteria for STS securitisation and the harmonisation of the existing provisions in EU law on securitisation related to risk retention, disclosure and due diligence will underpin the correct and safe functioning of the internal market. A directive would not lead to the same results, as implementation of a Directive might lead to divergent measures being adopted at national level, which could lead to distortion of competition and regulatory arbitrage. Moreover, the majority of EU provisions already in place in this area have been adopted in the form of Regulations.

The creation of this legal framework requires the adoption of a number of legal acts. First, a Securitisation Regulation that creates uniform definitions and rules across financial sectors, harmonising rules on risk retention, due diligence and disclosure. The same regulation stipulates the criteria for STS securitisation for all financial sectors, eligible asset classes and transaction structures as well as relevant market participants across sectors. This regulation should also repeal provisions in sectoral legislation that will become superfluous. Secondly, legal acts for a more risk-sensitive prudential treatment of securitisation for credit institutions are also proposed. For credit institutions the current prudential framework is laid down in CRR and for insurers in the Solvency II delegated act. A proposal for amending CRR should thus be adopted, while the Solvency II delegated act should also be amended once the legal framework for securitisation is adopted.

As regards the timing of these instruments, the different legal acts constitute one interlinked package, since for STS securitisation there will be a specific tailor-made prudential treatment. It is thus important that the Commission produces a comprehensive package that contains all relevant elements.

In order to ensure that the insurance regulatory framework for securitisation is compatible with the contents of this Regulation, a number of amendments to the Commission Delegated Regulation (EU) 2015/35 (Solvency II delegated act) are necessary. Firstly, its definitions regarding securitisation would have to be aligned with those in the present proposal. Secondly, due to the direct applicability of the risk retention and the due diligence requirements in the present proposal for a Regulation, the similar requirements from the Solvency II Delegated Regulation can be repealed after entry into force of this proposal. Finally, considering the broad support in the public consultation on the CMU Green Paper that the non-senior tranches of STS securitisation should also benefit from an adapted capital charge under Solvency II, with improved risk-sensitivity, the Commission will develop a new calibration. The methodology would follow a look-through approach based on the capital charge for the underlying exposures, increased by a non-neutrality factor to capture the model

risk of the securitisation. The capital charges of the underlying exposures would be based on the current calibrations in the Commission delegated act (EU) 2015/35 and the non-neutrality factor would be aligned with the average factors contained in advice given by EBA on 7 July 2015[16]. The methodology would result in a significant reduction of the capital charge for non-senior tranches of STS securitisation. Technical improvements will also be made to the methodology of calculation of the calibrations for the senior tranches. These changes to the calibrations will take the form of an amendment to the Commission delegated act (EU) 2015/35.

The Commission is empowered to already adopt at this moment these changes to the Solvency II Delegated Regulation. However, since the new calibrations will have to refer to this proposal and in particular the STS requirements, the necessary changes can only be adopted after adoption of this proposal. The Commission intends to ensure that the new calibrations in the insurance and banking sectors will apply as from the same data.

Finally, the current proposal will be followed at a later stage by a proposal to amend the LCR delegated act in order to align it with this Regulation. In particular the eligibility criteria for securitisations as Level 2B assets in Article 13 of that delegated act will be amended to make it consistent with the general STS criteria as laid down in this Regulation. Amendments of these delegated acts are not proposed at this stage. They follow a different procedure and depend on the outcome of the legislative negotiations on this package.

3. RESULTS OF STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Stakeholder consultations

A public consultation on a possible EU framework for simple, transparent and standardised securitisation was carried out between 18 February and 13 May 2015. 120 replies were received[17]. On the whole, the consultation indicated that the priority should be to develop an EU-wide framework for simple, transparent and standardised securitisation (see summary of replies in Annex 10 of the Impact Assessment referred to below).

Respondents generally agreed that the much stronger performance of EU securitisations during the crisis compared to US ones needs to be recognised and that the current regulatory framework needs modification. This would help the recovery of the European securitisation market in a sustainable way providing an additional channel of financing for the EU economy while ensuring financial stability.

The input from stakeholders was taken into account. A number of market participants expressed a preference for the establishment of private bodies to act as "certifiers" or "control bodies" for STS securitisations. They argued that the mandatory recourse to external parties could contribute to overcome the current stigma attached to securitisations and to build investors' confidence in STS securitisations. The optional involvement of third parties with an expertise in STS securitisation in helping to check compliance of a securitisation with the STS requirements may help both investors and originators in forming their opinion. However, as underlined by the majority of supervisory authorities in the public consultation, it is essential that investors continue to perform their own assessment as they are eventually responsible for their investment decisions. The Commission also believes that the more beneficial prudential

[16] Available at www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-14+Opinion+on+qualifying+securitisation.pdf

[17] Available at: http://ec.europa.eu/finance/consultations/2015/securitisation/index_en.htm

treatment in banking and insurance will give investors sufficient incentives to invest in STS securitisations.

Collection and use of expertise

The Commission has gained valuable insights through its participation in the discussions and exchange of views informing the BCBS-IOSCO joint task force on securitisation markets and through its involvement in the BCBS work on the review of the capital treatment. The Commission has also followed the work relating to key aspects of securitisation carried out by the Joint Committee of the European Supervisory Authorities (ESAs) as well as by its members separately (EBA, ESMA, EIOPA). Three public consultations, carried out in 2014 by ECB-BoE, BCBS-IOSCO and EBA respectively, have gathered valuable information on stakeholders' views on securitisation markets. In its own public consultation, the Commission has built on these, focusing on gathering further details on key issues. The Commission has met with public authorities, central banks, private sector representatives and the IMF. On the whole, these international level consultations confirm the views expressed in the Commission's own consultation, and provide some additional feedback on the relative merits of some of the proposed policy options.

Impact assessment

For the preparation of this proposal an Impact Assessment was prepared and discussed with an Interservice Steering Group. The Impact Assessment report was submitted to the Regulatory Scrutiny Board on 17 June 2015. The board meeting took place on 15 July 2015. The Board gave a positive opinion and called for changes and additional input in the following areas: current state of the securitisation market in the different Member States and likely effects of the initiative at this level; description of the link between identified problems and objectives of the initiative as well as its targets that can be realistically achieved; and overview of pros and cons in options' impact analysis. These issues have been addressed and incorporated in the final version which is available on the Commission website.Regulatory fitness and simplification

This proposal simplifies and harmonises the existing legal provisions applying to securitisations. It is not easy to provide reliable estimates on the additional financing an increase in securitisation markets could provide since it depends on a multitude of factors such as macroeconomic conditions and monetary policy, aggregated demand for credit, or developments in alternative funding channels. All of these are likely to change through time, affecting the final outcome. As an example, if the securitisation market would return to pre-crisis average issuance levels and new issuance would be used by credit institutions to provide new credit, these would be able to provide an additional amount of credit to the private sector ranging between €100-150bn. This would represent a 1.6% increase in credit to EU firms and households.

These financial instruments are not appropriate for retail investors due to the level of risks and inherent complexity. The policy options taken in this proposal should have several positive effects on SME financing (see annex 6 of the Impact Assessment report). First of all, it should help SME financing through two specific channels: SME lending, through SME ABS, and short-term lending, through simple and transparent ABCP conduits. Secondly, the initiative should provide banks with a tool for transferring risk off their balance sheets. This in turn means that banks should free up more capital that can then be used to grant new credit including SMEs. Finally, by introducing a single and consistent EU securitisation framework and encouraging market participants to develop further standardisation, the initiative should

reduce operational costs for securitisations. Since these costs are higher than average for the securitisation of SME loans, this decrease should have an especially beneficial effect on the cost of credit to SMEs.

Fundamental rights

Only the protection of personal data (Article 8), the freedom to conduct a business (Art. 16) and consumer protection (Art. 38) of the EU Charter of Fundamental Rights are to some extent relevant for this proposal. Limitations on these rights and freedoms are allowed under Article 52 of the Charter.

For this proposal, the general interest objective which justifies certain limitations of fundamental rights is the objective of ensuring market integrity and financial stability. The freedom to conduct a business may be impacted by the necessity to follow certain risk retention and due diligence requirements in order to ensure an alignment of interest in the investment chain and to ensure that potential investors act in a prudent manner. As regards protection of personal data the disclosure of certain loan level information may be necessary to ensure that investors are able to conduct their due diligence. It is however noted that these provisions are currently already in place in EU law. This proposal should not impact on consumers, since securitisations are not intended for consumers. However, for all classes of investors STS securitisation would enable better analysis of the risks involved which contributes to investor protection.

4. BUDGETARY IMPLICATIONS

This legislative proposal would have limited consequences on the EU budget. It will imply further policy development within the Commission and in the three ESAs. In addition specific coordination tasks with be assigned to the ESAs in ensuring a consistent implementation of the STS framework in the EU. A financial fiche is provided as an annex hereto.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Since the instrument proposed is a Regulation that is based to a significant extent on existing EU law, there is no need to prepare an implementation plan.

The Regulation includes monitoring and evaluation by the ESAs and by the Commission. First, EBA, in close cooperation with ESMA and EIOPA should publish a report on the implementation of the STS requirements, on the actions that supervisors have undertaken and on the material risks and new vulnerabilities which may have materialised during implementation and finally on the initiatives taken by market participants to foster standardisation in the EU securitisation market. In addition ESMA, in close cooperation with the two other ESAs, shall three years after the entry into force of this Regulation publish a report on the functioning of the transparency requirements and the level of transparency of the securitisation market in the EU.

Secondly, the Commission will review and report on the functioning of this Regulation four years after its entry into force and shall submit that report to the European Parliament and the Council together with a legislative proposal, where appropriate.

The Regulation will thus be subject to a complete evaluation in order to assess, among other things, how effective and efficient it has been in terms of achieving its objectives.

The degree of achievement of the first objective (*Differentiate simple, transparent and standardised securitisation products from other types of securitisation*) will be measured as a function of STS products prices and levels of issuance. An increase in both, relative to non-STS products, will be a sign of differentiation and thus of achievement of the first objective.

The second objective (*Foster the spread of standardisation of processes and practises in securitisation markets, tackle regulatory inconsistencies*) will be measured against three criteria: 1) STS products' price and issuance growth (e.g. since a decline in operational costs should translate into higher levels of issuance), 2) The degree of standardisation of marketing and reporting material and finally 3) feedback from market practitioners on operational costs' evolution (hard data on this may not be publicly available).

Detailed explanation of the specific provisions of the proposal

This proposal contains two main parts. The first part is devoted to rules that apply to all securitisation, whilst the second part focuses only on STS Securitisation.

The first part provides a common core of rules that apply to all securitisations, including STS securitisation. Whereas existing EU law provides in the credit institutions, asset management and insurance sector already for certain rules, these are scattered amongst different legal acts and they are not always consistent. The first part of the proposal therefore puts the rules in one legal act, thus ensuring consistency and convergence across sectors, while streamlining and simplifying the existing rules. As a consequence the sector-specific provisions on the same topic would be repealed.

The second part contains the criteria that define STS securitisation. In the LCR Regulation and the Solvency II Regulation the Commission has already laid down, for specific purposes, criteria similar to those in this proposal, but the Securitisation Regulation will create a general and cross-sectoral regime. The revision of the CRR Regulation and the future amendment of the Solvency II delegated act will provide for a more risk-sensitive prudential treatment for banks and insurers investing in STS securitisation. The LCR delegated act will also be amended to refer to this legislative act and in particular to the set of STS criteria. Specific criteria related to liquidity features of securitisation will be specified in the amended delegated act.

Definitions (Article 2)

The definitions in the proposal are to a large extent taken over from CRR and ensure that the same definitions apply across financial sectors, including those not covered by the CRR.

Due diligence rules for investors (Article 3)

Since securitisations are not always the simplest and most transparent financial products and can involve higher risks than other financial instruments, institutional investors are subject to due diligence rules.

The existing rules are laid down in the CRR, the Solvency II delegated act and the Commission Delegated Regulation 231/2013 (the AIFM Regulation). These rules will be repealed and replaced by a single Article that provides for all types of regulated institutional investors engaging in business in or through the EU identical and streamlined due diligence provisions. For UCITS no due diligence rules apply so far: the Commission is however empowered to adopt such rules (Article 50a of the UCITS Directive). It has not done so yet, due to the intention to cover UCITS in this initiative. For that reason, the proposal creates

requirements for UCITS. In the proposal IORP's are also covered by the due diligence requirements. These have not been subject to these rules until now, but to do so it would fit well with the objective of improving risk management in the IORP2 proposal and the objective to create a harmonised framework for institutional investors.

For STS securitisations, investors should also perform a due diligence on the compliance with STS requirements. As the STS requirements are not an indicator of the risk features of the securitisation, investors remain responsible for assessing risks inherent to their exposure to the securitisation position and whether the securitisation is suitable and appropriate for the needs of the investor.

Risk retention (Article 4)

Risk retention by originators, sponsors or original lenders of securitisations ensures alignment of interest between such actors and investors.

Existing sector-specific regulations (CRR, Solvency II Directive and AIFM Regulation) already establish risk retention requirements, but use the so-called "indirect approach": the originators, sponsors or original lenders are not directly subject to such requirements, but the investor should check whether the originator, sponsor or original lender has retained risk. This however places a burden on the investor, which has no direct access to the information necessary to perform such check.

The current proposal thus imposes a direct risk retention requirement and a reporting obligation on the originator, sponsor or the original lenders. Investors will thus in a simple manner be able to check whether these entities have retained risk. For securitisations notably in situations where the originator, sponsor nor original lender is not established in the EU the indirect approach will continue to fully apply. This existing approach ensures a level-playing field at global level. In accordance with existing EU law, 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.

This proposal also takes into account the EBA recommendation to close a potential loophole in the implementation of the risk retention regime whereby the requirements could be circumvented by an extensive interpretation of the originator definition. To this aim, it is specified that for the purposes of Article 4 an entity established as a dedicated shelf for the sole purpose of securitising exposures and without a broad business purpose cannot be considered as an originator. For instance, the entity retaining the economic interest has to have the capacity to meet a payment obligation from resources not related to the exposures being securitised.

Transparency rules (Article 5)

Transparency requirements on securitisations and underlying exposures allows investors to understand, assess and compare securitisation transactions and not to rely solely on third parties, such as credit rating agencies. They allow investors to act as prudent investors and do their due diligence.

This proposal ensures that investors will have all the relevant information on securitisations at their disposal. It covers all types of securitisations and applies across sectors. To facilitate both the use of the information by investors and the disclosure by originators, sponsors and

SSPEs the proposal assumes the existing acquis, including standardised disclosure templates. As the latter do not currently cover all securitisation segments, the development of additional templates is necessary (e.g. for ABCP). In doing so, there is a need to find a right balance between the level of details and the proportionality of the disclosure requirements.

Originators, sponsors and SSPE's should make freely available the information to investors, via standardised templates, on a website that meets certain criteria such as control of data quality and business continuity. In practice this could allow reporting of this information to a data repository such as the "European Datawarehouse", where much of this type of information is already collected for eligibility purposes in Eurosystem refinancing operations. Reporting of the information will be done via standardised templates, which could also be used for reporting under this Regulation and, pending completion thereof, to the SFI website, under Article 8b of the CRAIII Regulation. In any case, competent authorities will have the responsibility to ensure that information is properly provided to investors and that the website responds to the required characteristics. ESMA, in close cooperation with EBA and EIOPA, should specify in a draft regulatory technical standards specifying the requirements to be met by the website on which the information shall be made available to holders of securitisation positions. In particular, these requirements will cover the governance structure including independence of the website, the modalities to access information, the internal procedures to ensure the well-functioning, operational robustness and integrity of the website and the procedures in place in order to ensure quality and accuracy of the information.

STS securitisation (Article 6 to 13)

Articles 6 to 13 contain the requirements for **Simple, Transparent and Standardised ("STS") Securitisation.**

The "STS standard" does not mean that the securitisation concerned is free of risks, but means that the product respects a number of criteria and that a prudent and diligent investor will be able to analyse the risk involved.

There will be two types of STS requirements: one for long-term securitisations and one for short-term securitisations (ABCP). To a large extent the requirements are however similar. The requirements are developed on the basis of existing requirements in the Liquidity Coverage Ratio and Solvency II delegated acts, on the EBA advice and on the BCBS-IOSCO standard. The requirements will be applicable for all financial sectors.

This proposal only allows 'true sale' securitisation to become STS. In a true sale securitisation the ownership of the underlying exposures is transferred or effectively assigned to a securitisation special purpose entity. In synthetic securitisations the underlying exposures are not transferred to such an entity, but the credit risk related to the underlying exposures is transferred by means of a guarantee or derivative contract. This introduces an additional counterparty credit risk and potential complexity related in particular to the content of the contract. Until now neither on an international level (BCBS-IOSCO), nor on a European level (EBA), have STS criteria been developed for synthetic securitisation. Thus at this moment there is insufficient clarity on which synthetic securitisations should be considered STS and under which conditions. The Commission will further consider this issue and follow the work of international and European bodies on this topic. It will assess whether some synthetic securitisations that have performed well during the financial crisis and that are simple, transparent and standardised should be able to meet the STS requirements. Future input from in particular the EBA could inform the Commission in its future policy proposals. However, a

specific category of SME transactions undertaken alongside public authorities or public guarantee schemes (i.e. 'tranched cover') has been singled out and will be granted the STS prudential treatment in the CRR under specific conditions.

STS notification and disclosure (Article 14)

Originators, sponsors and SSPE's should be jointly responsible for the compliance with the STS requirements and for the notification to ESMA which will publish it on its website. 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. Originators and sponsors shall be liable for any loss or damage resulting from incorrect or misleading notifications under the conditions stipulated by national law. Investors will however still have to perform due diligence, but may place appropriate reliance on the STS notification and the information disclosed by the originator, sponsor and SSPE on STS compliance. To facilitate the process for investors and originators, sponsors and SSPE's, a template will be developed by the European Supervisory Authorities for the STS assessment.

Supervision (Article 15-22)

To safeguard financial stability, ensure investors' confidence and promote liquidity, a proper and effective supervision of securitisation markets is essential. To this aim, the proposal requires Member States to designate competent authorities in accordance with existing EU legal acts in the area of financial services. As is currently the case under existing provisions of EU law, for the supervision of compliance with the article on due diligence Member States should designate the competent authority of the relevant institutional investor. This supervisor should have the powers that are granted to it under the relevant financial services legislation. For the supervision of Articles 4 to 14 of the proposal, when the parties involved are regulated under the EU financial services legislation, the competent authority for the relevant regulated entity should be designated by Member States. For instance, when the entity concerned is a credit institution the relevant banking supervisor should be designated by Member States, In case the credit institution is a significant credit institution under Regulation (EU) No 1024/2013 the Single Supervisory Mechanism should be designated. Where the party concerned is not a regulated entity under EU financial services legislation, for instance a SSPE, Member States may decide which authority should be the competent authority. In this manner the supervisory arrangements for this proposal are as much as possible aligned with the existing arrangements. For entities that are currently not regulated by EU law Member States must designate one or more competent authorities.

Member States should provide the competent authorities with the supervisory, investigatory and sanctioning powers that are normally available under EU financial services legislation.

In view of the cross-border nature of the securitisation market cooperation between competent authorities and the ESAs is crucial. Information exchange, cooperation in supervisory activities and investigations and coordination of decision-taking is a basic requirement.

To ensure a consistent interpretation and common understanding of the STS requirements by competent authorities, EBA, ESMA and EIOPA should coordinate the work of competent authorities across financial sectors and assess practical issues which may arise with regards to STS securitisations. They may in particular coordinate their work in the framework of the joint-committee of the European Supervisory Authorities. A Q&A process could facilitate the implementation of this Regulation by market participants and competent authorities.

In view of the impact of the STS classification on, for instance, the capital treatment of such products, some specific rules are necessary. For instance, two insurers from two different

Member States could invest in the same STS securitisation from another Member State. The competent authority with oversight on the first insurer could come to the conclusion that the securitisation instrument does not satisfy the STS requirements, while the competent authority with oversight on the second insurer might conclude it does satisfy the STS requirements. Persistent use of different approaches could negatively impact the credibility of the STS approach and lead to regulatory arbitrage.

To ensure a credible approach for STS securitisation, some specific rules have therefore been introduced in the proposal. Where a competent authority has evidence that originators, sponsors and SSPE's have made an materially incorrect or misleading STS notification, it should immediately inform ESMA, EBA or EIOPA and the competent authorities of the Member States concerned to discuss its findings. Where they cannot come to an agreement, there should be binding mediation in accordance with the ESMA Regulation.

Amendments to other legal acts (Article 23 to 27)

Articles 24 to 27 amend a number of articles of other legal acts, in particular the UCITS Directive, the Solvency II Directive, the CRAIII Regulation, the AIFM Directive and EMIR. These changes are necessary to reflect the creation of a harmonised securitisation framework in this proposal. Therefore, a number of the provisions have to be repealed or amended. Until the (relevant provisions in the) delegated acts based on these Directives and Regulations are repealed they will remain applicable. This is in particular the case for the provisions of Commission Delegated Regulation (EU) No 625/2014[18], Articles 254 to 257 of the Solvency II Delegated Act, Articles 50 to 56 of the AIFM Regulation[19] and the provisions of Commission Delegated Regulation (EU) No 2015/3.[20] The Commission will adopt the necessary changes to these delegated acts on the basis of the adopted Securitisation Regulation.

The amendments to EMIR provide that OTC derivative contracts entered into by Covered Bond Entities and Securitisation Special Purpose Entities should not be subject to the clearing obligation provided that certain conditions are met. The exemption is justified by that fact that counterparties to OTC derivative contracts are secured creditors under covered bond and securitisation arrangements and adequate protection against counterparty credit risk may already be provided for. In such cases, an obligation to centrally clear could therefore imposes unnecessary duplication of risk mitigation techniques and would interfere with the structure of the asset. These provisions are intended to allow the ESA's to provide, for issuers of STS securitisations, the situations and conditions justifying exclusions from the EMIR clearing and margining requirements.

Third country dimension

This proposal provides essentially for a system that is open to third country securitisations. EU institutional investors can invest in non-EU securitisations and will have to perform the same due diligence as for EU securitisations, which includes a check whether the risk is

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18 Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk (*OJ L 174, 13.6.2014, p. 16–25).*

19 Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision ***(****OJ L 83, 22.3.2013, p. 1-95).*

20 Commission Delegated Regulation (EU) 2015/3 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments, ***(****OJ L 2, 6.1.2015, p. 57–119)****.*

retained and whether the originator, sponsor and SSPE make available all the relevant information. Moreover, non-EU securitisations can also meet the STS requirements and the originator, sponsor and SSPE may also submit an STS notification to ESMA pursuant to Article 8. There is also no requirement that the underlying exposures are located in the EU.

2015/0226 (COD)

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 op inion of the European Economic and Social Committee[21],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Securitisation involves transactions that enable a lender – typically a credit institution – to refinance a set of loans or exposures such as loans for immovable property, auto leases, consumer loans or credit cards, 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.

(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

[21] OJ C , , p. .

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 tranched. 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.

(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[22] and (EU) 2015/35[23], 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.

(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 may 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

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22 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)*.

23 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*).

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, concentration risk and risks of operational nature. 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.

(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 originators or the sponsors 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 originators are 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 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 will have access to all the relevant information over the entire life of the transactions and to reduce originators, sponsors and SSPEs reporting tasks and to facilitate investors' continuous; easy and free access to reliable information on securitisations.

(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.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. 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 conduits.

(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 of the underlying exposures to the SSPE should not be subject to severe clawback provisions in the event of the seller's insolvency. Such severe clawback provisions include but should not be limited to provisions under which the sale of the underlying exposures can be invalidated by the liquidator of the seller 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 prevent such invalidation only if it can prove that it was not aware of the insolvency of the seller at the time of sale.

(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.

(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.

(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 commercial loans, leases and credit facilities to undertakings of the same category to finance capital expenditures or business operations, pools of auto loans and leases to borrowers or lessees or loans and pools of credit facilities to individuals for personal, family or household consumption purposes.

(19) It is essential to prevent the recurrence of purely '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. The originator's 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.

(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. 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. Moreover, where a competent authority has imposed administrative sanctions or remedial measures 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.

(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. However, it is essential that investors make their own assessment, take responsibility for their investment decisions and do not mechanistically 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 and remedial measures 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, including the European Central Bank (ECB) in accordance with Council Regulation (EU) No 1024/2013[24], 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 authority finding that infringement should also inform the ESAs and the relevant competent authorities of the Member States concerned 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.

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[24] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (*OJ L 287, 29.10.2013. p. 263*).

(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.

(32) In order to facilitate the process to investors, originators, sponsors and SSPE's, the same power to adopt acts should be delegated to the Commission in respect of the adoption of regulatory 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 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.

(33) 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.

(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 the 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) The due diligence requirements are essentially taken over from existing Union law and should thus apply to securitisations issued on or after 1 January 2011 and to securitisations issued before that date, 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) (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 or "'STS' securitisation.

2. This Regulation applies to institutional investors becoming exposed to securitisation and to originators, original lenders, sponsors and securitisation special purpose entities.

Article 2

Definitions

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

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

   (a) payments in the transaction or scheme are dependent upon the performance of the exposures 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 legal entity, other than an originator or sponsor, established for the purpose of carrying out one or more securitisations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the SSPE from those of the originator, and in which the holders of the beneficial interests have the right to pledge or exchange those interests without restriction;

(3) 'originator' means an entity which:

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

(b) purchases a third party's exposures for its own account and then securitises them;

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

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

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

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

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

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

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

(12) 'institutional investors' means insurance undertakings as defined in Article 13 (1) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II); reinsurance undertakings as defined in Article 13 point (4) of Directive 2009/138/EC; institutions for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council[25] in accordance with Article 2 thereof, unless a Member States has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive; an alternative investment fund manager (AIFM) as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council[26] that manage and/or market AIFs in the Union; or a UCITS management company as defined in Article 2(1)(b) of Directive 2009/65/EC

[25] 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).

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

of the European Parliament and of the Council[27]; or an internally managed UCITS, which is an investment company authorised in accordance with Directive 2009/65/EC and which has not designated a management company authorised under that Directive for its management; or credit institutions or investments firms as defined in Article 4(1) (1) and (2) of Regulation (EU) No 2013/575;

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

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

(15) 'revolving exposure' means an exposure whereby customers' 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' positions to be redeemed before the originally stated maturity of the securities issued;

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

Chapter 2

Provisions applicable to all securitisation

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 is not a credit institution or investment firm as defined in Article 4(1), points (1) and (2) 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 these criteria and processes;

   (b) the originator, sponsor or original lender retains a material net economic interest in accordance with Article 4 of this Regulation and discloses it to the institutional investor in accordance with Article 5;

[27] 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).

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

2. Before becoming exposed to a securitisation, institutional investors shall also carry out a due diligence assessment commensurate with the risks involved including at least the following aspects:

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

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

(c) with regard to securitisations designated as STS, whether the securitisation meets the STS requirements laid down in Articles 7 to 10 or Articles 11 to 14. 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.

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

(a) establish written procedures commensurate with the risk profile of the securitisation position, and appropriate to their trading and non-trading book where relevant, to monitor compliance with paragraphs 1 and 2 and the performance of the securitisation position and the underlying exposures on an ongoing basis.. Where appropriate, 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) regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures that are commensurate with the nature, scale and complexity of the risk of the securitisation position;

(c) ensure that there is an adequate level of internal reporting to their management body so that they are aware of the material risk arising from the 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 recording of the relevant information.

Article 4

Risk retention

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

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

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

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

   (b) in the case of revolving securitisations or securitisations of revolving exposures, the retention of the originator's interest of no less than 5% of the nominal value of each of the securitised exposures;

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

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

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

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

   The first subparagraph shall apply only where credit institutions, investment firms or financial institutions which created the securitised exposures adhere to the

requirements set out in Article 79 of Directive 36/2013/EU and deliver the information needed to satisfy the requirements laid down in Article 5 of this Regulation, in a timely manner, to the originator or sponsor and to the EU parent credit institution, financial holding company or mixed financial holding company established in the Union.

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

(a) central governments or central banks;

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

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

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

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

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

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

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

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

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

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

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

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

Article 5

Transparency requirements for originators, sponsors and SSPE's

1. The originator, sponsor and SSPE of a securitisation shall, in accordance with paragraph 2, make at least the following information available to holders of a

securitisation position and to the competent authorities referred to in Article 15 of this Regulation.

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

(b) where applicable, the following documents, including a detailed description of the priority of payments of the securitisation:

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

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

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

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

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

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

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

(c) where a prospectus has not been drawn up in compliance with Directive 2003/71/EC of the European Parliament and of the Council[28], a transaction summary or overview of the main features of the securitisation, including, where applicable:

(i) details regarding the structure of the deal;

(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 with other secured creditors;

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

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

[28] 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).

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

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

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

(ii) data on the cash flows generated by the underlying exposures and by the liabilities of the securitisation, except for ABCP, and information on the breach of any triggers implying changes in the priority of payments or replacement of any counterparties;

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

(f) where applicable, information pursuant to Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council[29] on insider dealing and market manipulation;

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

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

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

(iii) a significant change in the risk characteristics of the securitisation or of the underlying exposures;

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

(v) any material amendment to transaction documents.

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

The information described in subparagraphs (a) and (e) shall be made available at the same moment each quarter at the latest one month after the due date for the payment of interest. With regard to ABCP securitisations the information described in subparagraphs (a) and (e) shall be made available at the same moment each month, at the latest one month after the due date for the payment of interest.

The information described in subparagraphs (f) and (g) shall be made available without delay.

2. The originator, sponsor and SSPE of a securitisation shall designate amongst themselves one entity to fulfil the information requirements pursuant to paragraph 1. The originator, sponsor and SSPE shall ensure that the information is available free of charge to the holder of a securitisation position and competent authorities, in a

[29] 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).

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 shall;

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

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

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

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

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

The entity responsible for reporting the information pursuant to this Article, and the location where the information is made available shall be indicated in the documentation regarding the securitisation.

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

(a) the information that the originator, sponsor and SSPE should provide to comply with their obligations under paragraph 1(a) and (d) and the format thereof by means of standardised templates;

(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, 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.

Chapter 3

Simple, transparent and standard securitisation

Article 6

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

Originators, sponsors and SSPE's shall use the designation "STS" or a designation that refers directly or indirectly to these terms for their securitisation only where the securitisation meets all the requirements of Section 1 or Section 2 of this Regulation, and they have notified ESMA pursuant to Article 14 (1).

SECTION 1

GENERAL REQUIREMENTS FOR STS SECURITISATION

Article 7

Simple, transparent and standardised securitisation

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

Article 8

Requirement relating to simplicity

1. The underlying exposures shall be acquired by a SSPE by means of a sale or assignment in a manner that is enforceable against the seller or any other third party including in the event of the seller's insolvency. The transfer of the underlying exposures to the SSPE shall not be subject to any severe clawback provisions in the event of the seller's insolvency. Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection should, at a minimum, incorporate the following events:

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

   (b) seller default or insolvency; and

   (c) unremedied breaches of contractual obligations by the seller.

2. The seller shall provide representations and warranties that, to the best of its knowledge, the underlying exposures included in the securitisation are not encumbered or otherwise in a condition that can be foreseen to adversely affect enforceability of the sale or assignment.

3. The underlying exposures transferred from the seller to the SSPE shall meet predetermined and clearly defined eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis.

4. The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type. The underlying exposures shall be contractually binding and enforceable obligations with full recourse to debtors, with defined periodic payment streams relating to rental, principal, interest payments, or related to any other right to receive income from assets warranting such payments. The underlying exposures shall not include transferable securities, as defined in Directive 2014/65/EU.

5. The underlying exposures shall not include securitisations.

6. The underlying exposures shall be originated in the ordinary course of the originator's or the original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or the original lender applies to origination of similar exposures that are not securitised. Material changes in underwriting standards shall be fully disclosed to potential investors. In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable intermediaries, were made aware that the information provided might not be verified by the lender. The assessment of the borrower's creditworthiness shall meet the requirements set out in paragraphs 1 to 4, 5(a), and 6 of Article 18 of Directive 2014/17/EU of the European Parliament and of the Council or of Article 8 of Directive 2008/48/EC of the European Parliament and of the Council or equivalent requirements in third countries. The originator or original lender shall have expertise in originating exposures of a similar nature to those securitised.

7. 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 declared insolvency, agreed with his creditors to a debt dismissal or reschedule or had a court grant his creditors a right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination;

   (b) is on an official registry of persons with adverse credit history;

   (c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not be made is significantly higher than for the average debtor for this type of loans in the relevant jurisdiction.

8. The debtors or the guarantors 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 exposures payable in a single instalment.

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

Article 9

Requirements relating to standardisation

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

2. Interest rate and currency risks arising from the securitisation shall be mitigated and the measures taken to that effect shall be disclosed. The underlying exposures shall not include derivatives, unless for the purpose of hedging currency risk and interest rate risk. Those derivatives shall be underwritten and documented according to common standards in international finance.

3. Any referenced interest payments under the securitisation assets and liabilities shall be based on generally used market interest rates and shall not reference complex formulae or derivatives.

4. Where the securitisation has been set up without a revolving period or the revolving period has terminated and where an enforcement or an acceleration notice has been delivered, no substantial amount of cash shall be trapped in the SSPE and principal receipts from the underlying exposures shall be passed to investors via sequential amortisation of the securitisation positions, as determined by the seniority of the securitisation position. Repayment of the securitisation positions shall not be reversed with regard to their seniority and performance-related triggers shall be included in transactions which feature non-sequential priority of payments, including at least the deterioration in the credit quality of the underlying exposures below a pre-determined threshold. There shall be no provisions requiring automatic liquidation of the underlying exposures at market value.

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

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

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

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

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

6. The transaction documentation shall clearly specify:

   (a) the contractual obligations, duties and responsibilities of the servicer and its management team, who shall have expertise in servicing the underlying exposures, and, where applicable, of the trustee and 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, liquidity providers and the account bank upon their default, insolvency, and other specified events, where applicable.

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

7. The transaction documentation shall include definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge offs, recoveries and other asset performance remedies in clear and consistent terms. That documentation shall clearly specify the payment priority, triggers, changes in payment priority following trigger events as well as the obligation to report such events. Any change in the payment priority shall be reported at the time of its occurrence.

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

Article 10

Requirements relating to transparency

1. The originator, sponsor, and SSPE shall provide access to data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised to the investor before investing. Those data shall cover a period no shorter than seven years for non-retail exposures and five years for retail exposures. 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, 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 a liability cash flow model to investors, both before the pricing of the securitisation and on an ongoing basis.

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

SECTION 2

REQUIREMENTS FOR ABCP SECURITISATION

Article 11

Simple, transparent and standardised ABCP Securitisations securitisation

ABCP securitisations shall be considered 'STS' where the ABCP programme complies with the requirements in Article 13 of this Regulation and all transactions within that ABCP programme fulfil the requirements in Article 12.

Article 12

Transaction level requirements

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

2. Transactions within an ABCP programme shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type and shall have a remaining weighted average life of no more than two years and none shall have a residual maturity of longer than three years. The underlying exposures shall not include loans secured by residential or commercial mortgages or fully guaranteed residential loans, as referred to in paragraph 1(e) of Article 129 of Regulation (EU) No 575/2013. The underlying exposures shall contain contractually binding and enforceable obligations with full recourse to debtors with defined payment streams relating to rental, principal, interest, or related to any other right to receive income from assets warranting such payments. The underlying exposures shall not include transferable securities, as defined in Directive 2014/65/EU.

3. Any referenced interest payments under the securitisation transaction's assets and liabilities shall be based on generally used market interest rates, but shall not reference complex formulae or derivatives.

4. Following the seller’s default or an acceleration event, no substantial amount of cash shall be trapped in the SSPE and 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. There shall be no provisions requiring automatic liquidation of the underlying exposures at market value.

5. The underlying exposures shall be originated in the ordinary course of the seller's business pursuant to underwriting standards that are no less stringent than those that the seller applies to origination of similar exposures that are not securitised. Material changes in underwriting standards shall be fully disclosed to potential investors. In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable intermediaries, were made aware

that the information provided might not be verified by the lender. The seller shall have expertise in originating exposures of a similar nature to those securitised.

6. 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.

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

7. The transaction documentation shall clearly specify:

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

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

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

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

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

Article 13

Programme level requirements

1. All transactions within an ABCP programme shall fulfil the requirements of Article 12 of this Regulation.

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

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

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

5. The securities issued by an ABCP programme shall not include call options, extension clauses or other clauses that have an effect on their final maturity.

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

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

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

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

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

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

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

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

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

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

Article 14

STS notification and due diligence

1. Originators, sponsors and SSPE's shall jointly notify ESMA by means of the template referred to in paragraph 5 of this Article that the securitisation meets the requirements of Articles 7 to 10 or Articles 11 to 13 of this Regulation ('STS notification'). ESMA shall publish the STS notification on its official website

pursuant to paragraph 4. They shall also inform their competent authority. The originator, sponsor and SSPE of a securitisation shall designate amongst themselves one entity to be the first contact point for investors and competent authorities.

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

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

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

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

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

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

   ESMA shall submit those draft regulatory technical standards to the Commission by [***twelve months 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.

Chapter 4

Supervision

Article 15

Designation of competent authorities

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

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

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

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

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

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

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

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

4. For entities not covered by the Union legislative acts referred to in paragraph 3, Member States shall designate one or more competent authority to ensure compliance with Articles 4 to 14 of this Regulation. Member States shall inform the Commission, ESMA, EBA and EIOPA and the competent authorities of other Member States of the designation of competent authorities pursuant to this paragraph.

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

Article 16

Powers of the competent authorities

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

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

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

Article 17

Administrative sanctions and remedial measures

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

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

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

2. Those sanctions and measures shall be effective, proportionate and dissuasive and shall include, at least the following:

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

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

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

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

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

   (f) or in the case of a legal person, the maximum administrative fines referred to in point (e) or of up to 10 % of the total annual 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 fines of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points (e) and (f).

3. Where the provisions referred to in the first paragraph apply to legal persons, Member States shall also ensure that competent authorities apply the administrative sanctions and remedial measures set out in paragraph 2 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 the right of appeal before a tribunal.

Article 18

Exercise of the power to impose administrative sanctions and remedial measures

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

   (a) directly;

   (b) in collaboration with other authorities;

   (c) by application to the competent judicial authorities.

2. Competent authorities, when determining the type and level of an administrative sanction or remedial measure imposed under Article 17 of this Regulation, shall take into account all relevant circumstances, including, 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 in particular by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

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

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

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

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

Article 19

Provision of criminal sanctions

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

2. Where Member States have chosen, in accordance with paragraph 1, to lay down criminal sanctions for the infringement referred to Article 17 (1) of this Regulation,

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

Article 20

Notification duties

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

Article 21

Cooperation between competent authorities and the European Supervisory Authorities

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

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

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

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

5. Upon reception of the information referred to in paragraph 3, the competent authority shall take any necessary action to address the infringement identified and notify the other competent authorities concerned, in particular those of the originator, the sponsor, SSPE and the competent authorities of the holder of a securitisation position, when known. In case of disagreement between the competent authorities, the matter may be referred to ESMA and the procedure of Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010 shall apply.

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

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

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

Article 22

Publication of administrative sanctions and remedial measures

1. Member States shall ensure that competent authorities publish without undue delay on their official websites any decision imposing an administrative sanction or remedial measure for infringement of Articles 4, 5 or 14 (1) of this Regulation after the addressee of the sanction or measure of the sanction or measure has been notified of that decision.

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

3. Where the publication of the identity, in case of legal persons, or the identityand the personal data, in the case of natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment, or where the competent authority considers that the publication jeopardises the stability of financial markets or an on-going investigation, Member States shall ensure that competent authorities either:

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

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

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

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

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

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

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

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

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

TITLE III

AMENDMENTS

Article 23

Amendment to Directive 2009/65/EC

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

Article 24

Amendment to Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

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

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

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

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

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

Article 25

Amendment to Regulation (EC) No 2009/1060

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

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

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

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

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

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

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

Article 26

Amendment to Directive 2011/61/EU

Article 17 of Directive 2011/61/EU is repealed

Article 27

Amendment to Regulation (EU) 648/2012

Regulation 648/2012/EU is amended as follows:

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

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

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

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

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

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

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

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

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

The ESAs shall submit those draft regulatory technical standards to the Commission by [***six months after entry into force of 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."

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

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

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

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

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

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

The ESAs shall submit those draft regulatory technical standards to the Commission by [***six months after entry into force of this 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."

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 a designation that refers directly or indirectly to these terms only where the requirements set out in Article 6 of this Regulation are complied with.

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

4. In respect of securitisation positions outstanding as of [***date of entry into force of this Regulation***] credit institutions or investment firms as defined in Article 4(1) and (2) of Regulation (EU) No 2013/575, insurance undertakings as defined in Article 13 (1) of Directive 2009/138/EC, reinsurance undertakings as defined in Article 13 point (4) of Directive 2009/138/EC and alternative investment fund managers (AIFM) as defined in Article 4(1)(b) of Directive 2011/61/EU shall continue to apply

Article 405 of Regulation (EU) No 575/2013 and to chapter 1, 2 and 3 and Article 22 of Commission Delegated Regulation (EU) No 625/2014, Articles 254 and 255 of Commission Delegated Regulation (EU) 2015/35 and Article 51 of Commission Delegated Regulation (EU) No 231/2013, respectively, in the version applicable on [***day before date of entry into force of this Regulation***].

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

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

Article 29

Reports

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

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

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

Article 30

Review

By [***four years after entry into force of this Regulation***] the Commission shall present a report to the European Parliament and the Council on the functioning of this Regulation, accompanied, where appropriate, by a legislative proposal.

Article 31

Entry into Force

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

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

Done at Brussels,

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

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

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LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Laying down common rules on securitisation and creating a European framework for simple and transparent securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) 2009/1060 and, (EU) No 648/2012

1.2. Policy area(s) concerned in the ABM/ABB structure[30]

1.3. Nature of the proposal/initiative

☒ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**[31]

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

This initiative is one of the building block of the Capital Markets Union initiative. This proposal aims to:

(1) restart markets on a more sustainable basis, so that simple, transparent and standardised securitisation can act as an effective funding channel to the economy;

(2) allow for efficient and effective risk transfers to a broad set of institutional investors as well as banks;

(3) allow securitisation to function as an effective funding mechanism for some longer term investors as well as banks;

(4) protect investors and managing systemic risk by avoiding a recurrence of the flawed "originate to distribute" models.

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Specific objective

This proposal has two main objectives:

30 ABM: activity-based management; ABB: activity-based budgeting.

31 As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1) Remove stigma from investors and ensure an appropriate regulatory treatment for simple and transparent securitisation products;

2) Reduce/eliminate unduly high operational costs for issuers and investors.

This framework should provide confidence to investors and a high standard for the EU, to help parties evaluate the risks relating to securitisation (both within and across products).

Securitisation can be an important channel for diversifying funding sources and allocating risk more efficiently within the EU financial system. It would allow for a broader distribution of financial sector risk and can help to free up banks' balance sheets to allow for further lending to the different categories of economic agent (e.g. non-financial companies, SME, individuals). Overall, it can improve efficiencies in the financial system and provide additional investment opportunities. Securitisation can bridge banks and capital markets with an indirect benefit for businesses and citizens (through, for example, less expensive loans, mortgages and credit cards).

ABM/ABB activity(ies) concerned

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

This proposal is aiming at two main objectives;:

1) remove stigma from investors and regulatory disadvantages for simple and transparent securitisation products;

2) reduce/eliminate unduly high operational costs for issuers and investors.

This framework should provide confidence to investors and a high standard for the EU, to help parties evaluate the risks relating to securitisation (both within and across products).

Securitisation can be an important channel for diversifying funding sources and allocating risk more efficiently within the EU financial system. It would allow for a broader distribution of financial sector risk and can help to free up banks' balance sheets to allow for further lending to the different categories of economic agent (e.g. non-financial companies, SME, individuals). Overall, it can improve efficiencies in the financial system and provide additional investment opportunities. Securitisation can bridge banks and capital markets with an indirect benefit for businesses and citizens (through, for example, less expensive loans, mortgages and credit cards).

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

The most important indicator for the achievement of the first objective will be the difference in the price of STS versus non-STS products. If the objective is achieved, this difference should increase from today, with STS products being more highly valued than non-STS ones by investors. This should trigger an increase in the supply of STS products, reason for which the achievement of this objective will also be measured with the growth in issuance of STS products versus non-STS ones.

The second objective would be measured against three criteria: 1) STS products' price and issuance growth (since a decline in operational costs should translate in higher issuance for STS products), 2) The degree of standardisation of marketing and reporting material and finally 3) feedback from market practitioners on operational costs' evolution.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

The objective of this proposal is to restart a sustainable securitisation market that will improve the financing of the EU economy, while ensuring financial stability and investor protection. To revive the market the proposal aims at taking away the stigma that securitisations face, to create more consistency and standardisation in the market and to put in place a more risk-sensitive regulatory framework.

1.5.2. Added value of EU involvement

Securitisation products are part of EU capital markets which are open and integrated. Securitisation links financial institutions from different Member States and non-Member States: often banks originate the loans that are securitised, while financial

institutions such as insurers and investment funds invest in these products and they do so across European borders.

Individual Member State action cannot by itself remove the stigma. The EU has advocated at international level for standards to identify simple, transparent and standardised (STS) securitisation. Such standards will help investors to identify categories of securitisations that have performed well during the financial crisis and which allow them to analyse the risks involved.

Although implementation of these international standards could be done by Member States, it would in practice lead to divergent approaches in Member States, which will hamper the removal of the stigma and will create a de facto barrier for cross-border investors which would have to enter into the details of the Member State frameworks. Moreover, a more risk-sensitive prudential framework for STS securitisation requires the EU to define what an STS securitisation is, since otherwise the more risk sensitive regulatory treatment for banks and insurance companies could be available for different types of securitisations in different Member States. This would lead to an un-level playing field and to regulatory arbitrage. As regards the lack of consistency and standardisation EU law has already harmonised a number of elements on securitisation, in particular definitions, rules on disclosure, due diligence, risk retention and prudential treatment for regulated entities investing in these products. Those provisions have been developed in the framework of different legal acts (CRR, Solvency II, UCITS, CRA Regulation, and AIFMD) which has led to certain discrepancies in the requirements that apply to different investors. Increasing their consistency and further standardisation of these provisions can only be done by EU action.

1.5.3. Lessons learned from similar experiences in the past

Market-developed differentiating mechanisms were unlikely to overcome stigma as they are relying on market associations' opinions that have not been tested by events. More importantly, even if these differentiating mechanisms between securitisation products would be successful in achieving differentiation and limiting stigma, they could not adjust the prudential treatment attached to securitisations and thus improve the economics of EU transactions. Furthermore, the current inconsistencies in EU legislation would continue to affect these markets. In absence of any EU intervention, the current state of the securitisation market would be unlikely to be reversed: low issuance and fragmentation would persist.

1.5.4. Compatibility and possible synergy with other appropriate instruments

This proposal on securitisation is linked to the Investment Plan for Europe put forward by the Commission in 2014 and aimed at restarting investment in Europe by addressing the main obstacles to investment in a coherent way. This new approach would help in addressing the current shortage of risk-financing in Europe.

This initiative is part of the Capital Markets Union (CMU) action plan adopted by the European Commission today. The CMU is one of the Commission's priorities to ensure that the financial system supports jobs and growth and and helps with the demographic challenges Europe faces.

Aside financial regulatory initiatives, several EU institutions and bodies have taken initiatives to build securitisation markets and increase confidence from a market

functioning perspective. The Commission, in association with the European Investment Bank and the European Investment Fund, is using securitisation vehicles to help finance SMEs, for example under the COSME programme and the joint Commission-EIB initiatives.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

– ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

1.7. Management mode(s) planned[32]

☐ **Direct management** by the Commission

– ☐ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☒ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐the EIB and the European Investment Fund;

– ☒ bodies referred to in Articles 208 and 209 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

The implemenation of this initiative will imply the three ESAs (EBA, ESMA and EIOPA). Thus the proposed resources are for EBA, ESMA and EIOPA which are regulatory agencies not executive agencies. EBA, ESMA and EIOPA act under the oversight of the Commission.

[32] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The proposal foresees that the Commission should review the effectiveness of the proposed measures on a periodic basis.

2.1.1. Risk(s) identified

In relation to the legal, economical, efficient and effective use of appropriations resulting from the proposal it is expected that the proposal would not bring about new risks that would not be currently covered by an EBA, EIOPA and ESMA existing internal control framework.

2.1.2. Information concerning the internal control system set up

NA

2.1.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error

NA

2.2. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to the EBA, EIOPA and the ESMA without any restriction. EBA, EIOPA and ESMA shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt appropriate provisions for all EBA, EIOPA and ESMA staff. The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by EBA, EIOPA and ESMA as well as on the staff responsible for allocating these monies. Articles 64 and 65 of the Regulation establishing EBA set out the provisions on implementation and control of the EBA budget and applicable financial rules

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
		Diff./Non-diff.[33]	from EFTA countries [34]	from candidate countries[35]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1a	12.02.04 EBA	DIFF	YES	YES	NO	NO
1a	12.02.05 EIOPA	DIFF	YES	YES	NO	NO
1a	12.02.06 ESMA	DIFF	YES	YES	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading……]	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

33 Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
34 EFTA: European Free Trade Association.
35 Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

[This section should be filled in using the **spreadsheet on budget data of an administrative nature** (second document in annex to this financial statement) and uploaded to CISNET for interservice consultation purposes.]

3.2.1. Summary of estimated impact on expenditure

This legislative initiative will have the following impacts on expenditures:

- The hiring of three new temporary agents (TA) at EBA (2 TA) - See in Annex for more information on their roles and the way their costs were calculated (of which 40% will be funded by the EU and 60% by the Member States).
- The hiring of three new TA at ESMA - See in Annex for more information on their roles and the way their costs were calculated (of which 40% will be funded by the EU and 60% by the Member States).
- The hiring of two new TA at EIOPA (2 TA) - See in Annex for more information on their roles and the way their costs were calculated (of which 40% will be funded by the EU and 60% by the Member States).

The costs related to the tasks to be carried out by ESMA, EBA and EIOPA have been estimated for staff expenditure in conformity with the cost classification in the ESA draft budget for 2015.

EUR million (to three decimal places)

Heading of multiannual financial framework	Number 1	Smart and Inclusive Growth

DG: FISMA			r **N**[36]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
• Operational appropriations										

[36] Year N is the year in which implementation of the proposal/initiative starts.

12.02.04 EBA	Commitments	(1)	0.266	0.251	0.251					0.767
	Payments	(2)	0.266	0.251	0.251					0.767
12.02.05 EIOPA	Commitments	(1a)	0.130	0.115	0.115					0.360
	Payments	(2a)	0.130	0.115	0.115					0.360
12.02.06 ESMA	Commitments	(1a)	0.212	0.197	0.197					0.606
	Payments	(2a)	0.212	0.197	0.197					0.606
Appropriations of an administrative nature financed from the envelope of specific programmes[37]										
Number of budget line		(3)								
TOTAL appropriations for DG FISMA	Commitments	=1+1a +3	0.6086	0.563	0.563	1.126				1.733
	Payments	=2+2a +3	0.6086	0.563	0.563	1.126				1.733

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING N°1 of the multiannual financial framework	Commitments	=4+ 6	0.6086	0.563	0.563	1.126				1.733
	Payments	=5+ 6	0.6086	0.563	0.563	1.126				1.733

If more than one heading is affected by the proposal / initiative:

[37] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6								
	Payments	=5+ 6								

Heading of multiannual financial framework	5	'Administrative expenditure'

EUR million (to three decimal places)

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: <…….>									
• Human resources									
• Other administrative expenditure									
TOTAL DG <…….>	Appropriations								

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)								

EUR million (to three decimal places)

		Year N[38]	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments								
	Payments								

[38] Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. Estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
	Type[39]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[40]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

39 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

40 As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

– ☒ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **N** [41]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
HEADING 5 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 5 of the multiannual financial framework								
Outside HEADING 5 [42] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 5 of the multiannual financial framework								
TOTAL								

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

41 Year N is the year in which implementation of the proposal/initiative starts.

42 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

– ☒ The proposal/initiative does not require the use of human resources.

– ☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)								
XX 01 01 01 (Headquarters and Commission's Representation Offices)								
XX 01 01 02 (Delegations)								
XX 01 05 01 (Indirect research)								
10 01 05 01 (Direct research)								
• External staff (in Full Time Equivalent unit: FTE)[43]								
XX 01 02 01 (AC, END, INT from the 'global envelope')								
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)								
XX 01 04 **yy** [44]	- at Headquarters							
	- in Delegations							
XX 01 05 02 (AC, END, INT - Indirect research)								
10 01 05 02 (AC, END, INT - Direct research)								
Other budget lines (specify)								
TOTAL								

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

43 AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

44 Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. Compatibility with the current multiannual financial framework

– ☐ The proposal/initiative is compatible the current multiannual financial framework.

– ☐ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

– ☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

–

The costs related to the tasks to be carried out by ESMA, EBA and EIOPA have been estimated for staff expenditure in conformity with the cost classification in the ESA draft budget for 2015. The proposal of the Commission includes provisions for the threes ESAs to develop a number of regulatory technical standards. ESMA will have to develop and maintain on its official website a list of all securitisations for which the originators, sponsors and SSPEs have notified that they meet the STS requirements (article 14.2). New supervisory competences will not be assigned to the three ESAs but they will be asked to further promote supervisory cooperation and convergence in interpretation and application of the STS criteria (see chapter 3). This objective is essential as it will prevent a fragmentation of the securitisation market throughout the EU. Finally, ESMA, EBA and EIOPA will have to jointly publish a report on the implementation of the STS requirements and on the functioning of the system of STS notification as well as of the functioning of the market. It shall also report on the actions that supervisors have undertaken and on material risks and new vulnerabilities which may have materialised. The first report shall be published two years after the entry into force of this Regulation and further reports each three years. Regarding the timing, the additional ESAs resources are therefore required from end 2016 to start the preparatory works and a smooth implementation of the Regulation. As regards the nature of the positions, the successful and timely delivery of new technical standards will require, in particular, additional resources to be allocated to tasks on policy, legal drafting and impact assessment. The work requires bilateral and multilateral meetings with stakeholders, analysis and assessment of options and drafting of consultation documents, public consultation of stakeholders, setting up and management of standing expert groups composed of supervisors from Member States, setting up and management of ad hoc expert groups composed of market participants and representatives of investors, analysis of the responses to consultations, drafting of cost/benefit analysis and drafting of the legal text. Some of the required work is closely related to the existing technical works carried out under CRR, CRA3, Solvency II and EMIR.

This means that additional temporary agents are needed as of 2017 and 2018 since ESAs are expected to perform new tasks. These new tasks are set out in the proposed Regulation and further spelled out in the explanatory memorandum.

3.2.5. Third-party contributions

– The proposal/initiative does not provide for co-financing by third parties.

– The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

– ☐ on own resources

– ☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[45]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

[45] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.

Annex to the Legislative Financial Statement for a proposal for Regulation of the European Parliament and of the Council on a European framework for simple, transparent and standardised securitisation

The costs related to the tasks to be carried out by ESMA, EBA and EIOPA have been estimated for staff expenditure in conformity with the cost classification in the ESA draft budget for 2015.

The proposal of the Commission includes provisions for the threes ESAs to **develop a number of regulatory technical standards, including the following**.

- An RTS to specify the risk retention requirement and a template for reporting on the risk retention (article 4.6);

- An RTS to specify the information that the originator, sponsor and SSPE should provide to comply with their obligations under article 5.1(a) and 1(e) and the presentation thereof by means of standardised templates;

- An RTS to specify the information that the originator, sponsor and SSPE should provide to comply with their obligations under paragraph article 14.1 (STS notification) and the presentation thereof by means of standardised templates.

- An RTS to specify criteria for establishing which arrangements under covered bond or securitisations adequately mitigate counterparty credit risk (amendment to EMIR);

- An RTS to specify the risk-management procedures, including the levels and type of collateral and segregation arrangements (amendment to EMIR);

- An RTS to specify the procedures for the counterparties and the relevant competent authorities to be followed when applying exemptions under article 11 paragraphs 6 to 10 (amendment to EMIR);

- An RTS to specify applicable criteria referred to in article 11 paragraphs 5 to 10 including in particular what should be considered as practical or legal impediment to the prompt transfer of own funds and repayment of liabilities between the counterparties (amendment to EMIR);.

- An RTS to establish standard forms, templates and procedures for the exchange of information between competent authorities and ESMA.

ESMA will have to develop and maintain on its official website a **list of all securitisations** for which the originators, sponsors and SSPEs have self-attested that they meet the STS requirements (article 14.2).

New supervisory competences will not be assigned to the three ESAs but they will be asked to further **promote supervisory cooperation and convergence in interpretation and application of the STS criteria** (see chapter 3). This objective is essential as it will prevent a fragmentation of the securitisation market throughout the EU.

Finally, ESMA, EBA and EIOPA will have to jointly publish a **report on the implementation of the STS requirements** and on the functioning of the system of STS notification and the functioning of the market. It shall also report on the actions that supervisors have undertaken and on material risks and new vulnerabilities which may have materialised. The first report shall be published two years after the entry into force of this Regulation and further reports each three years.

Regarding the timing, the additional ESAs resources are therefore required from end 2016 to start the preparatory works and a smooth implementation of the Regulation. As regards the

nature of the positions, the successful and timely delivery of new technical standards will require, in particular, additional resources to be allocated to tasks on policy, legal drafting and impact assessment.

The work requires bilateral and multilateral meetings with stakeholders, analysis and assessment of options and drafting of consultation documents, public consultation of stakeholders, setting up and management of standing expert groups composed of supervisors from Member States, setting up and management of ad hoc expert groups composed of market participants and representatives of investors, analysis of the responses to consultations, drafting of cost/benefit analysis and drafting of the legal text.

Some of the required work is closely related to the existing technical works carried out under CRR, CRA3, Solvency II and EMIR.

This means that additional temporary agents are needed from end 2016. It is assumed that this increased will be maintained in 2017 and 2018 since ESAs will have to perform new tasks. These new tasks are set out in the proposed Regulation and further spelled out in the explanatory memorandum.

Additional resources assumption:

The eight additional posts are assumed to be a temporary agents of functional group and grade AD7.

Average salary costs for different categories of personnel are based on DG BUDG guidance;

Salary correction coefficient for Paris is 1.168

Salary correction coefficient for London is 1.507

Salary correction coefficient for Frankfurt is 0.972

- Mission costs estimated at €10,000.
- Recruiting-related costs (travel, hotel, medical examinations, installation and other allowances, removal costs, etc) estimated at €12,700.

ESMA

Cost type	Calculation	Amount (in thousands)			
		2017	2018	2019	Total
Staff expenditure					
Salaries and allowances	=3x132 x1.168	463	463	463	1389
Expenditure related to recruitment	=3x13	39			39

Mission expenses	=3x10	30	30	30	90
Total		532	493	493	1518

EBA

Cost type	Calculation	Amount (in thousands)			
		2017	2018	2019	Total
Staff expenditure					
Salaries and allowances	=3x132 x1.507	597	597	597	1791
Expenditure related to recruitment	=3x13	39			39
Mission expenses	=3x10	30	30	30	90
Total		666	627	627	1920

EIOPA

Cost type	Calculation	Amount (in thousands)			
		2017	2018	2019	Total
Staff expenditure					
Salaries and allowances	=2x132 x0.972	257	257	257	771
Expenditure related to recruitment	=1x13	39			39
Mission expenses	=1x10	30	30	30	90
Total		326	287	287	900