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Regulation (EU) 2017/2402 of the European Parliament and of the Council

of 12 December 2017

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

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

(2) In its communication of 26 November 2014 on an Investment Plan for Europe, 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 of supporting job creation and a return to sustainable growth.

(3) The Union aims to strengthen 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 to apply a more risk-sensitive prudential framework.

(4) Securitisation is an important element of well-functioning financial markets. Soundly structured securitisation is an important channel for diversifying funding sources and allocating risk more widely within the Union financial system. It allows for a broader distribution of financial-sector risk and can help free up originators' 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, and credits for immovable property and credit cards). Nevertheless, this Regulation recognises the risks of

increased interconnectedness and of excessive leverage that securitisation raises, and enhances the microprudential supervision by competent authorities of a financial institution's participation in the securitisation market, as well as the macroprudential oversight of that market by the European Systemic Risk Board (ESRB), established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council, and by the national competent and designated authorities for macroprudential instruments.

(5) Establishing a more risk-sensitive prudential framework for simple, transparent and standardised ('STS') securitisations requires that the Union clearly define what an 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 unlevel playing field and to regulatory arbitrage, whereas it is important to ensure that the Union functions as a single market for STS securitisations and that it facilitates cross-border transactions.

(6) In line with the existing definitions in Union sectoral legislation, it is appropriate to provide 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) A sponsor should be able to delegate tasks to a servicer, but should remain responsible for risk management. In particular, a sponsor should not transfer the risk-retention requirement to his servicer. The servicer should be a regulated asset manager such as an undertaking for the collective investment in transferable securities (UCITS) management company, an alternative investment fund manager (AIFM) or an entity referred to in Directive 2014/65/EU of the European Parliament and of the Council (MiFID entity).

(8) This Regulation introduces a ban on resecuritisation, subject to derogations for certain cases of resecuritisations that are used for legitimate purposes and to clarifications as to whether asset-backed commercial paper (ABCP) programmes are considered to be resecuritisations. Resecuritisations could hinder the level of transparency that this Regulation seeks to establish. Nevertheless, resecuritisations can, in exceptional circumstances, be useful in preserving the interests of investors. Therefore, resecuritisations should only be permitted in specific instances as established by this Regulation. In addition, it is important for the financing of the real economy that fully supported ABCP programmes that do not introduce any re-tranching on top of the transactions funded by the programme remain outside the scope of the ban on resecuritisation.

(9) Investments in or exposures to securitisations 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 risk, model risk, legal and operational risk, counterparty risk, servicing risk, liquidity risk and concentration risk. Therefore, it is essential that institutional investors be 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 securitisation special purpose entity (SSPE) on whether a securitisation meets the STS requirements. However, they should not rely solely and mechanistically on such a notification and such information.

(10) It is essential that the interests of originators, sponsors, original lenders that are involved in a securitisation and investors be aligned. To achieve this, the originator, sponsor or original lender should retain a significant interest in the underlying exposures of the securitisation. It is therefore important for the originator, sponsor or original lender to retain a material net economic exposure to the underlying risks in question. More generally, securitisation transactions should not be structured in such a way so as to avoid the application of the retention requirement. That requirement should be applicable in all situations where the economic substance of a securitisation is applicable, whatever legal structures or instruments are used. There is no need for multiple applications of the retention requirement. For any given securitisation, it suffices that only the originator, the sponsor or the original lender is subject to the requirement. Similarly, where securitisation transactions contain other securitisations positions as underlying exposures, the retention requirement should be applied only to the securitisation which is subject to the investment. The STS notification should indicate to investors that the originator, sponsor or original lender is retaining a material net economic exposure to the underlying risks. Certain

exceptions should be made for cases in which securitised exposures are fully, unconditionally and irrevocably guaranteed in particular by public authorities. Where support from public resources is provided in the form of guarantees or by other means, this Regulation is without prejudice to State aid rules.

(11) Originators or sponsors should not take advantage of the fact that they could hold more information than investors and potential investors on the assets transferred to the SSPE, and should not transfer to the SSPE, without the knowledge of the investors or potential investors, assets whose credit-risk profile is higher than that of comparable assets held on the balance sheet of the originators. Any breach of that obligation should be subject to sanctions to be imposed by competent authorities, though only when such a breach is intentional. Negligence alone should not be subject to sanctions in that regard. However, that obligation should not prejudice in any way the right of originators or sponsors to select assets to be transferred to the SSPE that *ex ante* have a higher-than-average credit-risk profile compared to the average credit-risk profile of comparable assets that remain on the balance sheet of the originator, as long as the higher credit-risk profile of the assets transferred to the SSPE is clearly communicated to the investors or potential investors. Competent authorities should supervise compliance with this obligation by comparing the assets underlying a securitisation and comparable assets held on the originator's balance sheet. The comparison of performance should be made between assets that are *ex ante* expected to have similar performances, for example between non-performing residential mortgages transferred to the SSPE and non-performing residential mortgages held on the balance sheet of the originator. There is no presumption that the assets underlying a securitisation should perform similarly to the average assets held on the originator's balance sheet.

(12) The ability of investors and potential investors to exercise due diligence and thus make an informed assessment of the creditworthiness of a given securitisation instrument depends on their access to information on those instruments. Based on the existing *acquis*, it is important to create a comprehensive system under which investors and potential investors will have access to all the relevant information over the entire life of the transactions, to reduce originators', sponsors' and SSPEs' reporting tasks and to facilitate investors' continuous, easy and free access to reliable information on securitisations. To enhance market transparency, a framework for securitisation repositories to collect relevant reports, primarily on underlying exposures in securitisations, should be established. Such securitisation repositories should be authorised and supervised by the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council. In specifying the details of such reporting tasks, ESMA should ensure that the information required to be reported to such repositories reflects as closely as possible existing templates for disclosures of such information.

(13) The main purpose of the general obligation for the originator, sponsor and the SSPE to make available information on securitisations via the securitisation repository is to provide the investors with a single and supervised source of the data necessary for performing their due diligence. Private securitisations are often bespoke. They are important because they allow parties to enter into securitisation transactions without disclosing sensitive commercial information on the transaction (e.g. disclosing that a certain company needs funding to expand production or that an investment firm is entering a new market as part of its strategy) and/or related to the underlying assets (e.g. on the type of trade receivable generated by an industrial firm) to the market and competitors. In those cases, investors are in direct contact with the originator and/or sponsor and receive the information necessary to perform their due diligence directly from them. Therefore, it is appropriate to exempt private securitisations from the requirement to notify the transaction information to a securitisation repository.

(14) Originators, sponsors and original lenders should apply to exposures to be securitised the same sound and well-defined criteria for credit-granting which they apply to non-securitised exposures. However, to the extent that trade receivables are not originated in the form of a loan, credit-granting criteria need not be met with respect to trade receivables.

(15) Securitisation instruments are generally not appropriate for retail clients within the meaning of Directive 2014/65/EU.

(16) Originators, sponsors and SSPEs should make available in the investor report all materially relevant data on the credit quality and performance of underlying exposures, 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. The investor report should include in the case of a securitisation which is not an ABCP transaction data on the cash flows generated by underlying exposures and by the liabilities of the securitisation, including separate disclosure of the securitisation position's income and disbursements, namely scheduled principal, scheduled interest, prepaid principal,

past due interest and fees and charges, and data relating to the triggering of any event 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. 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. In order to allow for the different structural features of long-term securitisations and of short-term securitisations (namely ABCP programmes and ABCP transactions), there should be two types of STS requirements: one for long-term securitisations and one for short-term securitisations corresponding to those two differently functioning market segments. ABCP programmes rely on a number of ABCP transactions consisting of short-term exposures which need to be replaced once matured. In an ABCP transaction, securitisation could be achieved, inter alia, through agreement on a variable purchase-price discount on the pool of underlying exposures, or the issuance of senior and junior notes by an SSPE in a co-funding structure where the senior notes are then transferred to the purchasing entities of one or more ABCP programmes. However, ABCP transactions qualifying as STS should not include any resecuritisations. In addition, STS criteria should reflect the specific role of the sponsor providing liquidity support to the ABCP programme, in particular for fully supported ABCP programmes.

(17) At both the international and Union level, much work has already been done to identify STS securitisation. In Commission Delegated Regulations (EU) 2015/35 and (EU) 2015/61, criteria have already been set out for STS securitisation for specific purposes to which a more risk-sensitive prudential treatment is given.

(18) SSPEs should only be established in third countries that are not listed as high-risk and non-cooperative jurisdictions by the Financial Action Task Force (FATF). If a specific Union list of third-country jurisdictions that refuse to comply with tax good-governance standards has been adopted by the time a review of this Regulation is conducted, that Union list should be taken into account and could become the reference list for third countries where SSPEs are not allowed to be established.

(19) It is essential to establish a general and cross-sectorally applicable definition of STS securitisation based on the existing criteria, as well as on the criteria adopted by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) on 23 July 2015 for identifying simple, transparent and comparable securitisations in the framework of capital sufficiency for securitisations, and in particular based on the opinion on a European framework for qualifying securitisation published on 7 July 2015 by the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council.

(20) Implementation of the STS criteria throughout the Union should not lead to divergent approaches. Divergent approaches would create potential barriers for cross-border investors by obliging them to familiarise themselves with the details of the Member State frameworks, thereby undermining investor confidence in the STS criteria. The EBA should therefore develop guidelines to ensure a common and consistent understanding of the STS requirements throughout the Union, in order to address potential interpretation issues. Such a single source of interpretation would facilitate the adoption of the STS criteria by originators, sponsors and investors. ESMA should also play an active role in addressing potential interpretation issues.

(21) In order to prevent divergent approaches in the implementation of the STS criteria, the three European Supervisory Authorities (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 could arise with regard 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 those discussions should be made public on the websites of the ESAs so as to help originators, sponsors, SSPEs and investors assess STS securitisations before issuing or investing in such positions. Such a coordination mechanism would be particularly important in the period leading up to the implementation of this Regulation.

(22) This Regulation 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 SSPE. The transfer or assignment of the underlying exposures to the SSPE should not be subject to clawback provisions in the event of the seller’s insolvency, without prejudice to provisions of national insolvency laws under which the sale of underlying exposures concluded within a certain period before the declaration of the seller’s insolvency can, under strict conditions, be invalidated.

(23) A legal opinion provided by a qualified legal counsel could confirm the true sale or assignment or transfer with the same legal effect of the underlying exposures and the enforceability of that true sale, assignment or transfer with the same legal effect under the applicable law.

(24) In securitisations which are not true-sale, the underlying exposures are not transferred to an issuer entity which is a SSPE, 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. For those reasons, the STS criteria should not allow synthetic securitisation. The progress made by the EBA in its report of December 2015, identifying a possible set of STS criteria for synthetic securitisation and defining 'balance-sheet synthetic securitisation' and 'arbitrage synthetic securitisation', should be acknowledged. Once the EBA has clearly determined a set of STS criteria specifically applicable to balance-sheet synthetic securitisations, and with a view to promoting the financing of the real economy and in particular of SMEs, which benefit the most from such securitisations, the Commission should draft a report and, if appropriate, adopt a legislative proposal in order to extend the STS framework to such securitisations. However, no such extension should be proposed by the Commission in respect of arbitrage synthetic securitisations.

(25) 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.

(26) Underlying exposures should not include exposures in default or exposures to obligors or guarantors that, to the best of the originator's or original lender's knowledge, are in specified situations of credit-impairedness (for example, obligors that have been declared insolvent). The 'best knowledge' standard should be considered to be fulfilled on the basis of information obtained from debtors on origination of the exposures, information obtained from the originator in the course of its servicing of the exposures or in the course of its risk-management procedure or information notified to the originator by a third party. A prudent approach should apply to exposures which have been non-performing and have subsequently been restructured. However, the inclusion of the latter in the pool of underlying exposure should not be excluded where such exposures have not presented new arrears since the date of the restructuring, which should have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE. In such cases, adequate disclosure should ensure full transparency.

(27) 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, or pools of corporate loans, business property loans, leases and credit facilities to undertakings of the same category, or pools of auto loans and leases, or pools of credit facilities to individuals for personal, family or household consumption purposes. The underlying exposures should not include transferable securities, as defined in point (44) of Article 4(1) of Directive 2014/65/EU. To cater for those Member States where it is common practice for credit institutions to use bonds instead of loan agreements to provide credit to non-financial corporations, it should be possible to include such bonds, provided that they are not listed on a trading venue.

(28) It is essential to prevent the recurrence of 'originate to distribute' models. In those situations lenders grant credits applying poor and weak underwriting policies as they know in advance that related risks are eventually sold to third parties. Thus, the exposures to be securitised should be originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards that should not be less stringent than those the originator or original lender applies at the time of origination to similar exposures which are not securitised. Material changes in underwriting standards should be fully disclosed to potential investors or, in the case of fully supported ABCP programmes, to the sponsor and other parties directly exposed to the ABCP transaction. The originator or original lender should have sufficient experience in originating exposures of a similar nature to those which have been securitised. In the case of securitisations where the underlying exposures are residential loans, the pool of loans should not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable intermediaries, were made aware that the information provided might not be verified by the lender. The assessment of the borrower's creditworthiness should also meet where applicable, the requirements set out in Directive 2008/48/EC or 2014/17/EU of the European Parliament and of the Council or equivalent requirements in third countries.

(29) A strong reliance of the repayment of securitisation positions on the sale of assets securing the underlying assets creates vulnerabilities, as illustrated by the poor performance of parts of the market for commercial mortgage-backed securities (CMBS) during the financial crisis. Therefore, CMBS

should not be considered to be STS securitisations.

(30) Where data on the environmental impact of assets underlying securitisations are available, the originator and sponsor of such securitisations should publish them. Therefore, the originator, the sponsor and the SSPE of an STS securitisation where the underlying exposures are residential loans or auto loans or leases should publish the available information related to the environmental performance of the assets financed by such residential loans or auto loans or leases.

(31) Where originators, sponsors and SSPEs would like their securitisations to use the STS designation, investors, competent authorities and ESMA should be notified that the securitisation meets the STS requirements. The notification should include an explanation on how each of the STS criteria has been complied with. ESMA should then publish it on a list of notified STS securitisations 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. Compliance with the STS requirements remains solely the responsibility of the originators, sponsors and SSPEs. This should ensure that originators, sponsors and SSPEs take responsibility for their claim that the securitisation is STS and that there is transparency on the market.

(32) Where a securitisation no longer meets the STS requirements, the originator and sponsor should immediately notify ESMA and the relevant competent authority. Moreover, where a competent authority has imposed administrative sanctions with regard to a securitisation notified as being STS, that competent authority should immediately notify ESMA for their inclusion 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 and sponsors to make well-considered notifications in order to avoid reputational consequences.

(33) (33) Investors should perform their own due diligence on investments commensurate with the risks involved but they should be able to rely on the STS notification and on the information disclosed by the originator, sponsor and SSPE on whether a securitisation meets the STS requirements. However, they should not rely solely and mechanistically on such notifications and information.

(34) The involvement of third parties in helping to check compliance of a securitisation with the STS requirements could be useful for investors, originators, sponsors and SSPEs and contribute to increasing confidence in the market for STS securitisations. Originators, sponsors and SSPEs could also use the services of a third party authorised in accordance with this Regulation to assess whether their securitisation complies with the STS criteria. Those third parties should be subject to authorisation by competent authorities. The notification to ESMA and the subsequent publication on ESMA's website should mention whether STS compliance was confirmed by an authorised third party. However, it is essential that investors make their own assessment, take responsibility for their investment decisions and do not mechanistically rely on such third parties. The involvement of a third party should not in any way shift away from originators, sponsors and institutional investors the ultimate legal responsibility for notifying and treating a securitisation transaction as STS.

(35) Member States should designate competent authorities and provide them with the necessary supervisory, investigative and sanctioning powers. Administrative sanctions should, in principle, be published. Since investors, originators, sponsors, original lenders and SSPEs can be established in different Member States and supervised by different sectoral competent authorities, close cooperation between relevant competent authorities, including the European Central Bank (ECB) with regard to specific tasks conferred on it by Council Regulation (EU) No 1024/2013, and with the ESAs should be ensured by the mutual exchange of information and assistance in supervisory activities. Competent authorities should apply sanctions only in the case of intentional or negligent infringements. The application of remedial measures should not depend on evidence of intention or negligence. In determining the appropriate type and level of sanction or remedial measure, when taking into account the financial strength of the responsible natural or legal person, competent authorities should in particular take into consideration the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person.

(36) Competent authorities should closely coordinate their supervision and ensure consistent decisions, especially in the event of infringements of this Regulation. Where such an infringement concerns an incorrect or misleading notification, the competent authority identifying that infringement should also inform the ESAs and the relevant competent authorities of the Member States concerned. In the event of disagreement between the competent authorities, ESMA, and, where appropriate, the Joint-Committee of the European Supervisory Authorities, should exercise their binding mediation powers.

(37) The requirements for using the designation ‘simple, transparent and standardised’ (STS) securitisation are new and will be further specified by EBA guidelines and supervisory practice over time. In order to avoid discouraging market participants from using that designation, competent authorities should have the ability to grant the originator, sponsor and SSPE a grace period of three months to rectify any erroneous use of the designation that they have used in good faith. Good faith should be presumed where the originator, sponsor and SSPE could not know that a securitisation did not meet all the STS criteria to be designated as STS. During that grace period, the securitisation in question should continue to be considered STS-compliant and should not be deleted from the list drawn up by ESMA in accordance with this Regulation.

(38) 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 should carefully monitor and report on the standardisation efforts made by market participants.

(39) Directives 2009/65/EC(13), 2009/138/EC and 2011/61/EU of the European Parliament and of the Council and Regulations (EC) No 1060/2009 and (EU) No 648/2012 of the European Parliament and of the Council are amended accordingly to ensure consistency of the Union 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.

(40) As regards the amendments to Regulation (EU) No 648/2012, over-the-counter (‘OTC’) derivative contracts entered into by SSPEs 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 SSPEs 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.

(41) 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 be amended to ensure consistency of treatment between derivatives associated with covered bonds and derivatives associated with securitisations, with regard to the clearing obligation and to the margin requirements on non-centrally cleared OTC derivatives.

(42) In order to harmonise the supervisory fees that are to be charged by ESMA, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of further specifying the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States’ experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(43) In order to specify the risk-retention requirement, as well as to further clarify the homogeneity criteria and the exposures to be deemed homogenous under the requirements on simplicity, while ensuring that the securitisation of SME loans is not negatively affected, the Commission should be empowered to adopt regulatory technical standards developed by the EBA with regard to the modalities for 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, and the specification of homogeneity criteria and of which underlying exposures are deemed to be homogeneous. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. The EBA should consult closely with the other two ESAs.

(44) In order to facilitate investors continuous, easy and free access to reliable information on securitisations, as well as to specify the terms of the cooperation and exchange of information obligation of competent authorities, the Commission should be empowered to adopt regulatory technical standards developed by ESMA with regard to: comparable information on underlying

exposures and regular investor reports; the list of legitimate purposes under which resecuritisations are permitted; the procedures enabling securitisation repositories to verify the completeness and consistency of the details reported, the application for registration and simplified application for an extension of registration; the details of the securitisation to be provided for transparency reasons, the operational standards required for the collection, aggregation and comparison of data across securitisation repositories, the information to which designated entities have access and the terms and conditions for direct access; the information to be provided in the case of STS notification; the information to be provided to the competent authorities in the application for the authorisation of a third-party verifier; and the information to be exchanged and the content and scope of the notification obligations. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. ESMA should consult closely with the other two ESAs.

(45) In order to facilitate the process for investors, originators, sponsors and SSPEs, the Commission should also be empowered to adopt implementing technical standards developed by ESMA, with regard to: the templates to be used when making information available to holders of a securitisation position; the format of the application for registration and of the application for an extension of registration of securitisation repositories; template for the provision of information; the templates to be used to provide information to the securitisation repository, taking into account solutions developed by existing securitisation data collectors; and the template for STS notifications that will provide investors and competent authorities with sufficient information for their assessment of compliance with the STS requirements. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. ESMA should consult closely with the other two ESAs.

(46) Since the objectives of this Regulation, namely laying down a general framework for securitisation and creating a specific framework for STS securitisation, 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 can rather, by reason of their scale and effects, 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.

(47) This Regulation should apply to securitisations the securities of which are issued on or after 1 January 2019.

(48) For securitisation positions outstanding as of 1 January 2019, originators, sponsors and SSPEs should be able to use the designation ‘STS’ provided that the securitisation complies with the STS requirements, for certain requirements at the time of notification and for other requirements at the time of origination. Therefore, originators, sponsors and SSPEs should be able to submit an STS notification to ESMA pursuant to this Regulation. Any subsequent modification to the securitisation should be accepted provided that the securitisation continues to meet all of the applicable STS requirements.

(49) The due-diligence requirements that are applied in accordance with existing Union law before the date of application of this Regulation should continue to apply to securitisations issued on or after 1 January 2011, and to securitisations issued before 1 January 2011 where new underlying exposures have been added or substituted after 31 December 2014. The relevant provisions of Commission Delegated Regulation (EU) No 625/2014 that specify the risk-retention requirements for credit institutions and investments firms within the meaning of Regulation (EU) No 575/2013 of the European Parliament and of the Council should remain applicable until the moment that the regulatory technical standards on risk retention pursuant to this Regulation apply. 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 date of application of this Regulation, continue to be subject to Article 405 of Regulation (EU) No 575/2013 and to Chapters I, II and III and Article 22 of Delegated Regulation (EU) No 625/2014, Articles 254 and 255 of 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 SSPEs comply with their transparency obligations, until the regulatory technical standards to be adopted by the Commission pursuant to this Regulation apply, the information referred to in Annexes I to VIII of Commission Delegated Regulation (EU) 2015/3 should be made publicly available,

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, criteria for credit granting, requirements for selling securitisations to retail clients, a ban on re-securitisation, requirements for SSPEs as well as conditions and procedures for securitisation repositories. It also creates a specific framework for simple, transparent and standardised ('STS') securitisation.

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

Article 2

Definitions

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

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

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

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

(c) the transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013.

2 'securitisation special purpose entity' or 'SSPE' means a corporation, trust or other 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;

3 'originator' means an entity which:

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

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

4 'resecuritisation' means securitisation where at least one of the underlying exposures is a securitisation position;

5 'sponsor' means a credit institution, whether located in the Union or not, as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, or an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU other than an originator, that:

(a) establishes and manages an asset-backed commercial paper programme or other securitisation that purchases exposures from third-party entities, or

(b) establishes an asset-backed commercial paper programme or other securitisation that purchases exposures from third-party entities and delegates the day-to-day active portfolio management involved in that securitisation to an entity authorised to perform such activity in accordance with Directive 2009/65/EC, Directive 2011/61/EU or Directive 2014/65/EU;

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

7 ‘asset-backed commercial paper programme’ or ‘ABCP programme’ means a programme of securitisations the securities issued by which predominantly take the form of asset-backed commercial paper with an original maturity of one year or less;

8 ‘asset-backed commercial paper transaction’ or ‘ABCP transaction’ means a securitisation within an ABCP programme;

9 ‘traditional securitisation’ means a securitisation involving the transfer of the economic interest in the exposures being securitised through the transfer of ownership of those exposures from the originator to an SSPE or through sub-participation by an SSPE, where the securities issued do not represent payment obligations of the originator;

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 natural or legal person holding a securitisation position;

12 ‘institutional investor’ means an investor which is one of the following:

(a) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC;

(b) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

(c) an institution for occupational retirement provision falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council in accordance with Article 2 thereof, unless a Member States has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive; or an investment manager or an authorised entity appointed by an institution for occupational retirement provision pursuant to Article 32 of Directive (EU) 2016/2341;

(d) an alternative investment fund manager (AIFM) as defined in point (b) of Article 4(1) of Directive 2011/61/EU that manages and/or markets alternative investment funds in the Union;

(e) an undertaking for the collective investment in transferable securities (UCITS) management company, as defined in point (b) of Article 2(1) of Directive 2009/65/EC;

(f) an internally managed UCITS, which is an investment company authorised in accordance with Directive 2009/65/EC and which has not designated a management company authorised under that Directive for its management;

(g) a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 for the purposes of that Regulation or an investment firm as defined in point (2) of Article 4(1) of that Regulation;

13 ‘servicer’ means an entity that manages a pool of purchased receivables or the underlying credit exposures on a day-to-day basis;

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 borrowers’ outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to an agreed limit;

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

17 ‘early amortisation provision’ means a contractual clause in a securitisation of revolving exposures or a revolving securitisation which requires, on the occurrence of defined events, investors’ securitisation positions to be redeemed before the originally stated maturity of those positions;

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

19 ‘securitisation position’ means an exposure to a securitisation;

20 ‘original lender’ means an entity which, itself or through related entities, directly or indirectly, concluded the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised;

21 ‘fully- supported ABCP programme’ means an ABCP programme that its sponsor directly and fully supports by providing to the SSPE(s) one or more liquidity facilities covering at least all of the following:

(a) all liquidity and credit risks of the ABCP programme;

(b) any material dilution risks of the exposures being securitised;

(c) any other ABCP transaction-level and ABCP programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP;

22 ‘fully supported ABCP transaction’ means an ABCP transaction supported by a liquidity facility, at transaction level or at ABCP programme level, that covers at least all of the following:

(a) all liquidity and credit risks of the ABCP transaction;

(b) any material dilution risks of the exposures being securitised in the ABCP transaction;

(c) any other ABCP transaction-level and ABCP programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP;

23 ‘securitisation repository’ means a legal person that centrally collects and maintains the records of securitisations.

For the purpose of Article 10 of this Regulation, references in Articles 61, 64, 65, 66, 73, 78, 79 and 80 of Regulation (EU) No 648/2012 to ‘trade repository’ shall be construed as references to ‘securitisation repository’.

Article 3

Selling of securitisations to retail clients

1.The seller of a securitisation position shall not sell such a position to a retail client, as defined in point 11 of Article 4(1) of Directive 2014/65/EU, unless all of the following conditions are fulfilled:

(a) the seller of the securitisation position has performed a suitability test in accordance with Article 25(2) of Directive 2014/65/EU;

(b) the seller of the securitisation position is satisfied, on the basis of the test referred to in point (a), that the securitisation position is suitable for that retail client;

(c) the seller of the securitisation position immediately communicates in a report to the retail client the outcome of the suitability test.

2.Where the conditions set out in paragraph 1 are fulfilled and the financial instrument portfolio of that retail client does not exceed EUR 500 000, the seller shall ensure, on the basis of the information provided by the retail client in accordance with paragraph 3, that the retail client does not invest an aggregate amount

exceeding 10 % of that client's financial instrument portfolio in securitisation positions, and that the initial minimum amount invested in one or more securitisation positions is EUR 10 000.

3.The retail client shall provide the seller with accurate information on the retail client's financial instrument portfolio, including any investments in securitisation positions.

4.For the purposes of paragraphs 2 and 3, the retail client's financial instrument portfolio shall include cash deposits and financial instruments, but shall exclude any financial instruments that have been given as collateral.

Article 4

Requirements for SSPEs

SSPEs shall not be established in a third country to which any of the following applies:

(a) the third country is listed as a high-risk and non-cooperative jurisdiction by the FATF;

(b) the third country has not signed an agreement with a Member State to ensure that that third country fully complies with the standards provided for in Article 26 of the Organisation for Economic Cooperation and Development (OECD) Model Tax Convention on Income and on Capital or in the OECD Model Agreement on the Exchange of Information on Tax Matters, and ensures an effective exchange of information on tax matters, including any multilateral tax agreements.

CHAPTER 2

PROVISIONS APPLICABLE TO ALL SECURITISATIONS

Article 5

Due-diligence requirements for institutional investors

1.Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall verify that:

(a) where the originator or original lender established in the Union is not a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, the originator or original lender grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes in accordance with Article 9(1) of this Regulation;

(b) where the originator or original lender is established in a third country, the originator or original lender grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes to ensure that credit-granting is based on a thorough assessment of the obligor's creditworthiness;

(c) if established in the Union, the originator, sponsor or original lender retains on an ongoing basis a material net economic interest in accordance with Article 6 and the risk retention is disclosed to the institutional investor in accordance with Article 7;

(d) if established in a third country, the originator, sponsor or original lender retains on an ongoing basis a material net economic interest which, in any event, shall not be less than 5 %, determined in accordance with Article 6, and discloses the risk retention to institutional investors;

(e) the originator, sponsor or SSPE has, where applicable, made available the information required by Article 7 in accordance with the frequency and modalities provided for in that Article;

2.By derogation from paragraph 1, as regards fully supported ABCP transactions, the requirement specified in point (a) of paragraph 1 shall apply to the sponsor. In such cases, the sponsor shall verify that the originator or original lender which is not a credit institution or an investment firm grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes in accordance with Article 9(1).

3.Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall carry out a due-diligence assessment which enables it to assess the risks involved. That assessment shall consider at least all of the following:

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

(b) all the structural features of the securitisation that can materially impact the performance of the securitisation position, including 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 a securitisation notified as STS in accordance with Article 27, the compliance of that securitisation with the requirements provided for in Articles 19 to 22 or in Articles 23 to 26, and Article 27. Institutional investors may rely to an appropriate extent on the STS notification pursuant to Article 27(1) and on the information disclosed by the originator, sponsor and SSPE on the compliance with the STS requirements, without solely or mechanistically relying on that notification or information.

Notwithstanding points (a) and (b) of the first subparagraph, in the case of a fully supported ABCP programme, institutional investors in the commercial paper issued by that ABCP programme shall consider the features of the ABCP programme and the full liquidity support.

4.An institutional investor, other than the originator, sponsor or original lender, holding a securitisation position, shall at least:

(a) establish appropriate written procedures that are proportionate to the risk profile of the securitisation position and, where relevant, to the institutional investor’s trading and non-trading book, in order to monitor, on an ongoing basis, compliance with paragraphs 1 and 3 and the performance of the securitisation position and of the underlying exposures.

Where relevant with respect to the securitisation and the underlying exposures, those written procedures shall include monitoring of the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, recovery rates, repurchases, loan modifications, payment holidays, collateral type and occupancy, and frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification, frequency distribution of loan to value ratios with band widths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisation positions, as permitted under Article 8, institutional investors shall also monitor the exposures underlying those positions;

(b) in the case of a securitisation other than a fully supported ABCP programme, regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures or, in the absence of sufficient data on cash flows and collateral values, stress tests on loss assumptions, having regard to the nature, scale and complexity of the risk of the securitisation position;

(c) in the case of fully supported ABCP programme, regularly perform stress tests on the solvency and liquidity of the sponsor;

(d) ensure internal reporting to its management body so that the management body is aware of the material risks arising from the securitisation position and so that those risks are adequately managed;

(e) be able to demonstrate to its competent authorities, upon request, that it has a comprehensive and thorough understanding of the securitisation position and its underlying exposures and that it has implemented written policies and procedures for the risk management of the securitisation position and

for maintaining records of the verifications and due diligence in accordance with paragraphs 1 and 2 and of any other relevant information; and

(f) in the case of exposures to a fully supported ABCP programme, be able to demonstrate to its competent authorities, upon request, that it has a comprehensive and thorough understanding of the credit quality of the sponsor and of the terms of the liquidity facility provided.

5.Without prejudice to paragraphs 1 to 4 of this Article, where an institutional investor has given another institutional investor authority to make investment management decisions that might expose it to a securitisation, the institutional investor may instruct that managing party to fulfil its obligations under this Article in respect of any exposure to a securitisation arising from those decisions. Member States shall ensure that, where an institutional investor is instructed under this paragraph to fulfil the obligations of another institutional investor and fails to do so, any sanction under Articles 32 and 33 may be imposed on the managing party and not on the institutional investor who is exposed to the securitisation.

Article 6

Risk retention

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

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

2.Originators shall not select assets to be transferred to the SSPE with the aim of rendering losses on the assets transferred to the SSPE, measured over the life of the transaction, or over a maximum of 4 years where the life of the transaction is longer than four years, higher than the losses over the same period on comparable assets held on the balance sheet of the originator. Where the competent authority finds evidence suggesting contravention of that prohibition, the competent authority shall investigate the performance of assets transferred to the SSPE and comparable assets held on the balance sheet of the originator. If the performance of the transferred assets is significantly lower than that of the comparable assets held on the balance sheet of the originator as a consequence of the intent of the originator, the competent authority shall impose a sanction pursuant to Articles 32 and 33.

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

(a) the retention of not less than 5 % of the nominal value of each of the tranches sold or transferred to investors;

(b) in the case of revolving securitisations or securitisations of revolving exposures, the retention of the originator’s interest of not less than 5 % of the nominal value of each of the securitised exposures;

(c) the retention of randomly selected exposures, equivalent to not less than 5 % of the nominal value of the securitised exposures, where such non-securitised exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is not less than 100 at origination;

(d) the retention of the first loss tranche and, where such retention does not amount to 5 % of the nominal value of the securitised exposures, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total not less than 5 % of the nominal value of the securitised exposures; or

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

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

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

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

(a) central governments or central banks;

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

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

(d) national promotional banks or institutions within the meaning of point (3) of Article 2 of Regulation (EU) 2015/1017 of the European Parliament and of the Council; or

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

6.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.

7.EBA, in close cooperation with the ESMA and the European Insurance and Occupational Pensions Authority (EIOPA) which was established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council, shall develop draft regulatory technical standards to specify in greater detail the risk-retention requirement, in particular with regard to:

(a) the modalities for retaining risk pursuant to paragraph 3, 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 4;

(e) the conditions for exempting transactions based on a clear, transparent and accessible index referred to in paragraph 6;

The EBA shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 7

Transparency requirements for originators, sponsors and SSPEs

1.The originator, sponsor and SSPE of a securitisation shall, in accordance with paragraph 2 of this Article, make at least the following information available to holders of a securitisation position, to the competent authorities referred to in Article 29 and, upon request, to potential investors:

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

(b) all underlying documentation that is essential for the understanding of the transaction, including but not limited to, where applicable, the following documents:

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

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

  (iii) the derivatives and guarantee agreements, as well as 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;

  That underlying documentation shall include a detailed description of the priority of payments of the securitisation;

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

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

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

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

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

(d) in the case of STS securitisations, the STS notification referred to in Article 27;

(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) information on events which trigger changes in the priority of payments or the replacement of any counterparties, and, in the case of a securitisation which is not an ABCP transaction, data on the cash flows generated by the underlying exposures and by the liabilities of the securitisation;

  (iii) information about the risk retained, including information on which of the modalities provided for in Article 6(3) has been applied, in accordance with Article 6.

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

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

(i) a material breach of the obligations provided for in the documents made available in accordance with point (b), including any remedy, waiver or consent subsequently provided in relation to such a breach;

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

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

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

(v) any material amendment to transaction documents.

The information described in points (b), (c) and (d) of the first subparagraph shall be made available before pricing.

The information described in points (a) and (e) of the first subparagraph shall be made available simultaneously each quarter at the latest one month after the due date for the payment of interest or, in the case of ABCP transactions, at the latest one month after the end of the period the report covers.

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

Without prejudice to Regulation (EU) No 596/2014, the information described in points (f) and (g) of the first subparagraph shall be made available without delay.

When complying with this paragraph, the originator, sponsor and SSPE of a securitisation shall comply with national and Union law governing the protection of confidentiality of information and the processing of personal data in order to avoid potential breaches of such law as well as any confidentiality obligation relating to customer, original lender or debtor information, unless such confidential information is anonymised or aggregated.

In particular, with regard to the information referred to in point (b) of the first subparagraph, the originator, sponsor and SSPE may provide a summary of the documentation concerned.

Competent authorities referred to in Article 29 shall be able to request the provision of such confidential information to them in order to fulfil their duties under this Regulation.

2.The originator, sponsor and SSPE of a securitisation shall designate amongst themselves one entity to fulfil the information requirements pursuant to points (a), (b), (d), (e), (f) and (g) of the first subparagraph of paragraph 1.

The entity designated in accordance with the first subparagraph shall make the information for a securitisation transaction available by means of a securitisation repository.

The obligations referred to in the second and fourth subparagraphs shall not apply to securitisations where no prospectus has to be drawn up in compliance with Directive 2003/71/EC.

Where no securitisation repository is registered in accordance with Article 10, the entity designated to fulfil the requirements set out in paragraph 1 of this Article shall make the information available by means of a website that:

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

(b) is subject to appropriate governance standards and to maintenance and operation of an adequate organisational structure that ensures the continuity and orderly functioning of the website;

(c) is subject to appropriate systems, controls and procedures that identify all relevant sources of operational risk;

(d) includes systems that ensure the protection and integrity of the information received and the prompt recording of the information; and

(e) makes it possible to keep record of the information for at least five years after the maturity date of the securitisation.

The entity responsible for reporting the information, and the securitisation repository where the information is made available shall be indicated in the documentation regarding the securitisation.

3.ESMA, in close cooperation with the EBA and EIOPA, shall develop draft regulatory technical standards to specify the information that the originator, sponsor and SSPE shall provide in order to comply with their obligations under points (a) and (e) of the first subparagraph of paragraph 1 taking into account the usefulness of information for the holder of the securitisation position, whether the securitisation position is of a short-term nature and, in the case of an ABCP transaction, whether it is fully supported by a sponsor;

ESMA shall submit those draft regulatory technical standards to the Commission by 18 January 2019.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4.In order to ensure uniform conditions of application for the information to be specified in accordance with paragraph 3, ESMA, in close cooperation with the EBA and EIOPA, shall develop draft implementing technical standards specifying the format thereof by means of standardised templates.

ESMA shall submit those draft implementing technical standards to the Commission by 18 January 2019.

The Commission is empowered to adopt the implementing technical standards referred to in this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 8

Ban on resecuritisation

1.The underlying exposures used in a securitisation shall not include securitisation positions.

By way of derogation, the first subparagraph shall not apply to:

(a) any securitisation the securities of which were issued before 1 January 2019; and

(b) any securitisation, to be used for legitimate purposes as set out in paragraph 3, the securities of which were issued on or following 1 January 2019.

2.A competent authority designated pursuant to Article 29(2), (3) or (4), as applicable, may grant permission to an entity under its supervision to include securitisation positions as underlying exposures in a securitisation where that competent authority deems the use of a resecuritisation to be for legitimate purposes as set out in paragraph 3 of this Article.

Where such supervised entity is a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, the competent authority referred to in the first subparagraph of this paragraph shall consult with the resolution authority and any other authority relevant for that entity before granting permission for the inclusion of securitisation positions as underlying exposures in a securitisation. Such consultation shall last no longer than 60 days from the date on which the competent authority notifies the resolution authority, and any other authority relevant for that entity, of the need for consultation.

Where the consultation results in a decision to grant permission for the use of securitisation positions as underlying exposures in a securitisation, the competent authority shall notify ESMA thereof.

3.For the purposes of this Article, the following shall be deemed to be legitimate purposes:

(a) the facilitation of the winding-up of a credit institution, an investment firm or a financial institution;

(b) ensuring the viability as a going concern of a credit institution, an investment firm or a financial institution in order to avoid its winding-up; or

(c) where the underlying exposures are non-performing, the preservation of the interests of investors.

4.A fully supported ABCP programme shall not be considered to be a resecuritisation for the purposes of this Article, provided that none of the ABCP transactions within that programme is a resecuritisation and that the credit enhancement does not establish a second layer of tranching at the programme level.

5.In order to reflect market developments of other resecuritisations undertaken for legitimate purposes, and taking into account the overarching objectives of financial stability and preservation of the best interests of the investors, ESMA, in close cooperation with the EBA, may develop draft regulatory technical standards to supplement the list of legitimate purposes set out in paragraph 3.

ESMA shall submit any such draft regulatory technical standards to the Commission. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 9

Criteria for credit-granting

1.Originators, sponsors and original lenders shall apply to exposures to be securitised the same sound and well-defined criteria for credit-granting which they apply to non-securitised exposures. To that end, the same clearly established processes for approving and, where relevant, amending, renewing and refinancing credits shall be applied. Originators, sponsors and original lenders shall have effective systems in place to apply those criteria and processes in order to ensure that credit-granting is based on a thorough assessment of the obligor’s creditworthiness taking appropriate account of factors relevant to verifying the prospect of the obligor meeting his obligations under the credit agreement.

2.Where the underlying exposures of securitisations are residential loans made after the entry into force of Directive 2014/17/EU, the pool of those loans shall not include any loan that is marketed and underwritten on the premise that the loan applicant or, where applicable, intermediaries were made aware that the information provided by the loan applicant might not be verified by the lender.

3.Where an originator purchases a third party’s exposures for its own account and then securitises them, that originator shall verify that the entity which was, directly or indirectly, involved in the original agreement which created the obligations or potential obligations to be securitised fulfils the requirements referred to in paragraph 1.

4.Paragraph 3 does not apply if;

(a) the original agreement, which created the obligations or potential obligations of the debtor or potential debtor, was entered into before the entry into force of Directive 2014/17/EU; and

(b) the originator that purchases a third party’s exposures for its own account and then securitises them meets the obligations that originator institutions were required to meet under Article 21(2) of Delegated Regulation (EU) No 625/2014 before 1 January 2019.

CHAPTER 3

CONDITIONS AND PROCEDURES FOR REGISTRATION OF A SECURITISATION REPOSITORY

Article 10

Registration of a securitisation repository

1.A securitisation repository shall register with ESMA for the purposes of Article 5 under the conditions and the procedure set out in this Article.

2.To be eligible to be registered under this Article, a securitisation repository shall be a legal person established in the Union, apply procedures to verify the completeness and consistency of the information made available to it under Article 7(1) of this Regulation, and meet the requirements provided for in Articles 78, 79 and 80(1) to (3), (5) and (6) of Regulation (EU) No 648/2012. For the purposes of this Article, references in Articles 78 and 80 of Regulation (EU) No 648/2012 to Article 9 thereof shall be construed as references to Article 5 of this Regulation.

3.The registration of a securitisation repository shall be effective for the entire territory of the Union.

4.A registered securitisation repository shall comply at all times with the conditions for registration. A securitisation repository shall, without undue delay, notify ESMA of any material changes to the conditions for registration.

5.A securitisation repository shall submit to ESMA either of the following:

(a) an application for registration;

(b) an application for an extension of registration for the purposes of Article 7 of this Regulation in the case of a trade repository already registered under Chapter 1 of Title VI of Regulation (EU) No 648/2012 or under Chapter III of Regulation (EU) 2015/2365 of the European Parliament and of the Council.

6.ESMA shall assess whether the application is complete within 20 working days of receipt of the application.

Where the application is not complete, ESMA shall set a deadline by which the securitisation repository is to provide additional information.

After having assessed an application as complete, ESMA shall notify the securitisation repository accordingly.

7.In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of all of the following:

(a) the procedures referred to in paragraph 2 of this Article which are to be applied by securitisation repositories in order to verify the completeness and consistency of the information made available to them under Article 7(1);

(b) the application for registration referred to in point (a) of paragraph 5;

(c) a simplified application for an extension of registration referred to in point (b) of paragraph 5.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 January 2019.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

8.In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA shall develop draft implementing technical standards specifying the format of both of the following:

(a) the application for registration referred to in point (a) of paragraph 5;

(b) the application for an extension of registration referred to in point (b) of paragraph 5.

With regard to point (b) of the first subparagraph, ESMA shall develop a simplified format avoiding duplicate procedures.

ESMA shall submit those draft implementing technical standards to the Commission by 18 January 2019.

The Commission is empowered to adopt the implementing technical standards referred to in this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 11

Notification and consultation with competent authorities prior to registration or extension of registration

1.Where a securitisation repository applies for registration or for an extension of its registration as trade repository and is an entity authorised or registered by a competent authority in the Member State where it is established, ESMA shall, without undue delay, notify and consult that competent authority prior to the registration or extension of the registration of the securitisation repository.

2.ESMA and the relevant competent authority shall exchange all information that is necessary for the registration, or the extension of registration, of the securitisation repository as well as for the supervision of the compliance of the entity with the conditions of its registration or authorisation in the Member State where it is established.

Article 12

Examination of the application

1.ESMA shall, within 40 working days of the notification referred to in Article 10(6), examine the application for registration, or for an extension of registration, based on the compliance of the securitisation repository with this Chapter and shall adopt a fully reasoned decision accepting or refusing registration or an extension of registration.

2.A decision issued by ESMA pursuant to paragraph 1 shall take effect on the fifth working day following that of its adoption.

Article 13

Notification of ESMA decisions relating to registration or extension of registration

1.Where ESMA adopts a decision as referred to in Article 12 or withdraws the registration as referred to in Article 15(1), it shall notify the securitisation repository within five working days with a fully reasoned explanation for its decision.

ESMA shall, without undue delay, notify the competent authority as referred to in Article 11(1) of its decision.

2.ESMA shall communicate, without undue delay, any decision taken in accordance with paragraph 1 to the Commission.

3.ESMA shall publish on its website a list of securitisation repositories registered in accordance with this Regulation. That list shall be updated within five working days of the adoption of a decision under paragraph 1.

Article 14

Powers of ESMA

1.The powers conferred on ESMA in accordance with Articles 61 to 68, 73 and 74 of Regulation (EU) No 648/2012, in conjunction with Annexes I and II thereto, shall also be exercised with respect to this Regulation. References to Article 81(1) and (2) of Regulation (EU) No 648/2012 in Annex I to that Regulation shall be construed as references to Article 17(1) of this Regulation.

2.The powers conferred on ESMA or on any official of or other person authorised by ESMA in accordance with Articles 61 to 63 of Regulation (EU) No 648/2012 shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 15

Withdrawal of registration

1.Without prejudice to Article 73 of Regulation (EU) No 648/2012, ESMA shall withdraw the registration of a securitisation repository where the securitisation repository:

(a) expressly renounces the registration or has provided no services for the preceding six months;

(b) obtained the registration by making false statements or by other irregular means; or

(c) no longer meets the conditions under which it was registered.

2.ESMA shall, without undue delay, notify the relevant competent authority referred to in Article 11(1) of a decision to withdraw the registration of a securitisation repository.

3.The competent authority of a Member State in which a securitisation repository performs its services and activities and which considers that one of the conditions referred to in paragraph 1 has been met, may request ESMA to examine whether the conditions for the withdrawal of registration of the securitisation repository concerned are met. Where ESMA decides not to withdraw the registration of the securitisation repository concerned, it shall provide detailed reasons for its decision.

4.The competent authority referred to in paragraph 3 of this Article shall be the authority designated under Article 29 of this Regulation.

Article 16

Supervisory fees

1.ESMA shall charge the securitisation repositories fees in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 2 of this Article.

Those fees shall be proportionate to the turnover of the securitisation repository concerned and shall fully cover ESMA’s necessary expenditure relating to the registration and supervision of securitisation repositories as well as the reimbursement of any costs that the competent authorities incur as a result of any delegation of tasks pursuant to Article 14(1) of this Regulation. Insofar as Article 14(1) of this Regulation refers to Article 74 of Regulation (EU) No 648/2012, references to Article 72(3) of that Regulation shall be construed as references to paragraph 2 of this Article.

Where a trade repository has already been registered under Chapter 1 of Title VI of Regulation (EU) No 648/2012 or under Chapter III of Regulation (EU) 2015/2365, the fees referred to in the first subparagraph of

this paragraph shall only be adjusted to reflect additional necessary expenditure and costs relating to the registration and supervision of securitisation repositories pursuant to this Regulation.

2.The Commission is empowered to adopt a delegated act in accordance with Article 47 to supplement this Regulation by further specifying the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Article 17

Availability of data held in a securitisation repository

1.Without prejudice to Article 7(2), a securitisation repository shall collect and maintain details of the securitisation. It shall provide direct and immediate access free of charge to all of the following entities to enable them to fulfil their respective responsibilities, mandates and obligations:

(a) ESMA;

(b) the EBA;

(c) EIOPA;

(d) the ESRB;

(e) the relevant members of the European System of Central Banks (ESCB), including the European Central Bank (ECB) in carrying out its tasks within a single supervisory mechanism under Regulation (EU) No 1024/2013;

(f) the relevant authorities whose respective supervisory responsibilities and mandates cover transactions, markets, participants and assets which fall within the scope of this Regulation;

(g) the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council;

(h) the Single Resolution Board established by Regulation (EU) No 806/2014 of the European Parliament and of the Council;

(i) the authorities referred to in Article 29;

(j) investors and potential investors.

2.ESMA shall, in close cooperation with the EBA and EIOPA and taking into account the needs of the entities referred to in paragraph 1, develop draft regulatory technical standards specifying:

(a) the details of the securitisation referred to in paragraph 1 that the originator, sponsor or SSPE shall provide in order to comply with their obligations under Article 7(1);

(b) the operational standards required, to allow the timely, structured and comprehensive:

  (i) collection of data by securitisation repositories; and

  (ii) aggregation and comparison of data across securitisation repositories;

(c) the details of the information to which the entities referred to in paragraph 1 are to have access, taking into account their mandate and their specific needs;

(d) the terms and conditions under which the entities referred to in paragraph 1 are to have direct and immediate access to data held in securitisation repositories.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 January 2019.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

3.In order to ensure uniform conditions of application for paragraph 2, ESMA, in close cooperation with the EBA and EIOPA shall develop draft implementing technical standards specifying the standardised templates

by which the originator, sponsor or SSPE shall provide the information to the securitisation repository, taking into account solutions developed by existing securitisation data collectors.

ESMA shall submit those draft implementing technical standards to the Commission by 18 January 2019.

The Commission is empowered to adopt the implementing technical standards referred to in this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

CHAPTER 4

SIMPLE, TRANSPARENT AND STANDARDISED SECURITISATION

Article 18

Use of the designation ‘simple, transparent and standardised securitisation’

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

(a) the securitisation meets all the requirements of Section 1 or Section 2 of this Chapter, and ESMA has been notified pursuant to Article 27(1); and

(b) the securitisation is included in the list referred to in Article 27(5).

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

SECTION 1

Requirements for simple, transparent and standardised non-ABCP securitisation

Article 19

Simple, transparent and standardised securitisation

1.Securitisations, except for ABCP programmes and ABCP transactions, that meet the requirements set out in Articles 20, 21 and 22 shall be considered STS.

2.By 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised interpretation and application of the requirements set out in Articles 20, 21 and 22.

Article 20

Requirements relating to simplicity

1.The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller’s insolvency.

2.For the purpose of paragraph 1, any of the following shall constitute severe clawback provisions:

(a) provisions which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller's insolvency;

(b) provisions where the SSPE can only prevent the invalidation referred to in point (a) if it can prove that it was not aware of the insolvency of the seller at the time of sale.

3.For the purpose of paragraph 1, clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in the case of fraudulent transfers, unfair prejudice to creditors or transfers intended to improperly favour particular creditors over others shall not constitute severe clawback provisions.

4.Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to that seller, whether that true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in paragraphs 1 to 3.

5.Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection shall include at least the following events:

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

(b) insolvency of the seller; and

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

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

7.The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. For the purpose of this paragraph, substitution of exposures that are in breach of representations and warranties shall not be considered active portfolio management. Exposures transferred to the SSPE after the closing of the transaction shall meet the eligibility criteria applied to the initial underlying exposures.

8.The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the specific characteristics relating to the cash flows of the asset type including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall comprise only one asset type. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors.

The underlying exposures shall have defined periodic payment streams, the instalments of which may differ in their amounts, relating to rental, principal, or interest payments, or to any other right to receive income from assets supporting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets.

The underlying exposures shall not include transferable securities, as defined in point (44) of Article 4(1) of Directive 2014/65/EU, other than corporate bonds that are not listed on a trading venue.

9.The underlying exposures shall not include any securitisation position.

10.The underlying exposures shall be originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or original lender applied at the time of origination to similar exposures that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to potential investors without undue delay.

In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable, intermediaries were made aware that the information provided might not be verified by the lender.

The assessment of the borrower's creditworthiness shall meet the requirements set out in Article 8 of Directive 2008/48/EC or paragraphs 1 to 4, point (a) of paragraph 5, and paragraph 6 of Article 18 of Directive 2014/17/EU or, where applicable, equivalent requirements in third countries.

The originator or original lender shall have expertise in originating exposures of a similar nature to those securitised.

11.The underlying exposures shall be transferred to the SSPE after selection without undue delay and shall not include, at the time of selection, 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 of the originator's or original lender's knowledge:

(a) has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt-restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:

  (i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE; and

  (ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring;

  (iii) was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or original lender; or

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

12.The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of revolving securitisations backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits.

13.The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced.

The repayment of the holders of the securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party shall not be considered to depend on the sale of assets securing those underlying exposures.

14.The EBA, in close cooperation with ESMA and EIOPA, shall develop draft regulatory technical standards further specifying which underlying exposures referred to in paragraph 8 are deemed to be homogeneous.

The EBA shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 21

Requirements relating to standardisation

1.The originator, sponsor or original lender shall satisfy the risk-retention requirement in accordance with Article 6.

2.The interest-rate and currency risks arising from the securitisation shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

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

4.Where an enforcement or an acceleration notice has been delivered:

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

(b) principal receipts from the underlying exposures shall be passed to investors via sequential amortisation of the securitisation positions, as determined by the seniority of the securitisation position;

(c) repayment of the securitisation positions shall not be reversed with regard to their seniority; and

(d) no provisions shall require automatic liquidation of the underlying exposures at market value.

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

6.The transaction documentation shall include appropriate early amortisation provisions or triggers for termination of the revolving period where the securitisation is a revolving securitisation, including at least the following:

(a) a deterioration in the credit quality of the underlying exposures to or below a predetermined 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 predetermined threshold (early amortisation event); and

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

7.The transaction documentation shall clearly specify:

(a) the contractual obligations, duties and responsibilities of the servicer and the trustee, if any, and other ancillary service providers;

(b) the processes and responsibilities necessary to ensure that a default by or an insolvency of the servicer does not result in a termination of servicing, such as a contractual provision which enables the replacement of the servicer in such cases; and

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

8.The servicer shall have expertise in servicing exposures of a similar nature to those securitised and shall have well-documented and adequate policies, procedures and risk-management controls relating to the servicing of exposures.

9.The transaction documentation shall set out in clear and consistent terms definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge offs, recoveries and other asset performance remedies. The transaction documentation shall clearly specify the priorities of payment, events which trigger changes in such priorities of payment as well as the obligation to report such events. Any change in the priorities of payments which will materially adversely affect the repayment of the securitisation position shall be reported to investors without undue delay.

10.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 bondholders and the responsibilities of the trustee and other entities with fiduciary duties to investors shall be clearly identified.

Article 22

Requirements relating to transparency

1.The originator and the sponsor shall make available data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Those data shall cover a period of at least five years.

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.

3.The originator or the sponsor shall, before the pricing of the securitisation, make available to potential investors a liability cash flow model which precisely represents the contractual relationship between the underlying exposures and the payments flowing between the originator, sponsor, investors, other third parties and the SSPE, and shall, after pricing, make that model available to investors on an ongoing basis and to potential investors upon request.

4.In the case of a securitisation where the underlying exposures are residential loans or auto loans or leases, the originator and sponsor shall publish the available information related to the environmental performance of the assets financed by such residential loans or auto loans or leases, as part of the information disclosed pursuant to point (a) of the first subparagraph of Article 7(1).

5.The originator and the sponsor shall be responsible for compliance with Article 7. The information required by point (a) of the first subparagraph of Article 7(1) shall be made available to potential investors before pricing upon request. The information required by points (b) to (d) of the first subparagraph of Article 7(1) shall be made available before pricing at least in draft or initial form. The final documentation shall be made available to investors at the latest 15 days after closing of the transaction.

SECTION 2

Requirements for simple, transparent and standardised ABCP securitisation

Article 23

Simple, transparent and standardised ABCP securitisation

1.An ABCP transaction shall be considered STS where it complies with the transaction-level requirements provided for in Article 24.

2.An ABCP programme shall be considered STS where it complies with the requirements provided for in Article 26 and the sponsor of the ABCP programme complies with the requirements provided for in Article 25.

For the purpose of this Section, a ‘seller’ means ‘originator’ or ‘original lender’.

3.By 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised interpretation and application of the requirements set out in Articles 24 and 26 of this Regulation.

Article 24

Transaction-level requirements

1.The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller’s insolvency.

2.For the purpose of paragraph 1, any of the following shall constitute severe clawback provisions:

(a) provisions which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller’s insolvency;

(b) provisions where the SSPE can only prevent the invalidation referred to in point (a) if it can prove that it was not aware of the insolvency of the seller at the time of sale.

3.For the purpose of paragraph 1, clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in the case of fraudulent transfers, unfair prejudice to creditors or transfers intended to improperly favour particular creditors over others shall not constitute severe clawback provisions.

4.Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to the seller, whether that true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in paragraphs 1 to 3.

5.Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection shall include at least the following events:

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

(b) insolvency of the seller; and

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

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

7.The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. For the purpose of this paragraph, substitution of exposures that are in breach of representations and warranties shall not be considered active portfolio management.

Exposures transferred to the SSPE after the closing of the transaction shall meet the eligibility criteria applied to the initial underlying exposures.

8.The underlying exposures shall not include any securitisation position.

9.The underlying exposures shall be transferred to the SSPE after selection without undue delay and shall not include, at the time of selection, 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 of the originator's or original lender's knowledge:

(a) has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:

  (i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE; and

  (ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring;

(b) was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or original lender; or

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

10.The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of revolving securitisations backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits.

11.The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled over or refinanced.

The repayment of the holders of the securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party shall not be considered to depend on the sale of assets securing those underlying exposures.

12.The interest-rate and currency risks arising from the securitisation shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

13.The transaction documentation shall set out, in clear and consistent terms, definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge-offs, recoveries and other asset-performance remedies. The transaction documentation shall clearly specify the priorities of payment, events which trigger changes in such priorities of payment as well as the obligation to report such events. Any change in the priorities of payments which will materially adversely affect the repayment of the securitisation position shall be reported to investors without undue delay.

14.The originator and the sponsor shall make available data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being

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

15.ABCP transactions shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the characteristics relating to the cash flows of different asset types including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall only comprise one asset type.

The pool of underlying exposures shall have a remaining weighted average life of not more than one year, and none of the underlying exposures shall have a residual maturity of more than three years.

By way of derogation from the second subparagraph, pools of auto loans, auto leases and equipment lease transactions shall have a remaining weighted average life of not more than three and a half years, and none of the underlying exposures shall have a residual maturity of more than six years.

The underlying exposures shall not include loans secured by residential or commercial mortgages or fully guaranteed residential loans, as referred to in point (e) of the first subparagraph of Article 129(1) of Regulation (EU) No 575/2013. The underlying exposures shall contain obligations that are contractually binding and enforceable, 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 may also generate proceeds from the sale of any financed or leased assets. The underlying exposures shall not include transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU other than corporate bonds, that are not listed on a trading venue.

16.Any referenced interest payments under the ABCP transaction’s assets and liabilities shall be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, but shall not reference complex formulae or derivatives. Referenced interest payments under the ABCP transaction’s liabilities may be based on interest rates reflective of an ABCP programme’s cost of funds.

17.Following the seller’s default or an acceleration event:

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

(b) 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; and

(c) no provisions shall require automatic liquidation of the underlying exposures at market value.

18.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 at the time of origination to similar exposures that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to the sponsor and other parties directly exposed to the ABCP transaction without undue delay. The seller shall have expertise in originating exposures of a similar nature to those securitised.

19.Where an ABCP transaction is a revolving securitisation, the transaction documentation shall include triggers for termination of the revolving period, including at least the following:

(a) a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold; and

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

20.The transaction documentation shall clearly specify:

(a) the contractual obligations, duties and responsibilities of the sponsor, the servicer and the trustee, if any, 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 and other specified events, where applicable; and

(d) how the sponsor meets the requirements of Article 25(3).

21.The EBA, in close cooperation with ESMA and EIOPA, shall develop draft regulatory technical standards further specifying which underlying exposures referred to in paragraph 15 are deemed to be homogeneous.

The EBA shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 25

Sponsor of an ABCP programme

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

2.The sponsor of an ABCP programme shall be a liquidity facility provider and shall support all securitisation positions on an ABCP programme level by covering all liquidity and credit risks and any material dilution risks of the securitised exposures as well as any other transaction- and programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP with such support. The sponsor shall disclose a description of the support provided at transaction level to the investors including a description of the liquidity facilities provided.

3.Before being able to sponsor an STS ABCP programme, the credit institution shall demonstrate to its competent authority that its role under paragraph 2 does not endanger its solvency and liquidity, even in an extreme stress situation in the market.

The requirement referred to in the first subparagraph of this paragraph shall be considered to be fulfilled where the competent authority has determined on the basis of the review and evaluation referred to Article 97(3) of Directive 2013/36/EU that the arrangements, strategies, processes and mechanisms implemented by that credit institution and the own funds and liquidity held by it ensure the sound management and coverage of its risks.

4.The sponsor shall perform its own due diligence and shall verify compliance with the requirements set out in Article 5(1) and (3) of this Regulation, as applicable. It shall also verify that the seller has in place servicing capabilities and collection processes that meet the requirements specified in points (h) to (p) of Article 265(2) of Regulation (EU) No 575/2013 or equivalent requirements in third countries.

5.The seller, at the level of a transaction, or the sponsor, at the level of the ABCP programme, shall satisfy the risk-retention requirement referred to in Article 6.

6.The sponsor shall be responsible for compliance with Article 7 at ABCP programme level and for making available to potential investors before pricing upon their request:

(a) the aggregate information required by point (a) of the first subparagraph of Article 7(1); and

(b) the information required by points (b) to (e) of the first subparagraph of Article 7(1), at least in draft or initial form.

7.In the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry, the liquidity facility shall be drawn down and the maturing securities shall be repaid.

Article 26

Programme-level requirements

1.All ABCP transactions within an ABCP programme shall fulfil the requirements of Article 24(1) to (8) and (12) to (20).

A maximum of 5 % of the aggregate amount of the exposures underlying the ABCP transactions and which are funded by the ABCP programme may temporarily be non-compliant with the requirements of Article 24(9), (10) and (11) without affecting the STS status of the ABCP programme.

For the purpose of the second subparagraph of this paragraph, a sample of the underlying exposures shall regularly be subject to external verification of compliance by an appropriate and independent party.

2.The remaining weighted average life of the underlying exposures of an ABCP programme shall not be more than two years.

3.The ABCP programme shall be fully supported by a sponsor in accordance with Article 25(2).

4.The ABCP programme shall not contain any resecuritisation and the credit enhancement shall not establish a second layer of tranching at the programme level.

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, where such options or clauses may be exercised at the discretion of the seller, sponsor or SSPE.

6.The interest-rate and currency risks arising at ABCP programme level shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

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

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

(b) the contractual obligations, duties and responsibilities of the sponsor, who shall have expertise in credit underwriting, the trustee, if any, and other ancillary service providers;

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

(d) the provisions for replacement of derivative counterparties, and the account bank at ABCP programme level upon their default, insolvency and other specified events, where the liquidity facility does not cover such events;

(e) 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; and

(f) that the liquidity facility shall be drawn down and the maturing securities shall be repaid in the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry.

8.The servicer shall have expertise in servicing exposures of a similar nature to those securitised and shall have well-documented policies, procedures and risk-management controls relating to the servicing of exposures.

SECTION 3

STS notification

Article 27

STS notification requirements

1.Originators and sponsors shall jointly notify ESMA by means of the template referred to in paragraph 7 of this Article where a securitisation meets the requirements of Articles 19 to 22 or Articles 23 to 26 (‘STS notification’). In the case of an ABCP programme, only the sponsor shall be responsible for the notification of that programme and, within that programme, of the ABCP transactions complying with Article 24.

The STS notification shall include an explanation by the originator and sponsor of how each of the STS criteria set out in Articles 20 to 22 or Articles 24 to 26 has been complied with.

ESMA shall publish the STS notification on its official website pursuant to paragraph 5. Originators and sponsors of a securitisation shall inform their competent authorities of the STS notification and designate amongst themselves one entity to be the first contact point for investors and competent authorities.

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

Where the originator, sponsor or SSPE use the service of a third party authorised pursuant to Article 28 to assess whether a securitisation complies with Articles 19 to 22 or Articles 23 to 26, the STS notification shall include a statement that compliance with the STS criteria was confirmed by that authorised third party. The notification shall include the name of the authorised third party, its place of establishment and the name of the competent authority that authorised it.

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

(a) confirmation by the originator or original lender that its credit-granting is done on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing credits and that the originator or original lender has effective systems in place to apply such processes in accordance with Article 9 of this Regulation; and

(b) a declaration by the originator or original lender as to whether credit granting referred to in point (a) is subject to supervision.

4.The originator and sponsor shall immediately notify ESMA and inform their competent authority when a securitisation no longer meets the requirements of either Articles 19 to 22 or Articles 23 to 26.

5.ESMA shall maintain on its official website a list of all securitisations which the originators and sponsors have notified to it as meeting the requirements of Articles 19 to 22 or Articles 23 to 26. ESMA shall add each securitisation so notified to that list immediately and 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 or sponsor. Where the competent authority has imposed administrative sanctions in accordance with Article 32, it shall notify ESMA thereof immediately. ESMA shall immediately indicate on the list that a competent authority has imposed administrative sanctions in relation to the securitisation concerned.

6.ESMA, in close cooperation with the EBA and EIOPA, shall develop draft regulatory technical standards specifying the information that the originator, sponsor and SSPE are required to provide in order to comply with the obligations referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7.In order to ensure uniform conditions for the implementation of this Regulation, ESMA, in close cooperation with the EBA and EIOPA, shall develop draft implementing technical standards to establish the templates to be used for the provision of the information referred to in paragraph 6.

ESMA shall submit those draft implementing technical standards to the Commission by 18 July 2018.

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

Article 28

Third party verifying STS compliance

1.A third party referred to in Article 27(2) shall be authorised by the competent authority to assess the compliance of securitisations with the STS criteria provided for in Articles 19 to 22 or Articles 23 to 26. The competent authority shall grant the authorisation if the following conditions are met:

(a) the third party only charges non-discriminatory and cost-based fees to the originators, sponsors or SSPEs involved in the securitisations which the third party assesses without differentiating fees depending on, or correlated to, the results of its assessment;

(b) the third party is neither a regulated entity as defined in point (4) of Article 2 of Directive 2002/87/EC nor a credit rating agency as defined in point (b) of Article 3(1) of Regulation (EC) No 1060/2009, and the performance of the third party's other activities does not compromise the independence or integrity of its assessment;

(c) the third party shall not provide any form of advisory, audit or equivalent service to the originator, sponsor or SSPE involved in the securitisations which the third party assesses;

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

(e) the management body of the third party includes at least one third, but no fewer than two, independent directors;

(f) the third party takes all necessary steps to ensure that the verification of STS compliance is not affected by any existing or potential conflicts of interest or business relationship involving the third party, its shareholders or members, managers, employees or any other natural person whose services are placed at the disposal or under the control of the third party. To that end, the third party shall establish, maintain, enforce and document an effective internal control system governing the implementation of policies and procedures to identify and prevent potential conflicts of interest. Potential or existing conflicts of interest which have been identified shall be eliminated or mitigated and disclosed without delay. The third party shall establish, maintain, enforce and document adequate procedures and processes to ensure the independence of the assessment of STS compliance. The third party shall periodically monitor and review those policies and procedures in order to evaluate their effectiveness and assess whether it is necessary to update them; and

(g) the third party can demonstrate that it has proper operational safeguards and internal processes that enable it to assess STS compliance.

The competent authority shall withdraw the authorisation when it considers the third party to be materially non-compliant with the first subparagraph.

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

3.The competent authority may charge cost-based fees to the third party referred to in paragraph 1, in order to cover necessary expenditure relating to the assessment of applications for authorisation and to the subsequent monitoring of compliance with the conditions set out in paragraph 1.

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

ESMA shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER 5

SUPERVISION

Article 29

Designation of competent authorities

1.Compliance with the obligations set out in Article 5 of this Regulation shall be supervised by the following competent authorities in accordance with the powers granted by the relevant legal acts:

(a) for insurance and reinsurance undertakings, the competent authority designated in accordance with point (10) of Article 13 of Directive 2009/138/EC;

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

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

(d) for institutions for occupational retirement provision, the competent authority designated in accordance with point (g) of Article 6 of Directive 2003/41/EC of the European Parliament and of the Council;

(e) for credit institutions or investments firms, the competent authority designated in accordance with Article 4 of Directive 2013/36/EU, including the ECB with regard to specific tasks conferred on it by 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 with regard to specific tasks conferred on it by Regulation (EU) No 1024/2013, shall supervise compliance by sponsors with the obligations set out in Articles 6, 7, 8 and 9 of this Regulation.

3.Where originators, original lenders and SSPEs are supervised entities in accordance with Directives 2003/41/EC, 2009/138/EC, 2009/65/EC, 2011/61/EU and 2013/36/EU and Regulation (EU) No 1024/2013, the relevant competent authorities designated according to those acts, including the ECB with regard to specific tasks conferred on it by Regulation (EU) No 1024/2013, shall supervise compliance with the obligations set out in Articles 6, 7, 8 and 9 of this Regulation.

4.For originators, original lenders and SSPEs established in the Union and not covered by the Union legislative acts referred to in paragraph 3, Member States shall designate one or more competent authorities to supervise compliance with the obligations set out in Articles 6, 7, 8 and 9. Member States shall inform the Commission and ESMA of the designation of competent authorities pursuant to this paragraph by 1 January 2019. That obligation shall not apply with regard to those entities that are merely selling exposures under an ABCP programme or another securitisation transaction or scheme and are not actively originating exposures for the primary purpose of securitising them on a regular basis.

5.Member States shall designate one or more competent authorities to supervise the compliance of originators, sponsors and SSPEs with Articles 18 to 27, and the compliance of third parties with Article 28.

Member States shall inform the Commission and ESMA of the designation of competent authorities pursuant to this paragraph by 18 January 2019.

6.Paragraph 5 of this Article shall not apply with regard to those entities that are merely selling exposures under an ABCP programme or other securitisation transaction or scheme and are not actively originating exposures for the primary purpose of securitising them on a regular basis. In such a case, the originator or sponsor shall verify that those entities fulfil the relevant obligations set out in Articles 18 to 27.

7.ESMA shall ensure the consistent application and enforcement of the obligations set out in Articles 18 to 27 of this Regulation in accordance with the tasks and powers set out in Regulation (EU) No 1095/2010. ESMA shall monitor the Union securitisation market in accordance with Article 39 of Regulation (EU) No 600/2014 of the European Parliament and the Council and apply, where appropriate, its temporary intervention powers in accordance with Article 40 of Regulation (EU) No 600/2014.

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

Article 30

Powers of the competent authorities

1.Each Member State shall ensure that the competent authority designated in accordance with Article 29(1) to (5) has the supervisory, investigatory and sanctioning powers necessary to fulfil its duties under this Regulation.

2.The competent authority shall regularly review the arrangements, processes and mechanisms that originators, sponsors, SSPEs and original lenders have implemented in order to comply with this Regulation.

The review referred to in the first subparagraph shall include:

(a) the processes and mechanisms to correctly measure and retain the material net economic interest on an ongoing basis, the gathering and timely disclosure of all information to be made available in accordance with Article 7 and the credit-granting criteria in accordance with Article 9;

(b) for STS securitisations which are not securitisations within an ABCP programme, the processes and mechanisms to ensure compliance with Article 20(7) to (12), Article 21(7), and Article 22; and

(c) for STS securitisations which are securitisations within an ABCP programme, the processes and mechanisms to ensure, with regard to ABCP transactions, compliance with Article 24 and, with regard to ABCP programmes, compliance with Article 26(7) and (8).

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

4.The competent authority shall monitor, as applicable, the specific effects that the participation in the securitisation market has on the stability of the financial institution that operates as original lender, originator, sponsor or investor as part of its prudential supervision in the field of securitisation, taking into account, without prejudice to stricter sectoral regulation:

(a) the size of capital buffers;

(b) the size of the liquidity buffers; and

(c) the liquidity risk for investors due to a maturity mismatch between their funding and investments.

In cases where the competent authority identifies a material risk to financial stability of a financial institution or the financial system as a whole, irrespective of its obligations under Article 36, it shall take action to mitigate those risks, report its findings to the designated authority competent for macroprudential instruments under Regulation (EU) No 575/2013 and the ESRB.

5.The competent authority shall monitor any possible circumvention of the obligations set out in Article 6(2) and ensure that sanctions are applied in accordance with Articles 32 and 33.

Article 31

Macroprudential oversight of the securitisation market

1.Within the limits of its mandate, the ESRB shall be responsible for the macroprudential oversight of the Union's securitisation market.

2.In order to contribute to the prevention or mitigation of systemic risks to financial stability in the Union that arise from developments within the financial system and taking into account macroeconomic developments, so as to avoid periods of widespread financial distress, the ESRB shall continuously monitor developments in the securitisation markets. Where the ESRB considers it necessary, or at least every 3 years, in order to highlight financial stability risks, the ESRB shall, in collaboration with the EBA, publish a report on the financial stability implications of the securitisation market. If material risks are observed, the ESRB shall provide warnings and, where appropriate, issue recommendations for remedial action in response to those risks pursuant to Article 16 of Regulation (EU) No 1092/2010, including on the appropriateness of modifying the risk-retention levels, or the taking of other macroprudential measures, to the Commission, the ESAs and to the Member States. The Commission, the ESAs and the Member States shall, in accordance with Article 17 of Regulation (EU) No 1092/2010, communicate to the ESRB, the European Parliament and the Council the actions undertaken in response to the recommendation and shall provide adequate justification for any inaction within three months of the date of transmission of the recommendation to the addressees.

Article 32

Administrative sanctions and remedial measures

1.Without prejudice to the right for Member States to provide for and impose criminal sanctions pursuant to Article 34, Member States shall lay down rules establishing appropriate administrative sanctions, in the case of negligence or intentional infringement, and remedial measures, applicable at least to situations where:

(a) an originator, sponsor or original lender has failed to meet the requirements provided for in Article 6;

(b) an originator, sponsor or SSPE has failed to meet the requirements provided for in Article 7;

(c) an originator, sponsor or original lender has failed to meet the criteria provided for in Article 9;

(d) an originator, sponsor or SSPE has failed to meet the requirements provided for in Article 18;

(e) a securitisation is designated as STS and an originator, sponsor or SSPE of that securitisation has failed to meet the requirements provided for in Articles 19 to 22 or Articles 23 to 26;

(f) an originator or sponsor makes a misleading notification pursuant to Article 27(1);

(g) an originator or sponsor has failed to meet the requirements provided for in Article 27(4); or

(h) a third party authorised pursuant to Article 28 has failed to notify material changes to the information provided in accordance with Article 28(1), or any other changes that could reasonably be considered to affect the assessment of its competent authority.

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

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

2.Member States shall confer on competent authorities the power to apply at least the following sanctions and measures in the event of the infringements referred to in paragraph 1:

(a) a public statement which indicates the identity of the natural or legal person and the nature of the infringement in accordance with Article 37;

(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 preventing any member of the originator's, sponsor's or SSPE's management body or any other natural person held responsible for the infringement from exercising management functions in such undertakings;

(d) in the case of an infringement as referred to in point (e) or (f) of the first subparagraph of paragraph 1 of this Article a temporary ban preventing the originator and sponsor from notifying under Article 27(1) that a securitisation meets the requirements set out in Articles 19 to 22 or Articles 23 to 26;

(e) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 January 2018;

(f) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 January 2018 or of up to 10 % of the total annual net turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council, the relevant total annual net turnover shall be the total net annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

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

(h) in the case of an infringement as referred to in point (h) of the first subparagraph of paragraph 1 of this Article, a temporary withdrawal of the authorisation referred to in Article 28 for the third party authorised to check the compliance of a securitisation with Articles 19 to 22 or Articles 23 to 26.

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

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

Article 33

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 32 in accordance with their national legal frameworks, as appropriate:

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to other authorities;

(d) 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 32, shall take into account the extent to which the infringement is intentional or results from negligence and all other 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;

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

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

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

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

Article 34

Criminal sanctions

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

2.Where Member States have chosen, in accordance with paragraph 1 of this Article, to lay down criminal sanctions for the infringement referred to in Article 32(1), they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for the infringements referred to in Article 32(1), and to provide the same information to other competent authorities as well as ESMA, the EBA and EIOPA to fulfil their obligation to cooperate for the purposes of this Regulation.

Article 35

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, the EBA and EIOPA by 18 January 2019. Member States shall notify the Commission, ESMA, the EBA and EIOPA without undue delay of any subsequent amendments thereto.

Article 36

Cooperation between competent authorities and the ESAs

1.The competent authorities referred to in Article 29 and ESMA, the EBA and EIOPA shall cooperate closely with each other and exchange information to carry out their duties pursuant to Article 30 to 34.

2.Competent authorities shall closely coordinate their supervision in order to identify and remedy infringements of this Regulation, develop and promote best practices, facilitate collaboration, foster consistency of interpretation and provide cross-jurisdictional assessments in the event of any disagreements.

3.A specific securitisation committee shall be established within the framework of the Joint Committee of the European Supervisory Authorities, within which competent authorities shall closely cooperate, in order to carry out their duties pursuant to Articles 30 to 34.

4.Where a competent authority finds that one or more of the requirements under Articles 6 to 27 have been infringed or has reason to believe so, it shall inform the competent authority of the entity or entities suspected of such infringement of its findings in a sufficiently detailed manner. The competent authorities concerned

shall closely coordinate their supervision in order to ensure consistent decisions.

5.Where the infringement referred to in paragraph 4 of this Article concerns, in particular, an incorrect or misleading notification pursuant to Article 27(1), the competent authority finding that infringement shall notify without delay, the competent authority of the entity designated as the first contact point under Article 27(1) of its findings. The competent authority of the entity designated as the first contact point under Article 27(1) shall in turn inform ESMA, the EBA and EIOPA and shall follow the procedure provided for in paragraph 6 of this Article.

6.Upon receipt of the information referred to in paragraph 4, the competent authority of the entity suspected of the infringement shall take within 15 working days any necessary action to address the infringement identified and notify the other competent authorities involved, in particular those of the originator, sponsor and SSPE and the competent authorities of the holder of a securitisation position, when known. When a competent authority disagrees with another competent authority regarding the procedure or content of its action or inaction, it shall notify all other competent authorities involved about its disagreement without undue delay. If that disagreement is not resolved within three months of the date on which all competent authorities involved are notified, the matter shall be referred to ESMA in accordance with Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010. The conciliation period referred to in Article 19(2) of Regulation (EU) No 1095/2010 shall be one month.

Where the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in the first subparagraph, ESMA shall take the decision referred to in Article 19(3) of Regulation (EU) No 1095/2010 within one month. During the procedure set out in this Article, a securitisation appearing on the list maintained by ESMA pursuant to Article 27 of this Regulation shall continue to be considered as STS pursuant to Chapter 4 of this Regulation and shall be kept on such list.

Where the competent authorities concerned agree that the infringement is related to non-compliance with Article 18 in good faith, they may decide to grant the originator, sponsor and SSPE a period of up to three months to remedy the identified infringement, starting from the day the originator, sponsor and SSPE were informed of the infringement by the competent authority. During this period, a securitisation appearing on the list maintained by ESMA pursuant to Article 27 shall continue to be considered as STS pursuant to Chapter 4 and shall be kept on such list.

Where one or more of the competent authorities involved is of the opinion that the infringement is not appropriately remedied within the period set out in third subparagraph, first subparagraph shall apply.

7.Three years from the date of application of this Regulation, ESMA shall conduct a peer review in accordance with Article 30 of Regulation (EU) No 1095/2010 on the implementation of the criteria provided for in Articles 19 to 26 of this Regulation.

8.ESMA shall, in close cooperation with the EBA and EIOPA, develop draft regulatory technical standards to specify the general cooperation obligation and the information to be exchanged under paragraph 1 and the notification obligations pursuant to paragraphs 4 and 5.

ESMA shall, in close cooperation with the EBA and EIOPA, submit those draft regulatory technical standards to the Commission by 18 January 2019.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 37

Publication of administrative sanctions

1.Member States shall ensure that competent authorities publish on their official websites, without undue delay and as a minimum, any decision imposing an administrative sanction against which there is no appeal and which is imposed for infringement of Article 6, 7, 9 or 27(1) after the addressee of the sanction has been notified of that decision.

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

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

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

(b) publish the decision imposing the administrative sanction on an anonymous basis, in accordance with national law; or

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

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

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

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

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

6.Competent authorities shall inform ESMA of all administrative sanctions imposed, including, where appropriate, any appeal in relation thereto and the outcome thereof.

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

CHAPTER 6

AMENDMENTS

Article 38

Amendment to Directive 2009/65/EC

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

‘Article 50a

Where UCITS management companies or internally managed UCITS are exposed to a securitisation that no longer meets the requirements provided for in the Regulation (EU) 2017/2402 of the European Parliament and of the Council, they shall, in the best interest of the investors in the relevant UCITS, act and take

corrective action, if appropriate.’

Article 39

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 of this Directive supplementing this Directive by laying down the specifications for the circumstances under which a proportionate additional capital charge may be imposed when the requirements provided for in Articles 5 or 6 of Regulation (EU) 2017/2402 of the European Parliament and of the Council have been breached, without prejudice to Article 101(3) of this Directive.

3.In order to ensure consistent harmonisation in relation to paragraph 2 of this Article, 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.

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.’

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

Article 40

Amendment to Regulation (EC) No 1060/2009

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

(1) in recitals 22 and 41, in Article 8c and in point 1 of Part II of Section D of Annex I, ‘structured finance instrument’ is replaced by ‘securitisation instrument’;

(2) in recitals 34 and 40, in Articles 8(4), 8c, 10(3) and 39(4) as well as in the fifth paragraph of point 2 of Section A of Annex I, point 5 of Section B of Annex I, the title and point 2 of Part II of Section D of Annex I, points 8, 24 and 45 of Part I of Annex III and point 8 of Part III of Annex III, ‘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(1), 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 (EU) 2017/2402 (Securitisation Regulation);’

(5) Article 8b is deleted;

(6) in point (b) of Article 4(3), point (b) of the second subparagraph of Article 5(6) and Article 25a, the reference to Article 8b is deleted.

Article 41

Amendment to Directive 2011/61/EU

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

‘Article 17

Where AIFMs are exposed to a securitisation that no longer meets the requirements provided for in Regulation (EU) 2017/2402 of the European Parliament and of the Council, they shall, in the best interest of the investors in the relevant AIFs, act and take corrective action, if appropriate.’

Article 42

Amendment to Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

(1) in Article 2, the following points 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 are added:

‘5.Paragraph 1 of this Article 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 (EU) 2017/2402 of the European Parliament and of the Council 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 Article 18, and of Articles 19 to 22 or 23 to 26 of Regulation (EU) 2017/2402 (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 18 July 2018.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 or (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 is to be considered as a practical or legal impediment to the prompt transfer of own funds and repayment of liabilities between the counterparties.

The level and type of collateral required with respect to OTC derivative contracts that are concluded by covered bond entities in connection with a covered bond, or by a securitisation special purpose entity in connection with a securitisation within the meaning of this Regulation and meeting the conditions of Article 4(5) of this Regulation and the requirements set out in Article 18, and in Articles 19 to 22 or 23 to 26 of Regulation (EU) 2017/2402 (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 18 July 2018.

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

Article 43

Transitional provisions

1.This Regulation shall apply to securitisations the securities of which are issued on or after 1 January 2019, subject to paragraphs 7 and 8.

2.In respect of securitisations the securities of which were issued before 1 January 2019, originators, sponsors and SSPEs may use the designation ‘STS’ or ‘simple, transparent and standardised’, or a designation that refers directly or indirectly to those terms, only where the requirements set out in Article 18 and the conditions set out in paragraph 3 of this Article are complied with.

3.Securitisations the securities of which were issued before 1 January 2019, other than securitisation positions relating to an ABCP transaction or an ABCP programme, shall be considered ‘STS’ provided that:

(a) they met, at the time of issuance of those securities, the requirements set out in Article 20(1) to (5), (7) to (9) and (11) to (13) and Article 21(1) and (3); and

(b) they meet, as of the time of notification pursuant to Article 27(1), the requirements set out in Article 20(6) and (10), Article 21(2) and (4) to (10) and Article 22(1) to (5).

4.For the purposes of point (b) of paragraph 3, the following shall apply:

(a) in Article 22(2), ‘prior to issuance’ shall be deemed to read ‘prior to notification under Article 27(1)’;

(b) in Article 22(3), ‘before the pricing of the securitisation’ shall be deemed to read ‘prior to notification under Article 27(1)’;

(c) in Article 22(5):

(i) in the second sentence, ‘before pricing’ shall be deemed to read ‘prior to notification under Article 27(1)’;

(ii) ‘before pricing at least in draft or initial form’ shall be deemed to read ‘prior to notification under Article 27(1)’;

(iii) the requirement set out in the fourth sentence shall not apply;

(iv) references to compliance with Article 7 shall be construed as if Article 7 applied to those securitisations notwithstanding Article 43(1).

5.In respect of securitisations the securities of which were issued on or after 1 January 2011 but before 1 January 2019 and in respect of securitisations the securities of which were issued before 1 January 2011 where new underlying exposures have been added or substituted after 31 December 2014, the due-diligence requirements as provided for in Regulation (EU) No 575/2013, Delegated Regulation (EU) 2015/35 and Delegated Regulation (EU) No 231/2013 respectively shall continue to apply in the version applicable on 31 December 2018.

6.In respect of securitisations the securities of which were issued before 1 January 2019 credit institutions or investment firms as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, insurance undertakings as defined in point (1) of Article 13 of Directive 2009/138/EC, reinsurance undertakings as defined in point (4) of Article 13 of Directive 2009/138/EC and alternative investment fund managers (AIFMs) as defined in point (b) of Article 4(1) of Directive 2011/61/EU shall continue to apply Article 405 of Regulation (EU) No 575/2013 and Chapters I, II and III and Article 22 of Delegated Regulation (EU) No 625/2014, Articles 254 and 255 of Delegated Regulation (EU) 2015/35 and Article 51 of Delegated Regulation (EU) No 231/2013 respectively as in the version applicable on 31 December 2018.

7.Until the regulatory technical standards to be adopted by the Commission pursuant Article 6(7) of this Regulation apply, originators, sponsors or the original lender shall, for the purposes of the obligations set out in Article 6 of this Regulation, apply Chapters I, II and III and Article 22 of Delegated Regulation (EU) No 625/2014 to securitisations the securities of which are issued on or after 1 January 2019.

8.Until the regulatory technical standards to be adopted by the Commission pursuant to Article 7(3) of this Regulation apply, originators, sponsors and SSPEs shall, for the purposes of the obligations set out in points (a) and (e) of the first subparagraph of Article 7(1) of this Regulation, make the information referred to in Annexes I to VIII of Delegated Regulation (EU) 2015/3 available in accordance with Article 7(2) of this Regulation.

9.For the purpose of this Article, in the case of securitisations which do not involve the issuance of securities, any references to ‘securitisations the securities of which were issued’ shall be deemed to mean ‘securitisations the initial securitisation positions of which are created’, provided that this Regulation applies to any securitisations that create new securitisation positions on or after 1 January 2019.

Article 44

Reports

By 1 January 2021 and every three years thereafter, the Joint Committee of the European Supervisory Authorities shall publish a report on:

(a) the implementation of the STS requirements as provided for in Articles 18 to 27;

(b) 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;

(c) the functioning of the due-diligence requirements provided for in Article 5 and the transparency requirements provided for in Article 7 and the level of transparency of the securitisation market in the Union, including on whether the transparency requirements provided for in Article 7 allow the competent authorities to have a sufficient overview of the market to fulfil their respective mandates;

(d) the requirements provided for in Article 6, including compliance therewith by market participants and the modalities for retaining risk pursuant to Article 6(3).

Article 45

Synthetic securitisations

1.By 2 July 2019, the EBA, in close cooperation with ESMA and EIOPA, shall publish a report on the feasibility of a specific framework for simple, transparent and standardised synthetic securitisation, limited to balance-sheet synthetic securitisation.

2.By 2 January 2020, the Commission shall, on the basis of the EBA report referred to in paragraph 1, submit a report to the European Parliament and the Council on the creation of a specific framework for simple, transparent and standardised synthetic securitisation, limited to balance-sheet synthetic securitisation, together with a legislative proposal, if appropriate.

Article 46

Review

By 1 January 2022, the Commission shall present a report to the European Parliament and the Council on the functioning of this Regulation, accompanied, if appropriate, by a legislative proposal.

That report shall consider in particular the findings of the reports referred to in Article 44, and shall assess:

(a) the effects of this Regulation, including the introduction of the STS securitisation designation, on the functioning of the market for securitisations in the Union, the contribution of securitisation to the real economy, in particular on access to credit for SMEs and investments, and interconnectedness between financial institutions and the stability of the financial sector;

(b) the differences in use of the modalities referred to in Article 6(3), based on the data reported pursuant to point (e)(iii) of the first subparagraph of Article 7(1). If the findings show an increase in prudential risks caused by the use of the modalities referred to in points (a), (b), (c) and (e) of Article 6(3), then suitable redress shall be considered;

(c) whether there has been a disproportionate rise of the number of transactions referred to in the third subparagraph of Article 7(2), since the application of this Regulation and whether market participants structured transactions in a way to circumvent the obligation under Article 7 to make available information through securitisation repositories;

(d) whether there is a need to extend disclosure requirements under Article 7 to cover transactions referred to in the third subparagraph of Article 7(2) and investor positions;

(e) whether in the area of STS securitisations an equivalence regime could be introduced for third-country originators, sponsors and SSPEs, taking into consideration international developments in the area of securitisation, in particular initiatives on simple, transparent and comparable securitisations;

(f) the implementation of the requirements provided for in Article 22(4) and whether they need to be extended to securitisation where the underlying exposures are not residential loans or auto loans or leases, with the view to mainstreaming environmental, social and governance disclosure;

(g) the appropriateness of the third-party verification regime as provided for in Articles 27 and 28, and whether the authorisation regime for third parties provided for in Article 28 fosters sufficient competition among third parties and whether changes in the supervisory framework need to be introduced in order to ensure financial stability; and

(h) whether there is a need to complement the framework on securitisation set out in this Regulation by establishing a system of limited licensed banks, performing the functions of SSPEs and having the exclusive right to purchase exposures from originators and sell claims backed by the purchased exposures to investors.

Article 47

Exercise of the delegation

1.The power to adopt delegated acts is conferred on the Commission subject to the conditions provided for in this Article.

2.The power to adopt delegated acts referred to in Article 16(2) shall be conferred on the Commission for an indeterminate period of time from 17 January 2018.

3.The delegation of power referred to Article 16(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4.Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5.As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6.A delegated act adopted pursuant to Article 16(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 48

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*.

It shall apply from 1 January 2019.

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

Done at Strasbourg, 12 December 2017.