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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on a European framework for simple, transparent and standardised securitisation amending Directive 2009/65/EC, Directive 2009/138/EC, Regulation 2009/1060/EC, Directive 2011/61/EU and Regulation 648/2012/EU

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

Reasons for and objectives of the proposal

The development of a simple, transparent and standardised securitisation market constitutes a building block of the Capital Markets Union and contributes to the Commission's priority objective to support job creation and a return to sustainable growth. A high-quality framework for EU securitisation can promote further integration of EU financial markets, help diversify funding sources and unlock capital, making it easier for banks to lend to households and businesses.

In its Work Programme for 2015[1], the European Commission set out focused actions with 10 priorities and announced as part of the priority to develop a deeper and fairer Internal Market with a strengthened industrial base that it would put in place an EU framework for simple, transparent and standardised securitisation. In the Investment Plan for Europe presented by the Commission on 26 November 2014, creating a sustainable market for securitisation, without repeating the mistakes made before the crisis, was identified as one of the five areas where short-term action was needed[2].

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

Securitisation is an important element of well-functioning financial markets. Soundly structured securitisation can be an important channel for diversifying funding sources and allocating risk more efficiently within the EU financial system. It allows for a broader distribution of financial sector risk and can help to free up banks' 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 bridge banks and capital markets with an indirect benefit for businesses and citizens (through, for example, less expensive loans and business finance mortgages and credit cards).

Following the US subprime crisis in 2007-08, public authorities took a number of steps to make securitisation transactions safer and simpler, and to ensure that appropriate incentives are in place to manage risk – including through higher capital requirements, and mandatory risk retention requirements to ensure that securitised products are not being created solely for the purpose of distribution to investors, as was prevalent in the run-up to the financial crisis (a so-called 'originate to distribute' model).[3] These reforms were necessary to ensure financial stability. As a result of these reforms, all securitisations in Europe are now strictly regulated.

Since the beginning of the financial crisis, European securitisation markets have remained subdued. This is in contrast to markets in the US which have recovered. This is despite the fact that unlike the US, EU securitisation markets withstood the crisis relatively well, with

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1 COM(2014) 910 final.

2 COM/2014/0903 final.

3 Since 2011, EU banks as investors have been obliged to check that originating banks or sponsors of securitisations have retained an economic interest in the transaction equivalent to at least 5% of the securitised assets. This approach was subsequently extended to the insurance sector and part of the asset management sectors.

realised losses on instruments originated in the EU having been very low compared to the US. For example, AAA-rated US securitisation instruments backed by residential mortgages (RMBS) reached default rates of 16% (subprime) and 3% (prime). By contrast, default rates of EU RMBS never rose above 0.1%. The divergence is even bigger for BBB-rated products where US RMBS' default rates peaked at 62% and 46% (subprime and prime, respectively) while EU products' default rates peaked at 0.2%.

While securitisation markets in the US have recovered more strongly than the EU, this is at least in part due to the role of public sponsorship. Almost 80% of securitisation instruments in the US benefit from public guarantees from the US Government Sponsored Enterprises (e.g. Fannie Mae and Freddy Mac). Public support has helped rekindle US securitisation as banks investing in these products consequently also benefit from lower capital charges.

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

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

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

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

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

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

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

In its conclusions of its meeting of 25 and 26 June 2015, the European Council noted that securitisation can provide an effective mechanism to transfer risk from bank lenders to non-bank operators, thus increasing banks' capacity to lend, but also to channel non-bank financing towards the working capital of companies and called on the Commission to propose a framework for simple, transparent and standardised securitisation, building on the numerous

ongoing initiatives at European and international levels, as a matter of priority at the latest by the end of 2015.

In its July 2015 Resolution on CMU of the European economy, the European Parliament noted that the development of simple, transparent and standardised securitisation have to be better exploited and welcomed the initiative to establish a sustainable, transparent securitisation market by developing a specific regulatory framework with a uniform definition of high-quality securitisation, combined with effective methods for monitoring, measuring and managing risk.

Consistency with existing policy provisions in the policy area

Currently, the framework for EU securitisation is determined by a large number of EU legal acts. These include the Capital Requirements Regulation for banks[4], the Solvency II Directive[5] for insurers, and the UCITS[6] and AIFMD[7] directives for asset managers. Legal provisions, notably on information disclosure and transparency, are also laid down in the Credit Rating Agency Regulation[8] (CRAIII) and in the Prospectus Directive. There are also elements related to the prudential treatment of securitisation in Commission legislative proposals currently under negotiation (Bank Structural Reform and Money Markets Funds).

Provisions are also included in delegated acts. The EU has already taken steps to create a differentiated regulatory treatment in two delegated acts covering the prudential requirements for insurers (under the Solvency II Directive[9]), and the liquidity of banks (through the Liquidity Coverage Ratio[10]). This approach helps to better differentiate simple, transparent and standardised products from the more opaque and complex. This can make some securitisations more attractive by lowering barriers to the securitisation process and by improving liquidity and market depth. However, this differentiation does not replace the need for investors' due diligence. The EU's adoption of these delegated acts in 2014 were preliminary steps that now need to be complemented by further action, building on the range of EU and international initiatives.

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

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

5 Directive 2009/138/EC) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (*OJ L 335, 17.12.2009, p. 1*).

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

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

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

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

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

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

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

At EU level, in response to the slow recovery of securitisation markets, a number of public authorities have been looking at the issue. For example, the European Central Bank (ECB) and the Bank of England (BoE) launched a public consultation in May 2014 and offered some useful avenues to explore.

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

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

Consistency with other Union policies

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

This initiative is part of the Capital Markets Union (CMU) action plan adopted by the European Commission today. The CMU is one of the Commission's priorities to ensure that the financial system supports jobs and growth and helps with the demographic challenges that Europe faces. It aims at better linking savings with growth and providing more options and better returns for savers and investors. It intends to offer businesses more choices of funding at different stages of their development and to channel investment to where it can be used most productively, increasing the opportunities for Europe's companies and infrastructure projects.

The Commission initiated this CMU project by organising a public consultation through a Green Paper on Building the CMU from 18 February to 13 May 2015. The feedback of the majority of respondents confirms the areas identified in the Green Paper for boosting Europe's capital markets. The suggested option to develop a EU framework to promote

simple and transparent securitisation was also endorsed by stakeholders and detailed views were expressed as part of a separate consultation.

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

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

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

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

This legal basis has also been used by the EU legislator for the adoption of the Capital Requirements Regulation (Regulation 575/2013/EU), the CRA Regulation (Regulation 1060/2009/EC), and Regulation 648/2012/EU (EMIR), the provisions of which are taken over by this Regulation and/or amended.

This proposal also takes over/amends certain provisions of the Solvency II Directive and the AIFM Directive and the delegated acts based on these Directives. These Directives are based on Article 53 (1) in combination with Article 62. However, the main objective of these Directives is to put in practice the right of establishment and the free provision of services. Since the objective of this proposal to harmonise, in line with existing EU law, Member States legislation on securitisation to ensure a level playing field in the internal market the legal basis should be Article 114 of the TFEU.

Subsidiarity (for non-exclusive competence)

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

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

insurers and investment funds invest in these products and they do so across European borders, but also globally. The securitisation market is therefore International in nature.

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

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

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

Proportionality

The policy options chosen are the introduction, via EU legislation, of criteria for simple, transparent and standardised securitisation that apply to medium/long term and short term (ABCP) securitisation. The ultimate responsibility for ensuring compliance with these criteria lies with originators and sponsors and with investors, reinforced by supervisory oversight, cross border supervisory coordination and a sanctioning mechanism. The EU framework will provide rules on transparency, due diligence and risk retention rules and leave space for market participants to develop standardisation.

The differentiation made in EU law between STS and non-STS securitisation does not in any way restrict Member States to set their own specific rules on securitisation. At the same time, market participants are not obliged to issue and invest in STS securitisations: originators can still create non-STS securitisations or securitisations that are more simple, transparent and standardised then the STS criteria require. The drafting of the criteria has sought to align the STS criteria with the existing criteria in the LCR delegated Act and the Solvency II delegated act and that of the BCBS/IOSCO and EBA.

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

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

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

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

Choice of the instrument

This proposal aims in particular at creating a sustainable market for Simple, Transparent and Standardised Securitisation. To this end the proposal stipulates the criteria to be met by securitisations and provids the necessary supervisory framework and harmonises the existing provisions in EU law on securitisation related to risk retention, disclosure and due diligence.

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

Article 114(1) TFEU provides the legal basis for a Regulation creating uniform provisions aimed at the functioning of the internal market. The criteria for STS securitisation and the harmonisation of the existing provisions in EU law on securitisation related to risk retention, disclosure and due diligence will underpin the correct and safe functioning of the internal market. A directive would not lead to the same results, as implementation of a Directive might

lead to divergent measures being adopted at national level, which could lead to distortion of competition and regulatory arbitrage. Moreover, as stated above the EU provisions already in place in this area have been adopted in the form of Regulations.

The creation of this legal framework will require the adoption of a number of legal acts. First, a Securitisation Regulation that will create uniform definitions across financial sectors and harmonised rules on risk retention, due diligence and disclosure. The same regulation will stipulate the criteria for STS securitisation for all financial sectors. This regulation should also repeal provisions in sectoral legislation that will become superfluous due to the introduction of the securitisation regulation. Secondly, legal acts for a more risk-sensitive prudential treatment of securitisation for banks and insurers are also proposed. For banks the current prudential framework is laid down in CRR and for insurers in the Solvency II delegated act. For the banking treatment a proposal for amending CRR should be adopted, while for insurers the Solvency II delegated act will be amended to revise the prudential treatment.

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

In order to ensure that the insurance regulatory framework for securitisation is compatible with the contents of this Regulation, a number of amendments will have to be made to the Solvency II Commission Delegated Act (EU) 2015/35. Firstly, the definitions used regarding securitisation would have to be aligned with those in the present Regulation. Secondly, due to the direct applicability of the risk retention and the due diligence requirements in the present Regulation, as well as the deletion through this proposal of the empowerments for the Commission to adopt such rules under the Solvency II Directive, it is envisaged that these provisions would be repealed. The changes outlined above to the Commission Delegated Act (EU) 2015/35 would be adopted by the Commission once the Securitisation Regulation has been politically agreed by the co-legislators, with the intention that those changes to the Commission Delegated Act (EU) 2015/35 enter into effect at the same time as the entry into force of this Regulation.

Moreover, considering the broad support in the public consultation on the CMU Green Paper that the non-senior tranches of STS securitisation should also benefit from an adapted capital charge under Solvency II, with improved risk-sensitivity, the Commission will develop a new calibration. The methodology would follow a look-through approach based on the capital charge for the underlying exposures, increased by a non-neutrality factor to capture the model risk of the securitisation. The capital charges of the underlying exposures would be based on the current EIOPA calibrations in the Commission Delegated Act (EU) 2015/35 and the non-neutrality factor would be aligned with the average factors contained in advice given by EBA on 7 July 2015. The methodology would notably result in a significant reduction of the capital charge for non-senior tranches of STS securitisation. Technical improvements will also be made to the methodology of calculation of the calibrations for the senior tranches. These changes to the calibrations will be included in the same amendment to the Commission Delegated Act (EU) 2015/35 discussed above.

Finally, the current proposal will be followed at a later stage, by a proposal to amend the LCR Delegated Act in order to align it with the Securitisation Regulation. In particular the eligibility criteria for securitisations as Level 2B assets in Article 13 will be amended to make it consistent with the general STS criteria as laid down in the Securitisation Regulation.

3. RESULTS OF STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Stakeholder consultations

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

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

On most issues the input from stakeholders was fully taken into account. In addition to this, a significant number of respondents supported the establishment of private bodies acting as "certifiers" or "control bodies". These stakeholders believe that the recourse to external parties – which may in some extent be public authorities - is important to overcome the current stigma attached to securitisations and to build investors' confidence in STS securitisations. The Commission does find it useful to ask for a "STS" check by private bodies. Investors and/or issuers are free to do so and such bodies could contribute a certain expertise in helping assessing compliance with the STS criteria, but investors, originators, sponsors and SSPEs should remain free to ask such opinion. This approach is based on the premise that investors, originators, sponsors and SSPEs remain in all cases responsible for their assessments. The Commission also believes that the more beneficial prudential treatment in banking and insurance will give investors sufficient incentives to invest in securitisations.

There was also support for a centralised transparency website for securitisation instruments, so that information could be in one place and in a single format. This approach would limit administrative burden for originators/issuers as regards their reporting requirements. In addition, it will benefit actual and potential investors as they will be able to access and compare the different securitisations. Finally, supervisory authorities would be able to have a good overview of the market developments. In this context, many contributors mention the existing European DataWarehouse (EDW) as a very positive experience, very useful for investors. The proposal introduces common templates for reporting. It sets the conditions for disclosure – well-functioning website, free of charge to investors, and ensuring proper data quality – which will also be supervised by the competent authorities. This should definitively encourage centralisation of reporting.

Collection and use of expertise

The Commission has gained valuable insights through its participation in the discussions and exchange of views informing the BCBS-IOSCO joint task force on securitisation markets and through its involvement in the BCBS work on the review of the capital treatment. The Commission has also attentively followed the work relating to key aspects of securitisation carried out by the Joint Committee of the European Supervisory Authorities (ESAs) as well as by its members separately (EBA, ESMA, EIOPA). Three public consultations, carried out in 2014 by ECB-BoE, BCBS-IOSCO and EBA respectively, have gathered valuable information on stakeholders' views on securitisation markets. In its own public consultation, the Commission has built on these, focusing on gathering further details on key issues. Fruitful

meetings and exchange of ideas with private sector representatives, public authorities, central banks and the IMF have enriched the debate and understanding of the issues at stake. On the whole, these international level consultations confirm the views expressed in the Commission's own consultation, and provide some additional feedback on the relative merits of some of the proposed policy options.

Impact assessment

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

Regulatory fitness and simplification

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

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

Fundamental rights

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

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

4. BUDGETARY IMPLICATIONS

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

5. OTHER ELEMENTS

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

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

The Regulation foresees monitoring and evaluation at two levels. First, EBA, in close cooperation with ESMA and EIOPA should publish a report on the implementation of the STS requirements, on the actions that supervisors have undertaken and on the material risks and new vulnerabilities which may have materialised during implementation and finally on the initiatives taken by market participants to foster standardisation in the EU securitisation market.

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

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

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

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

Detailed explanation of the specific provisions of the proposal

This proposal contains two main parts. The first part is devoted to rules that apply to all securitisation, whilst the second part focuses only on Simple, Transparent and Standardised ("STS") Securitisation.

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

The second part contains the criteria which define what Simple, Transparent and Standardised Securitisation is. In the Liquidity Coverage Ratio Regulation and the Solvency II Regulation the Commission has already laid down, for specific purposes, STS criteria, but the Securitisation Regulation will create a general and cross-sectoral regime. The revision of the Capital Requirements Regulation (CRR) and a delegated act will provide for a more risk-sensitive prudential treatment for banks and insurers investing in STS securitisation. The LCR delegated act will also be amended to refer to this legislative act and in particular to the set of STS criteria. Specific criteria related to liquidity features of securitisation will be specified in the delegated act.

Definitions (Article 2)

The definitions in the draft-text are to a large extent taken over from the Capital Requirements Regulation (CRR) and ensure that across financial sectors the same definitions apply.

Due diligence rules for investors (Article 3)

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

The existing rules are laid down in the CRR, the Solvency II delegated Act and the Alternative Investment Funds Managers Regulation (AIFM Regulation). These rules will be repealed and replaced by a single Article that provides for all types of EU regulated investors identical and streamlined due diligence provisions.

For UCITS no due diligence rules apply so far: the Commission is however empowered to adopt such rules (Article 50a of the UCITS Directive). It has not done so yet, in view of the intention to cover UCITS in this initiative. For that reason, the proposal creates such requirements for UCITS. In the proposal also IORP's are covered by the due diligence requirements. Until now they are not subject to these rules, but it fits well with the objective of improving risk management in the IORP2 proposal and the objective to create a harmonised framework for institutional investors.

For STS securitisations, investors should also do a due diligence on the compliance with STS criteria. As the STS requirements are not an indicator of the risk features of the securitisation, investors remain responsible for assessing risks inherent to the transaction.

Risk retention provision (Article 4)

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

Existing risk retention requirements in sector-specific regulations (CRR, Solvency II Directive and AIFM Directive) already provide for risk retention requirements, but use the so-called "indirect approach": the originators, sponsors or original lenders are not directly subject to such requirements, but the investor should check whether the originator, sponsor or original lender has retained risk. This puts however a burden on the investor.

The proposal imposes a direct risk retention requirement on the originator, sponsor or the original lenders and a reporting obligation. Investors will thus in a simple manner be able to check whether these entities have retained risk. For securitisations where the originator, sponsor nor original lender is not established in the EU the indirect approach will continue to fully apply.

Transparency rules (Article 5)

Transparency on securitisations and underlying exposures gives investors the possibility to understand, assess and compare securitisation transactions and not to rely solely on third parties, such as credit rating agencies. In other words, the transparency allows investors to act as a prudent investor that do their due diligence and to monitor their investments.

This proposal ensures that investors will have all the relevant information on securitisations at their disposal. It covers all types of securitisations and applies across sectors. To facilitate both the use of the information by investors and the disclosure by originators, sponsors and issuers the proposal takes over the existing acquis, including standardised disclosure templates. As the latter do not currently cover all securitisation segments, the development of additional templates is necessary (e.g. for ABCP). In doing so, there is a need to find a right balance between the level of details and the proportionality of the disclosure requirements.

Originators, sponsors and SSPE's should make freely available the information to investors, in the form of standardised templates, in a website or equivalent electronic means that meets certain general criteria such as control of data quality and business continuity. In practice this should allow reporting of this information to the "European Datawarehouse", where much of this type of information is already collected, as it is a necessary condition for securitisations to be eligible as collateral for ECB refinancing operations. In any case, competent authorities will have the responsibility to ensure that information is properly provided to investors and that the website responds to the required characteristics.

STS securitisation (Article 6 and 7)

Article 6 and 7 contain the requirements for **Simple, Transparent and Standardised ("STS") Securitisation.**

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

There will be two types of STS requirements: one for long-term securitisations and one for short-term securitisations (ABCP). To a large extent the requirements are however similar. The requirements are developed on the basis of existing requirements in the Liquidity

Coverage Ratio and Solvency II delegated Act, on the EBA advice and the BCBS-IOSCO standard. The requirements will be applicable for all financial sectors.

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

Originators, sponsors and SSPE's should declare jointly that the securitisation meets the STS requirements and notify this to ESMA which will publish it on its website. This will ensure that originators, sponsors and SSPE's take responsibility for their claim that the securitisation is STS and that there is transparency on the market. On the other side, investors will still have to do due diligence. To facilitate the process for both investors and originators, sponsors and SSPE's, a template will be developed by the European Supervisory Authorities for the STS assessment.

The STS requirements are as clear as possible. In practice, market participants will have questions on their interpretation. At the same time, interpretation by supervisors could also be different from competent authority to competent authority. To ensure as much consistency as possible the provision of guidance to the market, especially in the first period after entry into force of the Regulation, and a consistent approach throughout the EU by market participants and regulators, the proposal requests the EBA in consultation with EIOPA and ESMA to prepare guidelines and allows for the preparation by them of a regulatory technical standard to specify further the STS requirements.

Supervision (Article 10-13).
To safeguard financial stability, ensure investors' confidence and promote liquidity, a proper and effective supervision of securitisation markets is essential. The proposal requires Member States to designate competent authorities. The due diligence process will be part of the ongoing supervisory responsibilities of the supervisor responsible for the institution concerned. This ensures consistency with existing supervision arrangements. For the other provisions in the Regulation, Member States would designate one or more competent authorities.

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

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

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

Member States could invest in the same STS securitisation from another Member State. The supervisor from the first insurer could come to the conclusion that the securitisation is not STS, while the supervisor from the second insurer might have a different opinion. Persistent different approaches could negatively impact the credibility of the STS approach and to regulatory arbitrage.

To ensure a credible approach for STS securitisation, some specific rules have therefore been introduced in the proposal. Where a competent authority has evidence that originators, sponsors and SSPE's have made an incorrect or misleading STS notification, it should immediately inform ESMA, EBA or EIOPA and the competent authorities of the Member States concerned to discuss its findings. They should together agree on the action to be taken. EBA, together with ESMA and EIOPA shall set up a Securitisation Committee involving all the competent authorities. The Committee should discuss cases of divergent interpretation and share information on the implementation of the Regulation, in particular on the organisation of reporting. In case they cannot come to an agreement there should be binding mediation in accordance with the ESMA Regulation.

Amendments to other legal acts (Article 16-20)
Articles 16 and further make amendment to a number of other legal acts, in particular UCITS, the Solvency II Directive, the CRA Regulation, the AIFM Directive and EMIR. These Articles are intended to draw the consequences of the creation of a consistent securitisation framework in the new Regulation. Therefore, a number of the provisions have to be repealed/amended. The necessary changes should also be made at a later moment in the level 2 acts based on this legislation.

The amendments to EMIR are intended to allow the ESA's to provide, for issuers of STS securitisations, the situations and conditions justifying exclusions from the EMIR clearing and margining requirements.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on a European framework for simple, transparent and standardised securitisation amending Directive 2009/65/EC, Directive 2009/138/EC, Regulation 2009/1060/EC, Directive 2011/61/EU and Regulation 648/2012/EU

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[11],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Securitisation refers to transactions that enable a lender – typically a bank – to refinance a set of loans or exposures such as mortgages, auto leases, consumer loans, credit cards by transforming them into tradable securities. The lender pools and repackages a portfolio of its loans, and organises them into different risk categories, tailored to the risk/reward appetite of investors and thus giving investors access to investments in loans and other exposures to which they normally do not have direct access. Returns to investors are generated from the cash flows of the underlying loans;

(2) In its Investment Plan for Europe the Commission announced its intention to revive high quality securitisation markets, without repeating mistakes made before the crisis. The development of a simple, transparent and standardised securitisation market constitutes a building block of the Capital Markets Union and contributes to the Commission's priority objective to support job creation and a return to sustainable growth;

(3) The European Union has no intention to weaken the legislative framework implemented after the financial crisis to address the risks inherent in highly complex, opaque and risky securitisation. Proposed legislation should help to better differentiate simple, transparent and standardised products and apply a more risk-sensitive prudential framework.

(4) Securitisation is an important element of well-functioning financial markets. Soundly structured securitisation can be an important channel for diversifying funding sources and allocating risk more efficiently within the EU financial system. It allows for a broader distribution of financial sector risk and can help to free up banks' balance sheets to allow for further lending to the economy. Overall, it can improve efficiencies

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[11] OJ C [...], [...], p. [...].

in the financial system and provide additional investment opportunities. Securitisation can bridge banks and capital markets with an indirect benefit for businesses and citizens (through, for example, less expensive loans and business financing, mortgages and credit cards).

(5) Securitisation instruments are part of EU financial markets which are open and integrated. Securitisation links financial institutions from different Member States and non-Member States. As the securitisation market is global in nature, individual Member State actions would not by themselves be sufficient to address all inherent risks and restart markets on a sustainable basis.

(6) This Regulation should provide, in line with the existing definitions in EU law, definitions of all the key concepts of securitisations. 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) Implementation of Simple, Transparent and Standardised ("STS") criteria throughout the EU should not lead to divergent approaches, which would create potential barriers for cross-border investors which would have to enter into the details of the Member State frameworks and undermine investor confidence in the standard. Establishing a more risk-sensitive prudential framework for STS securitisation requires the EU to define what STS securitisation is, since otherwise the more risk sensitive regulatory treatment for banks and insurance companies would be available for different types of securitisations in different Member States. This would lead to an un-level playing field and to regulatory arbitrage.

(8) Investments into securitisations will give the investor not solely an exposure to the credit risks of the underlying loans or exposures, but the structuring process of securitisations could also lead to other risks such as the agency risks, model risk, legal and operational risk, counterparty risk, servicing risk, liquidity risk, concentration risk and risks of operational nature. Therefore, it is essential that institutional investors are subject to proportionate due diligence requirements that ensure 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. For STS securitisations investors should also do appropriate due diligence. They can inform themselves with the information disclosed by the securitising parties, in particular the STS notification, which should provide investors with all the relevant information on the STS standard.

(9) It is important that the interests of originators, sponsors and original lenders that transform exposures into tradable securities and investors are aligned. To achieve this, the originator, sponsor or original lender should retain a significant interest in the underlying exposures of the securitisation. It is therefore important for the originators or the sponsors to retain a material net economic exposure to the underlying risks in question. More generally, securitisation transactions should not be structured in such a way as to avoid the application of the retention requirement. Such retention should be applicable in all situations where the economic substance of a securitisation is applicable, whatever legal structures or instruments are used to obtain this economic substance. 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 as an underlying, the retention requirement should be applied only to the securitisation which is subject to the investment. The STS notification process should provide investors indication that originators are retaining a material net economic exposure to the underlying risks.

(10) The ability of investors to do due diligence and thus to make an informed assessment of the creditworthiness of a given securitisation instrument depends on their access to information on those instruments. The Capital Requirements Regulation and the Credit Rating Agencies Regulation provide both for the provision of information to investors. Based on the existing acquis, this Regulation creates a comprehensive system under which investor will have access to all the relevant information. To lower administrative burdens for the benefit of both investors, but also securitising parties, the European Securities and Market Authority should be given the task to prepare draft Regulatory Technical Standards, which ensure that investors will receive standardised information on underlying exposures and regular investor reports. The STS notification should facilitate investors' due diligence before investing by providing clear and objective information on STS products.

(11) Originators, sponsors and SSPE's 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; data on the cash flows generated by underlying exposures and by the liabilities of the securitisation, including separate disclosure of the securitisation's income and disbursements, that is scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges; the breach of any triggers implying changes in the priority of payments or replacement of any counterparties;

(12) At both international and European level work much work has been done to identify Simple, Transparent and Standardised ("STS") securitisation and in its Liquidity Coverage Requirement Regulation[12] and in the Solvency II Regulation[13], the Commission has already set out for specific purposes criteria for simple, transparent and standardised securitisation, to which a more risk sensitive prudential is attached;

(13) Based on the existing criteria, on the BCBS-IOSCO criteria adopted on 23 July 2015 for identifying simple, transparent and comparable securitisations and in particular the EBA report on qualifying securitisation this Regulation provides for a general and cross-sectorally applicable definition of STS securitisation.

(14) Although securitisations that are simple, transparent and standardised have in the past performed well, the designation simple, transparent and standardised does not mean that it is free of risks, nor does the designation say anything about the credit quality underlying the securitisation. Instead it means that a prudent and diligent investor will

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

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

be able to analyse the risks involved in the securitisation. There should be two types of STS requirements: one for long-term securitisations and one for short-term securitisations (ABCP), which should be subject to a large extent to similar requirements;

(15) This proposal only allows 'true sale' securitisations to be designated STS. In a true sale securitisation the ownership of the underlying exposures is transferred to a securitisation special purpose entity. In securitisations which are not 'true sale', the underlying exposures are not transferred to such an entity, but the credit risk related to the underlying exposures is transferred by means of a derivative contract. This introduces an additional counterparty credit risk and potential complexity related in particular to the content of the derivative contract. Until now neither on an international level, nor on a European level sufficient analysis has been done that allows the identification of STS criteria for such securitisations. The analysis should continue to assess whether some synthetic securitisations that have performed well during the financial crisis and that are simple, transparent and standardised should be able to get the STS standard. On this basis, the Commission will assess whether any proposal covering securitisations which are not 'true sale' should be put forward in the future.

(16) Securitisation transactions should be backed by pools of exposures that are homogenous in nature, such as pools of residential loans, pools of commercial loans, leases and credit facilities to undertakings of the same category to finance capital expenditures or business operations, pools of auto loans and leases to borrowers or lessees or loans and pools of credit facilities to individuals for personal, family or household consumption purposes;

(17) The exposures to be securitised should be originated in the ordinary course of the originator's/original lender's business pursuant to underwriting standards that should not be less stringent than those the originator/original lender applies to origination of similar exposures not securitised. Material changes in underwriting standards should be fully disclosed to potential investors. The originator's/original lender should have sufficient experience in originating exposures of a similar nature to those 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 paragraphs 1 to 4, 5(a), and 6 of Article 18 of Directive 2014/17/EU of the European Parliament and of the Council or of Article 8 of Directive 2008/48/EC of the European Parliament and of the Council or equivalent requirements in third countries.

(18) Where originators, sponsors and SSPE's would like their securitisations to use the STS designation, they should notify that the securitisation meets the STS requirements to investors, competent authorities and ESMA which will publish it on its website. The inclusion of a securitisation 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 criteria. The compliance with the STS criteria remains solely the responsibility of the originators, sponsors and SSPEs. This will ensure that originators, sponsors and SSPE's take responsibility for their claim that the securitisation is STS and that there is transparency on the market.

(19) Originators and sponsors are jointly liable for any loss or damage resulting for incorrect or misleading notifications. In case the securitisation does not meet the requirements anymore, the originators, sponsors and SSPE's should immediately notify ESMA. Moreover, where a competent authority has imposed administrative sanctions and/or remedial measures in regard to a STS notification, it should immediately notify ESMA that will indicate on the list of STS notifications that sanctions and/or measures have been taken. This will allow investors to be informed about such sanctions and about the trustworthiness of STS notifications. It should moreover ensure that originators, sponsors and SSPE's make well-considered notifications and may face reputational consequences;

(20) Investors should be able to rely on the STS notifications, but should do their own due diligence on their investments commensurate with the risks involved. To facilitate the process for both investors and originators, sponsors and SSPE's, a template will be developed by the European Supervisory Authorities for STS notifications that should provide investors and competent authorities sufficient information for their analysis of compliance with the STS requirements;

(21) Whereas the involvement of third parties in checking compliance of a securitisation with the STS requirements should not be mandated by this Regulation, such third party validation could be useful for both investors and originators, sponsors and SSPE's and contribute to confidence in the market for STS securitisations. However, investors should not mechanistically rely on such third parties, make their own assessment and take responsibility for their investment decisions;

(22) Member State should, in accordance with the provisions of this Regulation, designate competent authorities and provide them with the necessary supervisory, investigative and sanctioning powers. Administrative sanctions and measures should in principle be published. Since investors, originators, sponsors, original lenders and SSPEs can be established in different Member States and also to different sectoral competent authorities close cooperation between competent authorities including the ECB in accordance with Council Regulation (EU) No 1024/2013 and with the European Supervisory Authorities should be ensured, by exchange of information and rendering assistance in supervisory activities. Where a competent authority finds, in situations where the originator, sponsor, original lender, SSPE or investor is supervised by competent authorities in different Member States that this Regulation has been infringed, it shall inform the competent supervisor of the originator, sponsor, original lender, SSPE or investor concerned of its findings in a sufficient detailed manner. The competent authorities concerned should closely coordinate their supervision and ensure consistent decisions.

(23) Where a competent authority has, in situations where the originator, sponsor, original lender, SSPE or investor is supervised by competent authorities in another Member State, evidence that originators, sponsors and SSPE's have made an incorrect or misleading STS notification pursuant to Article 8 (2), it should immediately inform ESMA, EBA or EIOPA and the competent authorities of the Member States concerned of its findings in a sufficient detailed manner. The competent authority should request the views of these competent authorities on the notification and take the necessary action in agreement with the competent authorities concerned. In case of disagreement between the competent authorities the procedure of binding mediation pursuant to Article 19 and, where applicable, Article 20 of the ESMA Regulation (Regulation (EU) No 1095/2010) should be applied.

(24) This regulation should harmonise a number of key elements in the securitisations market. However, further harmonisation of processes and practises in securitisation markets would be very helpful to restart securitisation markets, since it would facilitate securitising and investing in securitisations, facilitating investor due diligence and public supervision. For that reason, market participants and their professional associations are called upon to further work on standardisation of market practices, and in particular standardisation of documentation of securitisations, such as has been done already in a number of Member States. The Commission should carefully monitor standardisation efforts by market participants and their professional associations;

(25) This Regulations also amends the UCITS Directive, the Solvency II Directive, the CRA Regulation, the AIFM Directive and EMIR to ensure consistency of the EU legal framework with this Regulation on provisions related to securitisation;

(26) As regards the amendments to EMIR, OTC derivative contracts entered into by Covered Bond Entities and Securitisation Special Purpose Entities should not be subject to the clearing obligation provided that certain conditions are met. This is because counterparties to OTC derivative contracts are secured creditors under covered bond and securitisation arrangements and adequate protection against counterparty credit risk may already be provided for. In such cases, an obligation to centrally clear could therefore impose unnecessary duplication of risk mitigation techniques and would interfere with the structure of the asset. When establishing which arrangements under covered bond or securitisations adequately mitigate counterparty credit risk, the ESAs should take into account whether the collateral claims of OTC derivative counterparties are equal in ranking to other creditors under the arrangements of the covered bond or securitisation and whether sufficient collateral is available to cover the potential exposures under the OTC derivative contract;

(27) When developing draft regulatory technical standards to specify the arrangements required for the accurate and appropriate exchange of collateral to manage risks associated with uncleared trades, the ESAs should take due account of impediments faced by Covered Bond Entities and Securitisation Special Purpose Entity in exchanging collateral in a number of Union jurisdictions as the provision of collateral to derivative counterparties of the entities may be incompatible with the structure of EU securitisations and covered bonds. In particular, the ESAs should take due account of the fact that, under covered bonds and securitisations deemed to adequately mitigate counterparty credit risk in accordance with this regulation, equivalent protection against counterparty credit risk may already be provided for;

(28) This Regulation shall apply to securitisations issued on or after [date of entry into force of this Regulation] and to outstanding securitisations, to ensure that existing securitisations could also be designated "STS" securitisations. The due diligence and risk retention requirements which are in essence the same as existing sectoral provisions should apply to securitisations issued on or after 1 January 2011 and to securitisations issued before that date, where new underlying exposures have been added or substituted after 31 December 2014. Finally, originators, sponsors and SSPE's should make, until the moment that the regulatory technical standards to be adopted by the Commission pursuant to this Regulation are of application, the information mentioned by Annexes I to VIII of delegated Regulation 2015/3/EU available to the website referred to in Article 5 (4).

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 provides due diligence, risk retention and transparency requirements for parties involved in securitisations, such as institutional investors, originators, sponsors, original lenders and securitisation special purpose entities. It also provides a framework for Simple, Transparent and Standardised or '"STS' securitisation.

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

Article 2

Definitions

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

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

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

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

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

3. 'originator' means an entity which:

(1) 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

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

4. 'securitisation position' means an exposure to a securitisation;

5. 'Re-securitisation' means securitisation where the risk associated with an underlying pool of exposures is tranched and at least one of the underlying exposures is a securitisation position;

6. 'sponsor' means a credit institution or investment firm as defined in Article 4(1) (1) and (2) of Regulation 2013/575/EU other than an originator that establishes and manages an asset-backed commercial paper programme or other securitisation transaction or scheme that purchases exposures from third-party entities;

7. 'Tranche' means a contractually established segment of the credit risk associated with an exposures 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 each other such segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments;

8. 'Asset-backed commercial paper (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;

9. 'Asset-backed commercial paper (ABCP) transaction' means a securitisation within an ABCP programme;

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

11. '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;

12. 'Original lender' means the entity that concluded the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised;

13. 'Institutional investors' means insurance undertakings as defined in Article 13 (1) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II); reinsurance undertakings as defined in Article 13 point (4) of Directive 2009/138/EC; institutions for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council[14] in accordance with Article 2 thereof, unless a Member States has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive; an alternative investment fund manager

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

(AIFM) as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council[15] that does not fulfil the conditions for an exemption in accordance with Article 3 of that Directive; or a UCITS management company as defined in Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council[16]; or an internally managed UCITS, which is an investment company authorised in accordance with Directive 2009/65/EC and which has not designated a management company authorised under that Directive for its management; or credit institutions or investments firms as defined in Article 4(1) (1) and (2) of Regulation 2013/575/EU;

14. 'Servicer' means an entity defined in Article 142 (1) (8) of Regulation 2013/575/EU;

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

16. 'management body' means the body or bodies of an institutional investor, originator, sponsor, original lender or SSPE, which are appointed in accordance with national law, and which are empowered to set the entity's strategy, objectives and overall direction, and which oversee and monitor management decision-making and include persons who effectively direct the business of the entity;

17. 'Revolving exposure' means an exposure whereby customers' outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to an agreed limit;

18. '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;

19. 'Early amortisation provision' means a contractual clause in a securitisation of revolving exposures or a revolving securitisation which requires, on the occurrence of defined events, investors' positions to be redeemed before the originally stated maturity of the securities issued;

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

Chapter 2

Provisions applicable to all securitisation

Article 3

Due diligence requirements for institutional investors

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

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

1. An institutional investor shall ensure that for securitisation it invests in:

(a) The originator or original lender grants all its credits on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing them and has effective systems in place to apply these;

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

(c) The originator, sponsor and SSPE make available the information required by and in accordance with the frequency and modalities provided for in Article 5.

2. Before investing in a securitisation institutional investors shall carry out a due diligence assessment commensurate with the risks involved. Where relevant they shall at least analyse:

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

(b) the statements and disclosures made by the originators or sponsors about their due diligence on the securitised exposures and, where applicable, on the quality of the collateral supporting the securitised exposures;

(c) where applicable, the methodologies and concepts on which the valuation of the collateral supporting the securitised exposures is based and the policies adopted by the originator or sponsor to ensure the independence of the valuer;

(d) all the structural features of the securitisation that can materially impact the performance of the securitisation, such as the contractual priorities and priority related triggers, credit enhancements, liquidity enhancements, market value triggers, and deal-specific definitions of default.

(e) In case of STS securitisations, whether, on the basis of Article 5 and Article 8, the securitisation meets the STS requirements of Article 6 (2) or Article 7 (2) and (3);

3. Institutional investors that have invested in securitisation shall at least:

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

(b) regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures that are commensurate with the nature, scale and complexity of the risk;

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

(d) be able to demonstrate to their competent authorities that for each of those investments they have a comprehensive and thorough understanding of the investment and its underlying exposures and that they have implemented written policies and procedures for their risk management and recording of the relevant information.

Article 4

Risk retention rules

1. The originator, sponsor or the original lender of a securitisation shall retain on an ongoing basis a material net economic interest of not less than 5%. The material net economic interest shall be measured at the origination. It shall not be split amongst different types of retainers and not be subject to any credit risk mitigation or hedging and shall not be sold. The net economic interest shall be determined by the notional value for off-balance sheet items.

2. For the purpose of the application of this article, an entity shall not be considered to be an originator if it has been established or operates primarily for the purpose of securitising exposures.

3. Only any of the following shall qualify as a retention of a material net economic interest within the meaning of paragraph 1:

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

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

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

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

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

4. Where an EU parent credit institution, an EU financial holding company, an EU mixed financial holding company or one of its subsidiaries within the meaning of Regulation 575/2013/EU, as an originator or a sponsor, securitises exposures from one or more credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirement referred to in paragraph 1 may be satisfied on the basis of the consolidated situation

of the related EU parent credit institution, EU financial holding company, or EU mixed financial holding company.

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

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

(a) central governments or central banks;

(b) regional governments, local authorities and public sector entities of Member States;

(c) institutions to which a 50 % risk weight or less is assigned under Part Three, Title II, Chapter 2 of Regulation 2013/575/EU;

(d) multilateral development banks, as referred to in Article 117 of Regulation 2013/575/EU.

6. EBA, in close cooperation with ESMA and EIOPA shall develop draft regulatory technical standards to specify in greater detail the risk retention requirement. EBA shall submit those draft regulatory technical standards to the Commission by [six months after entry into force of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010.

Article 5

Transparency requirements for originators, sponsors and SSPE's

1. The originator, sponsor and SSPE of a securitisation shall make available in accordance with paragraph 4 information on the credit quality and performance of the underlying exposures of the securitisation, the structure of the securitisation, the cash flows and any collateral supporting the underlying exposures as well as any information that is necessary to conduct comprehensive and well-informed stress tests on the cash flows and collateral supporting the underlying exposures.

2. The information to be made available to investors shall include:

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

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

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

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

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

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

(v) the trust deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms or master trust framework or master definitions agreement;

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

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

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

(i) deal structure;

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

(iii) the note holder voting rights, the relationship between note holders and other secured creditors;

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

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

(d) In case of STS securitisations, the template notified in accordance with Article 8 (2).

(e) quarterly investor reports, or, in the case of ABCP, monthly investor reports, containing all materially relevant data on the credit quality and performance of underlying exposures; data on the cash flows generated by the underlying exposures and by the liabilities of the securitisation and information on the breach of any triggers implying changes in the priority of payments or replacement of any counterparties, information about the risk retained in accordance with Article 4 and other elements required pursuant to paragraph 5.

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

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

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

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

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

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

(iv) in case of STS securitisations, where the securitisation does not meet the STS requirements anymore or when competent authorities have taken remedial and/or administrative actions;

(v) any amendment to transaction documents.

The information under (a), (b), (c) and (d) shall be made available without delay at the latest after closing of the transaction. The information under (a) and (e) shall be made available at the same moment each quarter respectively each month, at the latest one month after the relevant coupon payment date. The information under (f) and (g) shall be made available without delay.

3. The obligation set out in paragraph 1 to make available information shall not apply to the extent that such publication would breach Union or national law governing the protection of confidentiality of information sources or the processing of personal data.

4. The originator, sponsor and SSPE of a securitisation may designate amongst themselves one entity that makes available the information required pursuant to paragraph 1 and 2. They shall ensure that the information is available free of charge to the investor, in a timely, clear and understandable manner. The website or other electronic means via which they shall make available the information shall ensure a well-functioning data quality control system, the maintenance and operation of an adequate organisational structure to ensure continuity and orderly functioning, the existence of appropriate systems, controls and procedures to ensure that the website can fulfil its function in a reliable and secure manner and to identify sources of operational risk, systems to ensure the protection and integrity of the information received and the prompt recording of the information received under Article 5 and shall maintain it for at least 5 years after the maturity date of the securitisation. For bilateral and private transactions the originator, sponsor and SSPE may decide to disclose the information required solely to investors in their securitisation and to the competent authorities referred to in Article 10.

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

(a) the information that the originator, sponsor and SSPE should provide to comply with their obligations under paragraph 2 (a) and 2 (d) and the presentation thereof by means of standardised templates;

(b) the definition of bilateral and private transactions that are excluded from the obligation to make available information pursuant to paragraph 4.

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

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

Chapter 3

Simple, transparent and standard securitisation

Article 6

Simple, transparent and standardised securitisation

1. Securitisation that meets the requirements in paragraph 2 may be considered Simple, Transparent and Standardised or 'STS'.

2. The securitisation and the exposures underlying it shall meet all the following requirements:

   (a) The underlying exposures are acquired by means of a true sale by a SSPE in a manner that is enforceable against any third party and are beyond the reach of the seller (in particular the originator, sponsor and original lender) and its creditors including in the event of the seller's insolvency. The transfer of the exposures to the SSPE may not be subject to any severe clawback provisions in the jurisdiction where the seller is incorporated. This includes but is not limited to provisions under which the sale of the underlying exposures can be invalidated by the liquidator of the seller solely on the basis that it was concluded within a certain period before the declaration of the seller's insolvency or provisions where the SSPE can prevent such invalidation only if it can prove that it was not aware of the insolvency of the seller at the time of sale;

   (b) There are predetermined and clearly defined eligibility criteria for the transfer of exposures from the seller to the SSPE. After the closing date of the securitisation there is no active portfolio management on a discretionary basis including the sale of transferred exposures. Exposures transferred to the SSPE after the closing meet eligibility criteria that are not less strict than those applied before the closing. A sample of underlying assets should be subject to external verification prior to issuance by an appropriate and independent party or parties. Substitution of exposures that are in breach of representations and warranties is in principle not be considered as active portfolio management.

   (c) The securitisation is backed by a pool of underlying exposures that are homogeneous in nature. The exposures are contractually guaranteed and enforceable obligations with full recourse to debtors with defined periodic payment streams relating to rental, principal, interest or principal and interest payments, or are rights to receive income from assets specified to support such payments. Any referenced interest payments under the securitisation assets and liabilities are based on generally used market interest rates, but should not reference complex formulae or derivatives.

   (d) The securitisation is not a re-securitisation;

(e) The exposures are originated in the ordinary course of the originator's/original lender's business pursuant to underwriting standards that are not less stringent than those the originator/original lender applies to origination of similar exposures not securitised. Material changes in underwriting standards are fully disclosed to potential investors. The seller has sufficient experience in originating exposures of a similar nature to those securitised. In the case of securitisations where the underlying exposures are residential loans, the pool of loans does 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 meets, where applicable, the requirements set out in paragraphs 1 to 4, 5(a), and 6 of Article 18 of Directive 2014/17/EU of the European Parliament and of the Council or of Article 8 of Directive 2008/48/EC of the European Parliament and of the Council or equivalent requirements in third countries.

(f) at the time of transfer of the exposures to the SSPE, they do not include:

(1) exposures to a credit-impaired debtor (or where applicable, a credit-impaired guarantor), who, to the best knowledge of the seller:

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

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

(c) has a credit assessment or a credit score indicating a significant risk that contractually agreed payments will not be made compared to the average debtor for this type of loans in the relevant jurisdiction.

(2) exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013.

(g) At the time of transfer of the exposures, the debtors (or, where applicable, the guarantors) have made at least one payment except where the securitisation is backed by credit facilities to individuals for personal, family or household consumption purposes, trade receivables or other receivables with only one contractual payment.

(h) The repayment of the securitisation does not depend, substantially, on the sale of assets securing the underlying exposures. However, this provision shall not prevent such assets from being subsequently rolled-over or refinanced.

(i) The originator, sponsor or the original lender retains on an ongoing basis a material net economic interest of not less than 5 % in accordance with Article 4

(j) Interest rate and currency risks arising from the securitisation are appropriately mitigated and the measures taken appropriately documented. The underlying exposures should not include transferable financial instruments or derivatives except derivatives used to hedge currency risk and interest rate risk, which should be underwritten in line with common standards in international finance;

(k) where the securitisation has been set up without a revolving period or the revolving period has terminated and where an enforcement or an acceleration

notice has been delivered, principal receipts from the underlying exposures are passed to the investors in the securitisation via sequential amortisation of the securitisation positions and no substantial amount of cash is trapped in the SSPE on each payment date. In particular, repayment of the investors in the securitisation in an order of priority that is 'reverse' with respect to their seniority is not foreseen. Performance-related triggers should be present in transactions which feature non-sequential priority of payments, including at least the deterioration in the credit quality of the underlying exposures below a pre-determined threshold. There are no provisions requiring automatic liquidation of the underlying exposures at market value.

(l) where the securitisation has been set up with a revolving period, the transaction documentation provides for appropriate early amortisation events and/or triggers for termination of the revolving period, which includes at a minimum all of the following:

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

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

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

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

(m) The transaction documentation clearly specifies the contractual obligations, duties and responsibilities of the servicer and, where applicable, of the trustee and other ancillary service providers as well as the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing and, at a minimum, provides for the replacement of derivative counterparties, liquidity providers and the account bank upon their default, insolvency, and other specified events, where applicable. The servicer has expertise in servicing the underlying exposures, supported by a management team with extensive servicing experience. Policies, procedures and risk management controls are well documented and effective systems are in place to apply these.

(n) The transaction documentation provide 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 securitisation documents clearly specify the priority of payments, triggers, changes in priority following trigger breaches as well as the obligation to report such breaches. Any change in the priority is reported on a timely basis, at the time of its occurrence. The originator or sponsor provide investors a liability cash flow model, both before the pricing of the securitisation and on an ongoing basis. The securitisation documentation contains clear provisions that facilitate the timely resolution of conflicts between different classes of investors, voting rights are clearly defined and allocated to noteholders and the

responsibilities of the trustee and other entities with fiduciary duties to investors are clearly identified.

(o) The originator, sponsor, and SSPE provide the investor before investing access to data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, covering a historical period of, at least, a complete economic cycle. The basis for claiming similarity should be disclosed.

(p) The originator, sponsor and SSPE jointly comply with Article 5. In addition, they make available to potential investors before pricing all information required by Article 5 (1) and (2) (a). The information required by Article 5 (1), (2) (b), (c) and (e) shall be made available at least in draft or initial form before pricing, where permissible under the applicable law. After closing of the transaction the final documentation shall be made available to investors at the latest 15 days after closing of the transaction.

Article 7

Simple, transparent and standardised ABCP

1. ABCP transactions that meet the requirements in paragraph 2 and ABCP programmes that meet the requirements in paragraph 3 may be considered Simple, Transparent and Standardised or 'STS'.

2. ABCP transactions within an ABCP programme shall meet the following requirements:

(a) It meets, at transaction level, the requirements of Article 6 (2) of this Regulation, except for paragraph (2) (c), (k), (l) and (m).

(b) The ABCP transactions are backed by a pool of underlying exposures that are homogeneous in nature and that have a remaining maturity of no longer than one year. The underlying exposures include no loans secured by residential or commercial mortgages or any fully guaranteed residential loans, as referred to in paragraph 1(e) of Article 129 of Regulation 575/2013/EU. The exposures contain contractually guaranteed obligations with defined payment streams relating to rental, principal, interest or principal and interest payments, or are rights to receive income from exposures specified to support such payments. Any referenced interest payments under the securitisation transaction's assets and liabilities should be based on generally used market interest rates, but should not reference complex formulae or derivatives.

(c) Following the occurrence of an event of seller's default or an acceleration event principal receipts from the underlying exposures are passed to the investors in the securitisation via sequential payment of the securitisation positions and no substantial amount of cash is trapped in the SSPE on each payment date. There shall be no provisions requiring automatic liquidation of the underlying exposures at market value.

(d) The transaction documentation provides for triggers for termination of the revolving period, which shall include at a minimum all of the following:

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

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

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

(e) The transaction documentation clearly specifies the contractual obligations, duties and responsibilities of the sponsor, servicer and, where applicable, the trustee and other ancillary service providers as well as the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing and, at a minimum, replacement of derivative counterparties and the bank account agreement upon their default or insolvency, where applicable. The servicer has expertise in servicing the underlying exposures, supported by a management team with extensive servicing experience. Policies, procedures and risk management controls are well documented and effective systems are in place to apply these.

(f) The sponsor has performed its own due diligence and satisfied itself that the seller meets sound underwriting standards, servicing capabilities and collection processes meet the requirements specified in points (i) to (m) of Article 259 (3) of the Capital Requirements Regulation or equivalent requirements in third countries.

3. The ABCP programme shall meet the following requirements:

(a) All ABCP transactions within an ABCP programme fulfil the requirements of paragraph 2;

(b) The originator, sponsor or the original lender shall retain on an ongoing basis a material net economic interest of not less than 5 % in accordance with Article 4.

(c) The ABCP programme is not a re-securitisation and the credit enhancement does not establish a second layer of tranching at the programme level;

(d) The sponsor of the ABCP programme is a credit institution, which is supervised under Directive 2013/36/EU. The sponsor is the unique liquidity facility provider and supports all transactions of the ABCP programme. The support provided to securitisation positions on transaction level covers all liquidity and credit risks and any material dilution risks of the securitised exposures as well as any other transaction costs and programme-wide costs;

(e) None of the securities issued by an ABCP programme includes call options, extension clauses or other clauses, which would have an effect on the final maturity of the instrument;

(f) The transaction documentation specifies the responsibility of the trustee and other entities with fiduciary duties towards investors and contains clear provisions facilitating the timely resolution of conflicts between the sponsor and investors;

(g) Interest rate and currency risks arising in the securitisation shall be appropriately mitigated on ABCP programme level and the measures taken appropriately documented. The underlying exposures do not include

derivatives except derivatives used to hedge currency risk and interest rate risk, which should be underwritten in line with common standards in international finance;

(h) The transaction documentation specifies clear contractual obligations, duties and responsibilities of the sponsor, servicer, trustee and other ancillary service providers as well as the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing and, at a minimum, provides for replacement of derivative counterparties, and the account bank at ABCP programme level upon their default, insolvency and other specified events, where applicable. Upon specified events, default or insolvency of the sponsor remedial steps are provided for to achieve, as appropriate, collateralisation of the funding commitment or replacement of the liquidity facility provider. In case the liquidity facility provider does not renew the funding commitment within 30 days of its expiry the liquidity facility is drawn, the maturing commercial paper is repaid and the transaction ceases to purchase exposures while amortising the existing one. The ABCP programme sponsor has expertise in credit underwriting, supported by a management team with extensive servicing experience. Policies, procedures and risk management controls are well documented and effective systems are in place to apply these.

(i) The originator, sponsor and SSPE jointly comply at ABCP programme level with Article 5. They shall make available to investors before pricing all information required by Article 5 (1) and (2) (a). The information required by Article 5 (1), (2) (b), (c) and (e) shall be made available at least in draft or initial form before pricing, where permissible under the applicable law. After closing of the transaction the final documentation shall be made available to investors at the latest 15 days after closing of the transaction.

Article 8

Notification of STS compliance and due diligence

1. Originators, sponsors and SSPE's shall use the designation "Simple, Transparent and Standardised", "STS" or a designation that refers directly or indirectly to these terms for their securitisation only if the securitisation meets all the requirements of either Article 6 (2) or Article 7 (2) and (3) and they have notified ESMA pursuant to paragraph 2.

2. Originators, sponsors and SSPE's shall declare jointly by means of the template referred to in paragraph 5 that the securitisation meets the requirements of Article 6 (2) or Article 7 (2) and (3) and shall notify it to ESMA for publication on its website pursuant to paragraph 3. They shall also inform their competent authority. The originator, sponsor and SSPE of a securitisation shall designate amongst themselves one entity that is the first contact point for investors and competent authorities.

3. Where the originator or original lender is not a credit institution or investment firm as defined in Article 4 (1) (1) (2) of Regulation 575/2013/EU the notification pursuant to paragraph 2 shall be accompanied by:

(a) a confirmation of 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 originator or original lender has effective systems in place to apply these.

(b) confirmation on whether elements mentioned in paragraph (a) are subject to supervision.

4.

5. ESMA shall maintain on its official website a list of all securitisations for which the originators, sponsors and SSPEs have notified that they meet the requirements of Article 6 (2) or Article 7 (2) and (3). The originator, sponsor and SSPE shall immediately notify ESMA and their competent authority when a securitisation no longer meets the requirements of either Article 6 (2) or Article 7 (2) and (3). Where the competent authority has imposed in accordance with Article 11 (2) (c) administrative sanctions and/or remedial measures it shall immediately notify ESMA thereof. ESMA shall immediately indicate on the published list that in relation to the securitisation concerned a competent authority has imposed administrative sanctions and/or remedial measures.

6. Originators and sponsors shall be jointly liable for any loss or damage resulting from incorrect or misleading notifications.

7. ESMA, in close cooperation with EBA and EIOPA, shall develop draft regulatory technical standards to specify the information that the originator, sponsor and SSPE should provide to comply with their obligations under paragraph 2 and the presentation thereof by means of standardised templates.

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

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

Article 9

Ensuring consistent interpretation and application of the STS requirements

1. EBA, in close cooperation with EIOPA and ESMA shall jointly adopt guidelines on the requirements of Article 6 (2) and 7 (2) and (3) by [six months after the entry into force of this Regulation].

2. EBA, in close cooperation with EIOPA and ESMA may develop draft regulatory technical standards to specify in greater detail the requirements of Article 6 (2) and 7 (2) and (3). EBA shall submit those draft regulatory technical standards to the Commission. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010.

Chapter 4

Supervision

Article 10

Designation of competent authorities

1. The competent sectoral authority of the institutional investor subject to the obligation to conduct due diligence shall ensure the application of Article 3 in accordance with and under the conditions of, where applicable, Council Regulation 1024/2013, Directive 2013/36/EU, Directive 2009/138/EC, Directive 2003/41/EC, Directive 2011/61/EU or Directive 2009/65/EC.

2. Each Member State shall designate one or more competent authorities which shall ensure the correct application by originators, sponsors, SSPE's and original lenders of Articles 4 to 8. Member States shall inform the Commission, ESMA, EBA and EIOPA and the competent authorities of other Member States of the identity of the competent authority responsible for supervision. ESMA shall publish and keep up-to-date a list of the competent authorities on its website.

Article 11

Supervisory powers and sanctions

1. Each Member State shall ensure that the competent authority, as designated in accordance with Article 10 (2) has the supervisory and investigatory powers necessary to fulfil its duties under this Regulation.

2. The competent authority shall regularly review the arrangements, process and mechanisms implemented by institutional investors, originators, sponsors, SSPE's and original lenders to comply with this Regulation. Competent authorities shall ensure that risks arising from securitisation transactions, including reputational risks, are evaluated and addressed through appropriate policies and procedures.

3. Without prejudice to the right for Member States to provide for and impose criminal sanctions, Member States shall lay down rules on and ensure that their competent authorities may impose administrative sanctions and/or remedial measures where:

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

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

   (c) an originator, sponsor and SSPE have failed to meet the requirements of Article 8 (1) and (2).

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

4. Member States may decide not to lay down rules for administrative sanctions for infringements which are subject to criminal sanctions under their national law. In that

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

5. Where the provisions referred to in the second paragraph apply to legal persons, Member States shall provide for competent authorities to be able to apply sanctions, subject to the conditions laid down in national law, to members of the management body, and to other individuals who under national law are responsible for the infringement.

6. Where Member States have chosen, in accordance with paragraph 2, to lay down criminal sanctions for the infringement referred to in paragraph 2 of this Article, 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 paragraph 2, and to provide the same to other competent authorities and ESMA; EBA and EIOPA to fulfil their obligation to cooperate for the purposes of this Regulation. Competent authorities may cooperate with competent authorities of other Member States and relevant third country authorities with respect to the exercise of their sanctioning powers. Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.

7. In the cases of infringement referred to in paragraph 2, Member States shall, in conformity with national law, provide that competent authorities have the power to take and impose at least the following administrative sanctions and measures:

   (a) a public statement, which indicates the natural or legal person and the nature of the infringement in accordance with Article 13;

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

   (d) in case of the infringement referred to in the paragraph 2 (c) a temporary ban for the originator, sponsor and SSPE to self-attest that a securitisation meets the requirements of Articles 6 (2) or 7 (2) and (3);

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

consolidated accounts approved by the management body of the ultimate parent undertaking;

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

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

8. Member States shall ensure that any decision taken under this Article is properly reasoned and is subject to the right of appeal before a tribunal.

Article 12

Publication of administrative sanctions and measures

1. Member States shall provide that competent authorities publish any decision imposing an administrative sanction or measure for infringement of Articles 4, 5 or 8 (2) on their official websites without undue delay after the person on whom the sanction was imposed has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible.

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

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

(b) publish the decision to impose the sanction or measure on an anonymous basis in a manner which complies with national law, if such anonymous publication ensures an effective protection of the personal data concerned;

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

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

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

In the case of a decision to publish a sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

3. Where the decision to impose a sanction or measure is subject to appeal before the relevant judicial or other authorities, competent authorities shall also publish, immediately, on their official website such information and any subsequent

information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a sanction or a measure shall also be published.

4. Competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of 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.

5. Competent authorities shall inform ESMA, EBA and EIOPA of all administrative sanctions imposed, including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgement in relation to any criminal sanction imposed and submit it to ESMA, EBA or EIOPA. ESMA, EBA and EIOPA shall jointly maintain a central database of sanctions communicated to them solely for the purposes of exchanging information between competent authorities. That database shall be accessible to competent authorities only and it shall be updated on the basis of the information provided by the competent authorities.

Article 13

Exercise of supervisory powers and powers to impose sanctions

1. Competent authorities shall exercise the supervisory powers and the powers to impose sanctions referred to in Article 13 in accordance with their national legal frameworks:

   (a) directly;

   (b) in collaboration with other authorities;

   (c) by application to the competent judicial authorities.

2. Member States shall ensure that competent authorities, when determining the type and level of an administrative sanction or measure imposed under Article 13, take into account all relevant circumstances, including, where appropriate:

   (d) the gravity and the duration of the infringement;

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

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

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

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

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

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

Article 14

Cooperation between competent authorities and the European Supervisory Authorities

1. The competent authorities referred to in Article 10 and ESMA, EBA and EIOPA shall cooperate closely with each other and exchange information for the purpose of carrying out their duties pursuant to this Regulation, in particular to identify and remedy infringements of this Regulation.

2. Where a competent authority finds, in situations where the originator, sponsor, original lender, SSPE or investor is supervised by competent authorities in different Member States that this Regulation has been infringed, it shall inform the competent supervisor of the originator, sponsor, original lender, SSPE or investor concerned of its findings in a sufficient detailed manner. The competent authorities concerned shall closely coordinate their supervision and ensure consistent decisions.

3. Where a competent authority has, in situations where the originator, sponsor, original lender, SSPE or investor is supervised by competent authorities in another Member State, evidence that originators, sponsors and SSPE's have made an incorrect or misleading notification pursuant to Article 8 (2), it shall notify the relevant competent authority and ESMA, EBA or EIOPA of its findings without delay. The competent authority shall take any necessary action to address the issues identified in the systems and controls of the originator to comply with this Regulation and notify the competent authorities concerned. In case of disagreement between the competent authorities, the matter may be referred to ESMA and the procedure of Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010 may apply.

4. ESMA shall, in close cooperation with EBA and EIOPA, develop draft regulatory technical standards to specify the cooperation arrangements and the information to be exchanged between competent authorities pursuant to paragraphs (1), (2) and (3). ESMA shall, in close cooperation with EBA and EIOPA submit those draft regulatory technical standards to the Commission [twelve months after entry into force of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulations (EU) No 1095/2010.

Article 15

Reporting and Review

1. EBA, in close cooperation with ESMA and EIOPA shall publish a report on the implementation of the STS requirements as laid down by articles 6 and 7. It shall also report on the actions that supervisors have undertaken and on material risks and new vulnerabilities which may have materialised and assess the actions of market participants to further standardise securitisation documentation. The first report shall be published two years after the entry into force of this Regulation and further reports each three years.

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

TITLE III

AMENDMENTS

Article 16

Amendment of Directive 2009/65/EC

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

"Investment in securitisation positions

UCITS that invest in securitisation shall comply with the due diligence requirements applicable to institutional investors pursuant to Regulation [this Regulation].

UCITS shall include appropriate information on their investments in securitisation and their risk management procedures appertaining thereto in the reports and disclosures to be submitted in accordance with Articles 68 and 78 of this Directive."

Article 17

Amendment of Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

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

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

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

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

(2) Article 308b (11) of Directive 2009/138/EC is repealed.

Article 18

Amendment of Regulation 2009/1060/EC

Regulation 2009/1060 is amended as follows:

(1) 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.

(2) In Article 3, point (l) is replaced by the following:

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

(3) Throughout the Regulation "structured finance instrument" shall be replaced by "securitisation instrument";

Article 19

Amendment of Directive 2011/61/EU

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

"Investment in securitisation positions

AIFMs that invest in securitisation on behalf of AIFs shall comply with the due diligence requirements applicable to institutional investors pursuant to Article 3 of Regulation [this Regulation].

AIFMs shall include appropriate information on their investments in securitisation and their risk management procedures appertaining thereto in the reports and disclosures to be submitted in accordance with Articles 22, 23 and 24 of this Directive."

Article 20

Amendment of Regulation 648/2012/EU

Regulation 648/2012/EU is amended as follows:

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

"(30) "Covered Bond" means a bond as referred to in Article 52(4) of Directive 2009/65/EC and 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. Article 4(1) shall not apply with respect to OTC derivative contracts that are concluded by Covered Bond Entities in connection with a covered bond, or by a Securitisation Special Purpose Entity in connection with a securitisation, within the meaning of Regulation [the Securitisation Regulation] provided that:

(a) In the case of Securitisation Special Purpose Entities, the Securitisation Special Purpose Entity shall solely issue securitisations that meet the requirements of Articles 6 (2) or 7 (2) and (3) and 8 (1) and (2) of Regulation [the Securitisation Regulation];

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

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

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

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

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

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

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

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

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

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

The level and type of collateral required with respect to OTC derivative contracts that are concluded by Covered Bond Entities in connection with a covered bond, or by a Securitisation Special Purpose Entity in connection with a securitisation within the meaning of [this Regulation] and meeting the conditions of paragraph 4(5) of this Regulation and the requirements of Articles 6 (2) or 7 (2) and (3) and 8 (1) and (2) of Regulation [the Securitisation Regulation] shall be determined taking into account any impediments faced in exchanging collateral with respect to existing collateral arrangements under the covered bond or securitisation.

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

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

Article 21

Transitional provisions

1. This Regulation shall apply to securitisations issued on or after [date of entry into force of this Regulation] and to outstanding securitisations, subject to paragraphs 2 and 3.

2. Article 3 and 4 shall apply to securitisations issued on or after 1 January 2011 and to securitisations issued before that date, where new underlying exposures have been added or substituted after 31 December 2014.

3. Originators, sponsors and SSPE's shall make, until the moment that the regulatory technical standards to be adopted by the Commission pursuant to Article 5 (5) are of application, the information mentioned by Annexes I to VIII of delegated Regulation 2015/3/EU available to the website referred to in Article 5 (4).

Article 22

Entry into Force

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

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LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a European framework for simple, transparent and standardised securitisation amending Directive 2009/65/EC, Directive 2009/138/EC, Regulation 2009/1060/EC, Directive 2011/61/EU and Regulation 648/2012/EU

1.2. Policy area(s) concerned in the ABM/ABB structure[18]

[…]

[…]

1.3. Nature of the proposal/initiative

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

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**[19]

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

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

1.4. Objective(s)

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

This initiative is one of the building block of the Capital Markets Union initiative. This proposal aims in particular at:

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

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

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

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

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

Specific objective

This proposal is aiming at two main objectives::

[18] ABM: activity-based management; ABB: activity-based budgeting.

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

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

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

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

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

ABM/ABB activity(ies) concerned

[…]

1.4.3. *Expected result(s) and impact*

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

This proposal is aiming at two main objectives:

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

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

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

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

1.4.4. *Indicators of results and impact*

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

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

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

1.5. Grounds for the proposal/initiative

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

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

1.5.2. *Added value of EU involvement*

Securitisation products are part of EU financial markets which are open and integrated. Securitisation links financial institutions from different Member States and non-Member States: often banks originate the loans that are securitised, while financial institutions such as insurers and investment funds invest in these products

and they do so across European borders, but also across the Atlantic. The securitisation market is therefore European/international in nature.

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

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

1.5.3. Lessons learned from similar experiences in the past

Market-developed differentiating mechanisms such as labelling initiatives (e.g. PCS and TSI) were unlikely to overcome stigma as they are relying on market associations' opinions that have not been tested by events (i.e. PCS-labelled securitisation were never tested in a stressed scenario). More importantly, even if these differentiating mechanisms between securitisation products would be successful in achieving differentiation and limiting stigma, they could not adjust the prudential treatment attached to securitisations and thus improve the economics of EU deals. Furthermore, the current inconsistencies in EU legislation would continue to affect these markets. In absence of any EU intervention, deals are thus likely to remain uneconomical and the current state of the securitisation market would be unlikely to be reversed: low issuance and fragmentation would persist.

1.5.4. Compatibility and possible synergy with other appropriate instruments

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

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

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

1.6. **Duration and financial impact**

☐ Proposal/initiative of **limited duration**

- ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- ☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

1.7. **Management mode(s) planned**[20]

☐ **Direct management** by the Commission

- ☐ by its departments, including by its staff in the Union delegations;
- ☐ by the executive agencies

☐ **Shared management** with the Member States

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

- ☐ third countries or the bodies they have designated;
- ☐ international organisations and their agencies (to be specified);
- ☐ the EIB and the European Investment Fund;
- ☒ bodies referred to in Articles 208 and 209 of the Financial Regulation;
- ☐ public law bodies;
- ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

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

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

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

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

2.1.1. Risk(s) identified

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

2.1.2. Information concerning the internal control system set up

NA

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

NA

2.2. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to the EBA, EIOPA and the ESMA without any restriction.

EBA, EIOPA and ESMA shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt appropriate provisions for all EBA, EIOPA and ESMA staff.

The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by EBA, EIOPA and ESMA as well as on the staff responsible for allocating these monies.

Articles 64 and 65 of the Regulation establishing EBA set out the provisions on implementation and control of the EBA budget and applicable financial rules

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

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

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
		Diff./Non-diff.[21]	from EFTA countries [22]	from candidate countries[23]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1a	12.02.04 EBA	DIFF	YES	YES	NO	NO
1a	12.02.05 EIOPA	DIFF	YES	YES	NO	NO
1a	12.02.06 ESMA	DIFF	YES	YES	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

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

[21] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[22] EFTA: European Free Trade Association.

[23] Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

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

3.2.1. Summary of estimated impact on expenditure

This legislative initiative will have the following impacts on expenditures:

- The hiring of three new temporary agents (TA) at EBA (2 TA as from January 2016) - See in Annex for more information on their roles and the way their costs were calculated (of which 40% will be funded by the EU and 60% by the Member States).
- The hiring of three new TA at ESMA (as from January 2016) - See in Annex for more information on their roles and the way their costs were calculated (of which 40% will be funded by the EU and 60% by the Member States).
- The hiring of two new temporary agents (TA) at EBA (2 TA as from January 2016) - See in Annex for more information on their roles and the way their costs were calculated (of which 40% will be funded by the EU and 60% by the Member States).

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

EUR million (to three decimal places)

Heading of multiannual financial framework	Number 1	Smart and Inclusive Growth

DG: FISMA			Year N[24]	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
• Operational appropriations										

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

12.02.04 EBA	Commitments	(1)	0.266	0.251	0.251					0.767
	Payments	(2)	0.266	0.251	0.251					0.767
12.02.05 EIOPA	Commitments	(1a)	0.130	0.115	0.115					0.360
	Payments	(2a)	0.130	0.115	0.115					0.360
12.02.06 ESMA	Commitments	(1a)	0.212	0.197	0.197					0.606
	Payments	(2a)	0.212	0.197	0.197					0.606
Appropriations of an administrative nature financed from the envelope of specific programmes[25]										
Number of budget line		(3)								
TOTAL appropriations for DG FISMA	Commitments	=1+1a +3	0.6086	0.563	0.563	1.126				1.733
	Payments	=2+2a +3	0.6086	0.563	0.563	1.126				1.733

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

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

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

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

Heading of multiannual financial framework	5	'Administrative expenditure'

EUR million (to three decimal places)

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

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

EUR million (to three decimal places)

		Year N[26]	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments								
	Payments								

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

3.2.2. *Estimated impact on operational appropriations*

- ☐ The proposal/initiative does not require the use of operational appropriations
- ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
	Type[27]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[28] …																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 …																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

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

[28] As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. *Estimated impact on appropriations of an administrative nature*

3.2.3.1. Summary

- ☒ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year N [29]	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
HEADING 5 of the multiannual financial framework						
Human resources						
Other administrative expenditure						
Subtotal HEADING 5 of the multiannual financial framework						

Outside HEADING 5[30] of the multiannual financial framework						
Human resources						
Other expenditure of an administrative nature						
Subtotal outside HEADING 5 of the multiannual financial framework						

TOTAL						

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

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

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

3.2.3.2. Estimated requirements of human resources

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

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

Estimate to be expressed in full time equivalent units

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)
• Establishment plan posts (officials and temporary staff)						
XX 01 01 01 (Headquarters and Commission's Representation Offices)						
XX 01 01 02 (Delegations)						
XX 01 05 01 (Indirect research)						
10 01 05 01 (Direct research)						
• External staff (in Full Time Equivalent unit: FTE)[31]						
XX 01 02 01 (AC, END, INT from the 'global envelope')						
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)						
XX 01 04 yy[32]	- at Headquarters					
	- in Delegations					
XX 01 05 02 (AC, END, INT - Indirect research)						
10 01 05 02 (AC, END, INT - Direct research)						
Other budget lines (specify)						
TOTAL						

XX is the policy area or budget title concerned.

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

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

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

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

3.2.4. *Compatibility with the current multiannual financial framework*

- ☐ The proposal/initiative is compatible the current multiannual financial framework.
- ☐ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

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

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

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

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

ESMA will have to develop and maintain on its official website a list of all securitisations for which the originators, sponsors and SSPEs have self-attested that they meet the STS requirements (article 8.3).

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

Finally, ESMA, EBA and EIOPA will have to jointly publish a report on the implementation of the STS requirements as laid down by article 6 and the functioning of the system of self-attestation and the functioning of the market. It shall also report on the actions that supervisors have undertaken and on material risks and new vulnerabilities which may have materialised. The first report shall be published two years after the entry into force of this Regulation and further reports each three years.

Regarding the timing, it has been assumed that the Regulation will enter into force in mid-2016. The additional ESAs resources are therefore required from 2016 to start the preparatory works and a smooth implementation of the Regulation. As regards the nature of the positions, the successful and timely delivery of new technical standards will require, in particular, additional resources to be allocated to tasks on policy, legal drafting and impact assessment.

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

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

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

3.2.5. Third-party contributions

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

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

Appropriations in EUR million (to three decimal places)

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

3.3. Estimated impact on revenue

- ☒ The proposal/initiative has no financial impact on revenue.
- ☐ The proposal/initiative has the following financial impact:
  - ☐ on own resources
  - ☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[33]						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article								

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

[...]

Specify the method for calculating the impact on revenue.

[...]

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

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

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

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

- An RTS to specify the risk retention requirement and a template for reporting on the risk retention (article 4.5);

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

- An RTS to specify the definition of bilateral and private transactions that are excluded from the obligation to publish information pursuant to article 5.4.

- An RTS to specify the information that the originator, sponsor and SSPE should provide to comply with their obligations under paragraph article 8.2 (self-attestation) and the presentation thereof by means of standardised templates.

- An RTS and guidelines to specify the requirements of Article 6 (2) and 7 (2) and (3) namely the criteria for simple, transparent and standardised securitisation and STS asset backed commercial paper.

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

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

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

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

– The proposal of the Commission includes provisions for ESMA to **develop 1 regulatory technical standard** to establish standard forms, templates and procedures for the exchange of information between competent authorities and ESMA (article 14).

ESMA will have to develop and maintain on its official website a **list of all securitisations** for which the originators, sponsors and SSPEs have self-attested that they meet the STS requirements (article 8.3).

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

Finally, ESMA, EBA and EIOPA will have to jointly publish a **report on the implementation of the STS requirements** as laid down by article 6 and the functioning of the system of self-attestation and the functioning of the market. It shall also report on the actions that supervisors have undertaken and on material risks and new vulnerabilities which may have materialised. The first report shall be published two years after the entry into force of this Regulation and further reports each three years.

Regarding the timing, it has been assumed that the Regulation will enter into force in mid-2016. The additional ESAs resources are therefore required from 2016 to start the preparatory works and a smooth implementation of the Regulation. As regards the nature of the positions, the successful and timely delivery of new technical standards will require, in particular, additional resources to be allocated to tasks on policy, legal drafting and impact assessment.

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

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

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

Additional resources assumption:

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

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

Salary correction coefficient for Paris is 1.168

Salary correction coefficient for London is 1.507

Salary correction coefficient for Frankfurt is 0.972

- Mission costs estimated at €10.000.
- Recruiting-related costs (travel, hotel, medical examinations, installation and other allowances, removal costs, etc) estimated at €12.700.

ESMA

Cost type	Calculation	Amount (in thousands)			
		2016	2017	2018	Total
Staff expenditure					
Salaries and allowances	=3x132 x1.168	463	463	463	1389
Expenditure related to recruitment	=3x13	39			39
Mission expenses	=3x10	30	30	30	90
Total		532	493	493	1518

EBA

Cost type	Calculation	Amount (in thousands)			
		2016	2017	2018	Total
Staff expenditure					
Salaries and allowances	=3x132 x1.507	597	597	597	1791
Expenditure related to recruitment	=3x13	39			39
Mission expenses	=3x10	30	30	30	90
Total		666	627	627	1920

EIOPA

Cost type	Calculation	Amount (in thousands)			
		2016	2017	2018	Total
Staff expenditure					
Salaries and allowances	=2x132 x0.972	257	257	257	771
Expenditure related to recruitment	=1x13	39			39
Mission expenses	=1x10	30	30	30	90
Total		326	287	287	900