III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 11 March 2016

on (a) a proposal for a regulation laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation; and (b) a proposal for a regulation amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms

(CON/2016/11)

(2016/C 219/03)

Introduction and legal basis

On 9 December 2015 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on (a) a proposal [1] for a regulation of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (hereinafter the 'proposed securitisation regulation'); and (b) a proposal [2] for a regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (hereinafter the 'proposed CRR amendment') (together hereinafter the 'proposed regulations') [3].

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, since the proposed regulations contain provisions affecting: (a) the basic task of the European System of Central Banks (ESCB) of defining and implementing the monetary policy of the Union pursuant to Article 127(2) of the Treaty; (b) the ESCB's task of contributing to the smooth conduct of policies pursued by competent authorities relating to the prudential supervision of credit institutions and the stability of the financial market system pursuant to Article 127(5) of the Treaty; and (c) the tasks conferred on the ECB pursuant to Article 127(6) of the Treaty concerning policies relating to the prudential supervision of credit institutions. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

GENERAL OBSERVATIONS

1. Objectives of the proposed regulations

1.1 The ECB welcomes the objectives of the proposed regulations of promoting the further integration of Union financial markets, diversifying funding sources and unlocking capital for sound lending to the real economy. The development of a common set of substantive rules across the Union regulatory framework for all securitisations is a significant step towards regulatory harmonisation and consistency. The ECB also supports the establishment of criteria to identify a subset of securitisations which can be classified as simple, transparent and standardised (STS) and welcomes the proposed CRR amendment's adjustment to capital charges to provide for a more risk-sensitive treatment for STS securitisations.

1.2 The ECB considers that the proposed regulations strike the right balance between the need to revive the European securitisation market by making the securitisation framework more attractive for both issuers and investors, and the need to maintain the prudential nature of the regulatory framework. The ECB notes that European securitisations with features broadly similar to those of the proposed STS securitisations suffered low levels of losses

[1] COM(2015) 472 final.
[2] COM(2015) 473 final.
[3] The ECB has adopted its opinion based on the proposed regulations (as proposed by the Commission) sent for consultation, but also taking into account the suggested amendments contained in the Council compromise texts, as applicable (2015/0226 (COD), 14537/15 on the proposed securitisation regulation and 2015/0225 (COD), 14536/15 on the proposed CRR amendment).

during the financial crisis ([1]). Consequently, it is appropriate for the regulatory framework to distinguish between them and more complex, opaque and bespoke securitisations. In the ECB's view, overall, the proposed STS criteria are generally appropriate and the lower regulatory capital charges applied to them are proportionate to their comparably lower risk profile. The ECB highlights nonetheless that its support for the proposed capital treatment of STS securitisations is predicated on the existence of robust STS criteria, an appropriate attestation procedure and rigorous supervision. Consequently the proposed regulations should, in the ECB's view, be further enhanced and streamlined, as set out below and in the attached technical annex.

2. The ECB's role in the securitisation market — monetary policy and macro-prudential considerations

2.1 The ECB has a strong interest in the sustainable revival of the European securitisation market. As a form of asset-based financing with the capacity both to channel flows of credit to the real economy and to transfer risk, securitisation has particular significance for the transmission mechanism of monetary policy. A healthy European securitisation market is indicative of a functioning capital market in the Union. Particularly where credit institutions' capacity to lend to the real economy is constrained and economic growth remains subdued, securitisation can act as a fresh source of funding and free up capital for lending. Uncertainty regarding the timing of the adoption of the proposed regulations should therefore be avoided in order to provide the necessary regulatory clarity and stability to securitisation market participants to support sustainable growth of the market.

2.2 The ECB has significant experience in the field of securitisation through the Eurosystem's monetary policy operations. On the one hand, it accepts asset-backed securities (ABS) fulfilling applicable eligibility criteria as collateral for the Eurosystem's liquidity-providing reverse transactions and, on the other, it purchases ABS as part of the Eurosystem's expanded asset purchase programme ([2]). This informs the ECB's view of the proposed regulations, in particular in relation to transparency, due diligence, investor demand and market functioning. Nonetheless, the ECB notes that the proposed regulations are independent of the Eurosystem collateral framework and the ABS purchase programme (ABSPP) as these are monetary policy instruments that fall within the Eurosystem's exclusive competence.

2.3 Finally, considering the ECB's monetary policy and macro-prudential tasks, the ECB has also participated actively in the public debate on regulatory initiatives on securitisation during which it highlighted the benefits of sound securitisation markets ([3]), recommended differentiated capital treatment of securitisations and supported a prudent Union framework for STS securitisations ([4]). The ECB's specific recommendations on the proposed regulations, as set out below and in the attached technical annex, reflect these positions.

3. Clarification of the ECB's supervisory competences in respect of securitisation

3.1 Notwithstanding the ECB's monetary policy activities in the securitisation market, its role under the new securitisation regime in its capacity as supervisor must be assessed independently. In particular, Article 127(6) of the Treaty only permits the conferral of tasks on the ECB in policy areas relating to the prudential supervision of credit institutions. Accordingly, Article 4(1)(d) of Council Regulation (EU) No 1024/2013 ([5]) assigns to the ECB, for prudential supervisory purposes, the task of ensuring compliance by significant credit institutions with the relevant Union law which imposes prudential requirements in the area of securitisation. Article 15 of the proposed securitisation regulation designates the ECB as the competent authority for supervision of compliance by significant credit institutions with due diligence obligations, risk retention requirements, transparency requirements and the STS criteria. In light of the above, the ECB is concerned that Article 15 of the proposed securitisation regulation also assigns the ECB supervisory tasks which are not primarily prudential in nature, but rather relate to product markets or investor protection.

([1]) *The impact of the CRR and CRD IV on bank financing, Eurosystem response to the DG FISMA consultation paper*, 10 December 2015.

([2]) Decision (EU) 2015/5 of the European Central Bank of 19 November 2014 on the implementation of the asset-backed securities purchase programme (ECB/2014/45) (OJ L 1, 6.1.2015, p. 4). Purchases under the ABS purchase programme began in November 2014.

([3]) *The impaired EU securitisation market: causes, roadblocks and how to deal with them*, 11 April 2014, and *The case for a better functioning securitisation market in the European Union — A Discussion Paper*, 29 May 2014, ECB and Bank of England.

([4]) *Joint response from the Bank of England and the European Central Bank to the consultation document of the European Commission: 'An EU framework for simple, transparent and standardised securitisation'*, 27 March 2015.

([5]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

3.2 The ECB agrees that it should be competent to ensure compliance by significant credit institutions with due diligence requirements, including verification by significant credit institutions acting as investors in securitisations that risk retention obligations are complied with by the originator, sponsor or original lender (Article 3 of the proposed securitisation regulation), as well as compliance with the rules of Regulation (EU) No 575/2013 of the European Parliament and of the Council ([1]) (the Capital Requirements Regulation (CRR)) on significant risk transfers (SRTs) and assignment of risk weights to various classes of securitisation products as these tasks are clearly prudential. In this regard, the ECB also agrees that the supervision of compliance with criteria for credit granting as introduced by the Council compromise text ([2]) would also fall within the prudential tasks being conferred upon the ECB under Article 4(1)(d) of Regulation (EU) No 1024/2013.

3.3 On the other hand, Articles 6 to 14 of the proposed securitisation regulation, which contain the STS criteria and provide for the process of ensuring STS compliance, relate to supervision of the securitisation markets. The ECB considers this task to be clearly outside the tasks relating to the prudential supervision of credit institutions. The ECB welcomes the amendments made by the Council compromise text ([3]) which permit Member States to designate the competent authorities responsible for supervision of compliance of an originator, sponsor or securitisation special purpose entity (SSPE) with STS criteria, instead of directly assigning this task to competent authorities responsible for their supervision in accordance with the relevant sectoral Union legislation.

3.4 Although there are arguments in favour of characterising these rules as prudential, directly ensuring compliance of significant credit institutions acting as originators, sponsors or original lenders with risk retention rules (Article 4) and transparency requirements (Article 5) should be viewed as primarily relating to supervision of product markets, as these rules ensure alignment of interests between originators, sponsors or original lenders and investors and allow investors to understand, assess and compare securitisation transactions. Therefore the ECB also considers that such tasks cannot be conferred on it. The ECB notes that the Council compromise text ([4]) also assigns the task of ensuring compliance by credit institutions acting as sponsors, originators, original lenders or SSPEs with the risk retention rules and transparency requirements to authorities designated pursuant to Article 4 of Directive 2013/36/EU of the European Parliament and of the Council ([5]). The ECB welcomes that the Council compromise text abstains from a direct reference to the ECB and notes that it would not consider these tasks to be transferred to the ECB by Article 4(1)(d) of Regulation (EU) No 1024/2013.

3.5 Consequently, Article 15 of the proposed securitisation regulation should be amended to ensure that the ECB's competences under the proposed securitisation regulation reflect the tasks conferred on it by Regulation (EU) No 1024/2013.

SPECIFIC OBSERVATIONS

PART I: PROPOSED SECURITISATION REGULATION

4. Provisions applicable to all securitisations

4.1 The ECB welcomes the proposed securitisation regulation's consolidation and harmonisation of existing regulatory requirements in a common set of rules for all securitisations, as this significantly simplifies the regulatory framework and reduces inconsistencies and duplication. However, insofar as consolidation is the aim, it should be comprehensive. Like the Council compromise text ([6]), the ECB therefore recommends the repeal of Article 8b of Regulation (EC) No 1060/2009 of the European Parliament and of the Council ([7]) but also, after the expiry of the transitional period provided for in Article 28(6) of the proposed securitisation regulation, of the related Commission Delegated Regulation (EU) 2015/3 ([8]) to avoid unnecessary duplication of transparency and disclosure obligations laid down in Article 5 of the proposed securitisation regulation.

([1]) 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).
([2]) Article 5a of the Council compromise text (2015/0226 (COD), 14537/15). In the following sections the Council compromise text is only discussed in cases when it significantly differs from the proposed regulations (as proposed by the Commission).
([3]) Article 15 of the Council compromise text (2015/0226 (COD), 14537/15).
([4]) Ibid.
([5]) OJ L 176, 27.6.2013, p. 338.
([6]) Article 25(5) of the Council compromise text (2015/0226 (COD), 14537/15).
([7]) Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).
([8]) Commission Delegated Regulation (EU) 2015/3 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments (OJ L 2, 6.1.2015, p. 57).

4.2 The ECB also welcomes the proposed securitisation regulation's approach to transparency requirements. However, transparency requirements need to be balanced against the confidentiality of private and bilateral transactions. Article 5 requires data disclosure to existing investors only. Prospectuses or equivalent offering documents, loan-level data and other securitisation documentation should be disclosed to prospective investors as well. However, such data should only be disclosed publicly in the case of public transactions and otherwise should only be disclosed to the prospective investors to which a transaction is marketed. At the same time, the ECB recommends exempting certain securitisations from unnecessary disclosure burdens, such as intra-group transactions or where there is a single investor only ([1]).

4.3 The ECB also recommends that loan-level data is expressly required in Article 5(1)(a), including for those asset-backed commercial paper (ABCP) programmes that are not fully supported or where the underlying asset maturities exceed one year, redacted where this is necessary to protect confidentiality for corporate clients of sponsors ([2]).

5. Criteria for STS securitisations

5.1 The success of the STS framework will depend substantially on the extent to which it is used by market participants. It is therefore important that the criteria and their application are not overly complex, to ensure, inter alia, that investors are not hindered in fulfilling their extensive due diligence obligations. The onus of ensuring and notifying compliance with STS criteria rests with the securitising parties. Thus, the clarity of the STS criteria is key to the decision by originators and sponsors to apply the STS framework and expose themselves to the sanctions regime for failing to fulfil the criteria. The ECB considers most of the criteria to be sufficiently clear. However, several of them need to be further specified to ensure legal certainty and efficiency for those interpreting and applying them ([3]). The ECB therefore recommends mandating the European Banking Authority (EBA) to develop, in close cooperation with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), regulatory technical standards on STS criteria where further clarification is needed ([4]). While this would extend the timeframe for the proposed securitisation regulation's full implementation, this would be offset by the benefits of lower burdens and greater legal certainty for all involved parties.

5.2 Sound asset quality is key to the STS framework and underpins the capital charges for STS securitisations. Thus, performing loans restructured more than three years prior to inclusion in an STS securitisation can be allowed. However, any relaxation beyond this threshold, such as that contained in the Council compromise text ([5]), would require a recalibration of the capital charges envisaged in the current proposal, to maintain the prudential nature of the STS framework.

5.3 ABCP programmes have the potential to support financing of the real economy. However, preferential regulatory capital treatment should be restricted to ABCP programmes without maturity mismatches between the underlying assets and commercial paper liabilities. The ECB therefore recommends a one-year, rather than a three-year, or as the Council compromise text proposes, up to six-year ([6]), residual maturity cap for underlying assets of STS ABCP programmes, with which most existing ABCP programmes could comply or adjust to, given that around half of assets underlying existing European ABCP programmes are estimated to have a residual maturity of less than one year and consist mostly of trade receivables. From a prudential perspective, maturity mismatches expose investors, in the case of sponsor default, to extension risk and potential losses, and sponsors to liquidity strains or even losses if investors no longer roll over short-term paper in times of market disruption. Finally, a lax maturity cap could give rise to undesirable regulatory arbitrage opportunities between traditional STS securitisations and STS ABCP programmes and, from a policy perspective, could affect the term auto and consumer loan ABS markets.

([1]) See Amendment 28 introducing a new Article 5(2b).

([2]) See Amendment 18 on Article 5(1)(a).

([3]) See, for example, the requirements for expertise laid down, in the case of traditional securitisations, in Articles 8(6) and 9(6) for originators and servicers and, in the case of ABCP programmes, in Article 12(5) and Article 13(7)(c) for sellers and sponsors.

([4]) See Amendment 61 introducing a new Article 14a.

([5]) In the Council compromise text (2015/0226 (COD), 14537/15), Article 8(7)(a)(i) permits the inclusion in STS securitisations of performing loans restructured one year prior to their inclusion. This contrasts with the three-year threshold provided for in Article 8(7)(a) of the proposed securitisation regulation.

([6]) Article 12(2) of the proposed securitisation regulation allows assets with residual maturity of up to three years and imposes a transaction level restriction of a weighted average life of two years. In contrast, the second subparagraph of Article 12(2) and Article 13(1a) of the Council compromise text (2015/0226 (COD), 14537/15) would permit a programme level weighted average life of no more than two years, a transaction level weighted average life of no more than three and a half years and an underlying exposure residual maturity of no longer than six years.

5.4 STS securitisations should meet higher transparency standards than non-STS securitisations as they benefit from preferable regulatory capital treatment which is justified, inter alia, on the basis of a high degree of transparency. Investor reports represent the main source of investor information after the closing of the transaction. The proposed securitisation regulation should therefore clarify that higher standards for investor reporting are mandatory for STS securitisations ([1]).

5.5 Securitisations whose repayment is dependent on collateral liquidation should not qualify under the STS framework ([2]). The performance of such securitisations is highly dependent on assumptions as to whether market risks have been adequately mitigated. Risks may materialise which go beyond the anticipated stress scenarios, thereby invalidating these assumptions. Only securitisations whose repayment depends strictly on obligors' willingness and ability to meet their obligations should be eligible under the STS framework.

6. STS attestation, notification and due diligence

6.1 The ECB welcomes the proposed securitisation regulation's approach of requiring both that securitising parties jointly self attest to the compliance of a securitisation with the STS criteria and that investors conduct their own due diligence on STS compliance. This fundamental mechanism places primary responsibility for STS compliance on the securitising parties, which are best placed to assume it. It also avoids mechanical reliance on third party or supervisory certifications and therefore preserves the incentives of all parties to the securitisation to behave prudently ([3]).

6.2 The ECB recognises the potential benefits which experienced third parties can offer through their accumulated expertise when checking STS compliance, particularly for originators who have not previously securitised or who do so infrequently. However, third parties should not be expressly granted a role by law in the STS attestation process in the proposed securitisation regulation as this would weaken a key pillar of the STS framework ([4]). First, such a regulated role for third parties to certify STS compliance could introduce moral hazard for investors. Investors could have fewer incentives to undertake independent due diligence for STS securitisations, as they could falsely equate such third party certification with supervisory endorsement. Additionally, it would increase complexity and burden public resources, given the need to supervise such third parties separately. Moreover, it would also create systemic risk, as the invalidation of one or more STS certifications made by such a third party could raise concerns for all STS attestations made by them. Finally, such a regulated role is unnecessary to achieve the acknowledged potential benefits offered by such third parties, as they could simply contract with originators and sponsors to provide them with advice on compliance with STS criteria. Instead, the ECB considers that legal certainty for securitising parties should mainly be achieved by making the STS criteria sufficiently clear ([5]).

6.3 The STS notification process should ensure greater clarity for investors by explicitly documenting, in the summary of the prospectus or equivalent information memorandum, whether and, if so, how the STS criteria have been fulfilled. This would support investors' independent due diligence processes ([6]).

7. Effective cooperation between supervisory authorities

The consistent application and interpretation of the proposed securitisation regulation by the various supervisors, particularly in the context of STS securitisations, are key to the integrity of the framework, its adoption by market participants and, consequently, its overall effectiveness. The ECB therefore recommends enhancements to the cooperation procedures provided for in Article 21 between competent authorities and the EBA, ESMA and EIOPA to resolve more efficiently disagreements between two or more competent authorities, especially in cases when one or more of them decides that a securitisation should lose its STS status. For transparency and consistency reasons, ESMA should keep a centralised register of all remedial actions undertaken with respect to securitisations regulated under the proposed securitisation regulation.

([1]) See Amendment 42 introducing a new Article 10(5).
([2]) Under Article 8(9), securitisations dependent to some extent on collateral sale to ensure repayment, such as residual value auto lease ABS and certain commercial mortgage-backed securities, could potentially qualify.
([3]) See *Joint response from the Bank of England and the European Central Bank to the consultation document of the European Commission*: '*An EU framework for simple, transparent and standardised securitisation*', 27 March 2015.
([4]) See Articles 14(1a) and 14a of the Council compromise text, which permits third-party attestation in addition to self-attestation by securitising parties (2015/0226 (COD), 14537/15).
([5]) See the ECB's recommendation in paragraph 5.1.
([6]) See Amendment 56 introducing a new Article 13(9).

8. **Sanctions regime**

A robust framework for the Union securitisation market requires a credible and dissuasive regime for sanctioning infringements of the proposed securitisation regulation. However, there are several aspects of the proposed securitisation regulation which impose new obligations on market participants and require further definition, guidance and interpretation by competent authorities, the European Supervisory Authorities and market participants. Given these uncertainties, it is difficult to reconcile the imposition of heavy administrative and criminal sanctions on a strict liability basis with the well-established principle of legal certainty in criminal matters, or with the overall aim of encouraging market participants to use and apply the proposed securitisation regulation. These uncertainties and sanctions could in fact deter market participants from using the proposed securitisation framework. The ECB therefore strongly recommends a reduction in the types of administrative sanctions available by limiting the extent of fines, the removal of the possibility for Member States to impose criminal sanctions for infringements of the proposed securitisation regulation in Article 19, and the imposition of sanctions only in the event of negligence, including negligent omissions, rather than on a strict liability basis. This would alleviate concerns about the disproportionate nature of the penalties. The proposed removal of Article 19 would only preclude the establishment of a new regime of criminal liability specifically for infringements of the proposed securitisation regulation. However, it would be without prejudice to existing, more general provisions of national criminal law to which the activities of securitising parties are already subject. These may include provisions establishing criminal liability for fraudulent, reckless or other dishonest activities by financial institutions, their employees or directors under national law, which would naturally remain applicable.

9. **Ensuring robust supervision of third country STS securitisation**

The STS framework should be synonymous with prudent asset origination and securitisation structuring. This, in turn, is dependent on effective supervision to ensure that the STS standards are not diluted over time. The financial crisis showed that supervisory frameworks which rely solely on the self-attestation of the securitising parties, without ongoing and rigorous supervision, are vulnerable to abuse. The proposed securitisation regulation currently permits underlying assets of STS securitisations to be originated outside the Union and the originator, sponsor and/or SSPE to be located outside the Union. Nevertheless, there is currently no requirement relating to the supervision in third countries of STS securitisations ([1]). The ECB supports an STS securitisation framework that is open to accepting STS securitisations issued in third countries provided that such acceptance is complemented by a requirement that the third country originator, sponsor and SSPE taking part in such securitisation are subject to a robust supervisory framework in relation to their STS securitisation activities, which the European Commission has assessed as equivalent to the Union framework ([2]).

PART II: PROPOSED CRR AMENDMENT

10. **Capital treatment for STS securitisations**

10.1 The ECB strongly supports the incorporation of the STS criteria in the banking regulatory capital framework through the proposed CRR amendment, as an enhancement to the December 2014 revisions to the Basel securitisation framework. The STS criteria limit the two main sources of risk in STS securitisations: structural risk and asset credit risk. The lower risk profile of STS securitisations therefore warrants a relatively lower capital charge.

10.2 Both the calibration of capital charges and the hierarchy of approaches to calculating capital charges for STS securitisations are relevant to the effectiveness of the new framework in striking the right balance between reviving the Union securitisation market and preserving the prudential nature of the securitisation framework. The ECB considers that the calibration, which reduces capital charges for STS securitisations, in Articles 260, 262 and 264 is appropriate, considering their lower risk profile.

10.3 In relation to the hierarchy of approaches, the ECB considers the changes contained in Article 254(3) to be a positive first step towards a more equal regulatory treatment of STS securitisations issued in different Union jurisdictions. As drafted, it effectively permits credit institutions to cap capital charges under the securitisation external ratings-based approach (SEC-ERBA) at the level applicable under the securitisation standardised approach (SEC-SA), subject to certain conditions ([3]). The proposal means that there is more of a level playing field for

([1]) See also the explanatory memorandum to the proposed securitisation regulation 'Third country dimension'.
([2]) See Amendments 30 and 75 introducing new Articles 6(2) and 22a.
([3]) Article 254, as proposed, allows banks to use, subject to *ex-post* supervisory approval, SEC-SA instead of SEC-ERBA when the application of SEC-ERBA results in overly high capital charges that are not commensurate with the credit risk of the underlying assets.

securitisations issued in Union jurisdictions subject to the application of sovereign rating caps and to other restrictive rating methodologies that result in capital charges under SEC-ERBA significantly higher than under SEC-SA, despite the fact that using SEC-SA should ordinarily result in the highest capital charges. However, the proposal introduces arbitrage opportunities if banks selectively apply the SEC-SA cap for some, but not all, eligible securitisations. At the same time, equal treatment will not be effective if the cap is allowed in some jurisdictions while disallowed in others by virtue of national supervisory discretion to provide or withhold approval.

10.4 The ECB recommends disallowing the use of SEC-ERBA ([1]) for STS securitisations only. This would provide equality of treatment across Union STS securitisations and between Union STS securitisations and non-Union securitisations issued in jurisdictions where the use of external ratings and, consequently, the application of SEC-ERBA, is not permitted. At the same time, the prudential nature of the STS securitisation framework is preserved, as STS securitisations have lower structural and asset quality risk and, therefore, the application of the formula-based SEC-SA, instead of SEC-ERBA, can be justified. Moreover, the simplification of the STS hierarchy would eliminate the potential for arbitrage ([2]). Competent authorities should nevertheless retain their discretion to impose capital charges higher than those resulting from the application of SEC-SA for STS securitisations (as for non-STS securitisations), where justified on a case-by-case basis, e.g. due to residual structural complexities or other relevant risk drivers not sufficiently captured in all cases under the standardised approach ([3]). Importantly, the ECB's recommendation to disallow the application of SEC-ERBA is, however, contingent on the maintenance of high standards for asset quality and self-attestation ([4]).

11. **Capital treatment for qualifying synthetic securitisations**

11.1 The proposed CRR amendment introduces a differentiated capital treatment for senior tranches of synthetic securitisations meeting certain criteria ([5]). Synthetic securitisations can support the overall aims of the proposed regulations, including providing funding for the real economy. However, from a prudential perspective, the arguments for reducing capital charges for certain synthetic securitisations are not as strong as for traditional STS securitisations. Notably there is currently limited data available on both the volume and performance of synthetic securitisations due to their private nature. The ECB therefore acknowledges the cautious approach taken by the Commission, whereby the preferential treatment is strictly limited to a subset of synthetic securitisation structures.

11.2 Moreover, the prudence of the framework for qualifying synthetic structures should be further strengthened by developing criteria specifically adapted to synthetic securitisations. The proposed application of the requirements for traditional STS securitisations to synthetic securitisations pursuant to Article 270(a) in the proposed CRR amendment is not appropriate in this regard, given the significantly different structural features of traditional and synthetic securitisations. At the same time, the introduction of criteria specific to synthetic securitisation transactions should not expand the narrow scope proposed by Article 270 ([6]).

12. **Strengthening the SRT assessment**

The ECB considers that the proposed CRR amendment should be used as an opportunity to both clarify and strengthen the current CRR provisions with regard to significant risk transfer and implicit support. First, the conditions for recognising SRT ([7]) in Articles 244 and 245 should be linked to the conditions for implicit support in

([1]) See Amendment 103 introducing a new Article 254a.
([2]) Article 254 of the proposed CRR amendment and of the Council's compromise text (2015/0225 (COD), 14536/15) permit banks, unless restricted by supervisors, to selectively use SEC-SA, i.e. banks can choose to cap the risk weights resulting from the application of SEC-ERBA only for those exposures where applying SEC-SA is more advantageous than SEC-ERBA. The hierarchy arbitrage would not be allowed under the ECB's proposal, as SEC-SA would need to be used at all times and a supervisory intervention, if any, can only increase capital charges applied.
([3]) See Amendment 105 introducing a new Article 258a.
([4]) See paragraphs 5.2 on asset quality and 6.2 on the attestation process.
([5]) See Article 270.
([6]) *The EBA Report on Synthetic Securitisation* of 18 December 2015 recommends, inter alia, introducing criteria specific to synthetic securitisations and the expansion of the scope of Article 270 to allow private investors to act as eligible credit protection providers.
([7]) See Amendments 93 and 96 on Articles 244(4)(f) and 245(4)(e).

Article 250, as they address the same issues. In addition, the quantitative significant risk transfer tests provided in Articles 244(2) and 245(2) should be reviewed by the EBA [1] as they are insufficient and open to regulatory arbitrage in certain cases.

Where the ECB recommends that the proposed regulations are amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on the ECB's website.

Done at Frankfurt am Main, 11 March 2016.

The President of the ECB

Mario DRAGHI

[1] See Amendments 94 and 97 on Articles 244(6) and 245(6).

EUROPEAN CENTRAL BANK

EUROSYSTEM

ECB-PUBLIC

Technical working document

produced in connection with ECB Opinion (CON/2016/11)[1]

Drafting proposals in relation to the proposed securitisation regulation

Text proposed by the European Commission	**Amendments proposed by the ECB[2]**
Amendment 1 Citations	
Having regard to the opinion of the European Economic and Social Committee,	**Having regard to the opinion of the European Central Bank,** Having regard to the opinion of the European Economic and Social Committee,
Explanation *The proposed amendment is necessary to record the adoption of the Regulation in compliance with the obligation to consult the European Central Bank (ECB) on any proposed Union act in its fields of competence under Articles 127(4), first indent, and 282(5) of the Treaty.*	
Amendment 2 Recital 3	
'(3) The European Union does not intent to weaken the legislative framework implemented after the financial crisis to address the risks inherent in highly complex, opaque and risky securitisation. It is essential to ensure that rules are adopted to better differentiate simple, transparent and standardised products from complex, opaque and risky instruments and apply a more risk-sensitive prudential framework.'	'(3) The European Union does not intend**d**~~t~~ to weaken the legislative framework implemented after the financial crisis to address the risks inherent in highly complex, opaque and risky securitisation. It is essential to ensure that rules are adopted to better differentiate simple, transparent and standardised products from complex~~;~~ **and** opaque ~~and risky~~ instruments~~ and apply a more risk-sensitive prudential framework~~.'
Explanation	

1 This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published in the Legal framework section of the ECB's website alongside the opinion itself.

2 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the European Commission	Amendments proposed by the ECB[2]
The proposed amendment clarifies that simple, transparent and standardised (STS) securitisations are not risk free.	
Amendment 3 Recital 14	
'(14) Originators, sponsors and SSPE's should make all materially relevant data on the credit quality and performance of underlying exposures available in the investor report, including data allowing investors to clearly identify delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, repurchases, payment holidays, losses, charge offs, recoveries and other asset performance remedies in the pool of underlying exposures. Data on the cash flows generated by underlying exposures and by the liabilities of the securitisation issuance, including separate disclosure of the securitisation position's income and disbursements, that is scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges and any data relating to the breach of any triggers implying changes in the priority of payments or replacement of any counterparties as well as data on the amount and form of credit enhancement available to each tranche should also be made available in the investor report. …'	'(14) Originators, sponsors and SSPE's should make all materially relevant data on the credit quality and performance of underlying exposures available in the investor report, including data allowing investors to clearly identify delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, repurchases, payment holidays, losses, charge offs, recoveries and other asset performance remedies in the pool of underlying exposures. Data on the cash flows generated by underlying exposures and by the liabilities of the securitisation issuance, including separate disclosure of the securitisation position's income and disbursements, that is scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges and any data relating to the breach of any triggers implying changes in the priority of payments or replacement of any counterparties as well as data on the amount and form of credit enhancement available to each tranche should also be made available in the investor report. **These higher quality standards for investors should be mandatory for STS securitisations.** …'
Explanation *This Amendment should be read together with Amendment 42 introducing a new Article 10(5).*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Amendment 4 Recital 24a (new)	
No text	**'(24a) Council Regulation (EU) No 1024/2013 has conferred specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions. The scope of these tasks are, in accordance with Article 127(6) of the Treaty, prudential in nature, and include ensuring compliance with the relevant Union law which imposes prudential requirements on credit insitutions in the area of securitisation. The ECB should only ensure compliance with the provisions of this Regulation which impose prudential requirements. In this regard, due dilligence requirements for credit institutions as institutional investors should be considered to be of a prudential nature.'**
Explanation *The proposed amendment clarifies the scope of the ECB's responsibilities under Article 15, having regard to the scope of the prudential supervisory tasks which may be conferred on the ECB in accordance with Article 127(6) of the Treaty.*	
Amendment 5 Recital 25	
'(25) Competent authorities should closely coordinate their supervision and ensure consistent decisions, especially in case of infringements of this Regulation. Where such an infringement concerns an incorrect or misleading notification, the competent authority finding that infringement should also inform the ESAs and the relevant competent authorities of the Member States concerned ESMA, and, where appropriate, the Joint-Committee of the European Supervisory	'(25) Competent authorities should closely coordinate their supervision and ensure consistent decisions, especially in case of infringements of this Regulation. Where such an infringement concerns a~~n~~ **materially** incorrect or misleading notification, the competent authority finding that infringement should also inform the ESAs and the relevant competent authorities of the Member States concerned. ESMA, and, where appropriate, the Joint-Committee of the European Supervisory

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Authorities, should be able to exercise their binding mediation powers.'	Authorities, should be able to exercise their binding mediation powers.'
Explanation *Infringements which are immaterial or minor should be excluded from the notification obligations in view of proportionality requirements and the potentially severe sanctions that may be imposed as a consequence of infringements.*	
Amendment 6 Article 2(11)	
'(11) "investor" means a person holding securities resulting from a securitisation;'	'(11) "investor" means a person **or entity** holding ~~securities resulting from~~ a securitisation **position or an exposure to an ABCP programme**;'
Explanation *The proposed amendment would ensure that the definition of investor encompasses not only entities with an exposure to the securitisation by means of a direct holding of securities, but also other types of exposures, such as through swap agreements or liquidity facilities, as well as investors in asset-backed commercial paper (ABCP) programmes which, due to the lack of tranching in the commercial paper, would not otherwise be captured by the definition of securitisation in Regulation (EU) No 575/2013. Without this addition, a credit institution acting as a swap counterparty or liquidity facility provider would not be required to exercise due diligence requirements although they would be exposed to the risks of the securitisation.*	
Amendment 7 Article 2(12)	
'(12) "institutional investors" means insurance undertakings as defined in Article 13 (1) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II); reinsurance undertakings as defined in Article 13 point (4) of Directive 2009/138/EC; institutions for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament	'(12) "institutional investor~~s~~" means **an investor which is also one of the following: an** insurance undertaking~~s~~ 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); **a** reinsurance undertaking~~s~~ as defined in Article 13 point (4) of Directive 2009/138/EC; **an** institution~~s~~ for occupational retirement provision falling within the

Text proposed by the European Commission	Amendments proposed by the ECB[2]
and of the Council* in accordance with Article 2 thereof, unless a Member States has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive; an alternative investment fund manager (AIFM) as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council** that manage and/or market AIFs in the Union; or a UCITS management company as defined in Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council***; or an internally managed UCITS, which is an investment company authorised in accordance with Directive 2009/65/EC and which has not designated a management company authorised under that Directive for its management; or credit institutions or investments firms as defined in Article 4(1) (1) and (2) of Regulation (EU) No 2013/575;'	scope of Directive 2003/41/EC of the European Parliament and of the Council* in accordance with Article 2 thereof, unless a Member States has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive; an alternative investment fund manager (AIFM) as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council** that manage and/or market AIFs in the Union; or a UCITS management company as defined in Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council***; 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 **a** credit institution~~s~~ or investment~~s~~ firm~~s~~ as defined in Article 4(1) (1) and (2) of Regulation (EU) No 2013/575;'
Explanation *The proposed amendment is necessary to ensure that institutional investors are also investors holding a securitisation position (see also Amendment 6 on Article 2(11)).*	
Amendment 8 Article 2(19) (new)	
No text	'**(19) "securitisation position" means an exposure to a securitisation;**'
Explanation *The proposed amendment is necessary as this term is used extensively in the proposed securitisation regulation, and the definition from Regulation (EU) No 575/2013 should be included here for ease of reference. If included here, it would imply that it should be removed from the CRR to avoid duplication in the EU regulatory framework.*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Amendment 9 Article 2(20) (new)	
No text	'**(20) "fully-supported ABCP programme" means an ABCP programme whose sponsor directly and fully ensures the full and timely payment of maturing ABCP, whether through the provision of a liquidity facility to the SSPE or otherwise.**'
Explanation *As this term will be used extensively in the proposed securitisation regulation if the ECB's amendments are accepted[3] it is useful to include a definition. This Amendment supplements the provisions on STS ABCP programmes in Article 13(4).*	
Amendment 10 Article 3(1)(a)	
'(a) where the originator or original lender is not a credit institution or investment firm as defined in Article 4(1), points (1) and (2) of Regulation (EU) No 575/2013, the originator or original lender grants all its credits on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply these criteria and processes;'	'(a) where the originator or original lender is not a credit institution or investment firm as defined in Article 4(1), points (1) and (2) of Regulation (EU) No 575/2013, the originator or original lender grant~~s~~**ed** ~~all its~~ **the** credits **giving rise to the underlying exposures** on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply these criteria and processes;'
Explanation *This amendment is necessary to clarify that an institutional investor only needs to verify the standard of asset origination and underwriting applied by the originator or original lender (the criteria and processes) in relation to the actual assets (credits) underlying a particular securitisation. It would be a heavy burden and, in many cases, practically impossible for an institutional investor to verify the standard of origination applied to the originator's or original lender's entire portfolio of assets. The most relevant information for investors when conducting their due diligence is information regarding the actual assets included in the*	

3 See for example Amendments 11, 12, 13, 18 and 53.

Text proposed by the European Commission	Amendments proposed by the ECB[2]
securitisation. Information regarding assets which are not included is of more limited value.	
Amendment 11 Article 3(3)(a)	
'(a) establish written procedures commensurate with the risk profile of the securitisation position, and appropriate to their trading and non-trading book where relevant, to monitor compliance with paragraphs 1 and 2 and the performance of the securitisation position and the underlying exposures on an ongoing basis. Where appropriate, those written procedures shall include monitoring of the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, recovery rates, repurchases, loan modifications, payment holidays, collateral type and occupancy, and frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification, frequency distribution of loan to value ratios with band widths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisations, institutional investors shall also monitor the exposures underlying those securitisations;'	'(a) **when holding exposures to a securitisation other than a fully-supported ABCP programme backed by underlying exposures with a residual individual maturity of no longer than one year,** establish written procedures commensurate with the risk profile of the securitisation position, and appropriate to their trading and non-trading book where relevant, to monitor compliance with paragraphs 1 and 2 and the performance of the securitisation position and the underlying exposures on an ongoing basis. ~~Where appropriate, t~~**T**hose written procedures shall include**, where applicable to the asset class,** monitoring of the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, recovery rates, repurchases, loan modifications, payment holidays, collateral type and occupancy, and frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification, frequency distribution of loan to value **and loan to income** ratios with band widths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisations, institutional investors shall also monitor the exposures underlying those securitisations;'
Explanation *The proposed amendment is justified because the detailed monitoring process required by Article 3(3)(a) is not necessary for fully-supported ABCP programmes backed, directly or through underlying transactions, by underlying exposures with a residual maturity of less than one year, such as trade*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
receivables. In such cases, it is sufficient for an institutional investor to focus its due diligence process on the sponsor's creditworthiness. In contrast, ABCP programmes that are not fully supported and fully-supported ABCP programmes backed by underlying exposures with a remaining residual maturity of more than one year have a higher risk profile. For such ABCP programmes, more detailed monitoring processes are warranted. In addition, the loan to income ratio of a borrower is a key factor in the probability of repayment of a debt. It has therefore been added to the list of items to be monitored.	
Amendment 12 Article 3(3)(b)	
'(b) regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures that are commensurate with the nature, scale and complexity of the risk of the securitisation position;'	'(b) **when holding exposures to a securitisation other than a fully-supported ABCP programme backed by underlying exposures with a residual individual maturity of no longer than one year,** regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures that are commensurate with the nature, **seniority**~~scale~~, **amount** and complexity of the risk of the securitisation position;'
<u>*Explanation*</u> *This amendment is necessary because cash flow stress tests are not strictly necessary for fully-supported ABCP programmes backed, directly or through underlying transactions, by underlying exposures with a residual maturity of no longer than one year. The redemption of the commercial paper issued under such ABCP programmes is guaranteed by the sponsor's full support. In addition, maturity mismatches are minimised due to the short maturity of the underlying exposures (assets) compared to the commercial paper liabilities. These factors mean that the sponsor's liquidity buffers are less likely to be constrained if its support is drawn on to redeem the commercial paper. Therefore, for such ABCP programmes, an assessment of the sponsor's risk profile and the terms of the liquidity facility are sufficient. Seniority and amount are also important factors that determine the extent of the due diligence warranted for a securitisation position.*	
Amendment 13 Article 3(3)(d)	
'(d) be able to demonstrate, upon request, to their competent authorities that for each of their	'(d) be able to demonstrate, upon request, to their competent authorities that for each of their

Text proposed by the European Commission	Amendments proposed by the ECB[2]
securitisation positions they have a comprehensive and thorough understanding of the position and its underlying exposures and that they have implemented written policies and procedures for their risk management and recording of the relevant information.'	securitisation positions they have a comprehensive and thorough understanding of the position and its underlying exposures **including, in the case of fully-supported ABCP programmes, the sponsor's risk profile and the terms of the liquidity facility,** and that they have implemented written policies and procedures for their risk management and recording of the relevant information.'
Explanation *The proposed amendment is justified as, in the case of fully-supported ABCP programmes, investors should understand the sponsor's risk profile and the terms on which the sponsor supports the ABCP programme.*	
Amendment 14 Article 4(1)	
'(1) The originator, sponsor or the original lender of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of not less than 5 %. Where the originator, sponsor or the original lender have not agreed between them who will retain the material net economic interest, the originator shall retain the material net economic interest. There shall be no multiple applications of the retention requirements for any given securitisation. The material net economic interest shall be measured at the origination and shall be determined by the notional value for off-balance sheet items. The material net economic interest shall not be split amongst different types of retainers and not be subject to any credit risk mitigation or hedging. For the purposes of this Article, an entity shall not be considered to be an originator where the entity has been established or operates for the sole	'(1) The originator, sponsor or the original lender of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of not less than 5 %. Where the originator, sponsor or the original lender have not agreed between them who will retain the material net economic interest, the originator shall retain the material net economic interest. There shall be no multiple applications of the retention requirements for any given securitisation. The material net economic interest shall be measured at the origination and shall be determined by the notional value for off-balance sheet items. The material net economic interest ~~shall~~ **may** not be split amongst different types of retainers**,** ~~and not~~ be subject to any credit risk mitigation or hedging **or be sold.** For the purposes of this Article, an entity shall not be considered to be an originator where the entity has been established or operates for the sole purpose of securitising exposures. **The retention**

Text proposed by the European Commission	Amendments proposed by the ECB[2]
purpose of securitising exposures.'	**requirement shall apply to an originator or original lender only if they are involved in the securitisation.**'
Explanation *The prohibition on selling the retained interest which is contained in Regulation (EU) No 575/2013 has not been included here. However, it remains important, especially as Article 4(6)(c) places the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) under an obligation to develop draft regulatory technical standards on the 'prohibition on hedging or selling the retained interest'. In addition, the proposed clarification follows from the definition of originator in Regulation (EU) No 575/2013, which covers all parties involved in the origination of the relevant exposures. A credit institution may purchase exposures from the original lender in the secondary market and subsequently securitise them. In these circumstances, the original lender, which is not a party to the securitisation, cannot be expected to comply with the requirement to retain a net economic interest in the securitisation.*	
Amendment 15 Article 4(6)(e)	
'(e) the conditions for exempting transactions based on a clear, transparent and accessible index referred to in paragraph 5.'	'(e) the conditions for exempting transactions based on a clear, transparent and accessible index **and transactions where the underlying reference entities are tradable securities other than securitisation positions as** referred to in paragraph 5**;.**'
Explanation *The proposed amendment clarifies that all of the exemptions mentioned in Article 4(5) need to be specified further by the European Supervisory Authorities (ESAs) in order not to be subject to the risk retention requirements. The term 'tradable securities' is not defined in Regulation (EU) No 575/2013 and therefore needs further specification. It could be interpreted as referring to 'transferable securities' as defined in Article 4(1)(44) of Directive 2014/65/EU of the European Parliament and of the Council[4], to listed securities or to securities admitted to trading on one of the platforms provided for by Directive 2014/65/EU or Regulation (EU) No 600/2014 of the European Parliament and of the Council[5]. The level of disclosure to investors varies depending on which meaning applies. The information available to*	

4 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

5 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

Text proposed by the European Commission	Amendments proposed by the ECB[2]
investors is one of the factors that should be considered when assessing whether the exemption from the risk retention requirements pursuant to Article 4(5) is justified, as investors can only assess the extent of adverse selection if they have sufficient information on the underlying securities. If investors receive sufficient information, there is less incentive for the securitising parties to engage in adverse selection in the first place, potentially justifying the exemption under Article 4(5).	
Amendment 16 Article 4(6)(f) (new)	
No text	'**(f) the format of the disclosure of compliance with the risk retention requirements, including the ongoing status of compliance, amount retained and retention form.**'
Explanation *Currently, there is no uniformity of reporting on the ongoing status of risk retention compliance or how risk retention requirements are met, i.e. the method of risk retention and the amount retained. We recommend that the EBA drafts templates in this regard, and that risk retention status is updated on an ongoing basis (see also Amendment 24 on Article 5(1)(g)(vi)).*	
Amendment 17 Article 5(1), introductory text	
'(1) The originator, sponsor and SSPE of a securitisation shall, in accordance with paragraph 2, make at least the following information available to holders of a securitisation position and to the competent authorities referred to in Article 15 of this Regulation.'	'(1) **Where the originator, the sponsor or the SSPE is established in the Union,** ~~T~~the originator, sponsor~~and~~ **or** SSPE of a securitisation shall, in accordance with paragraph 2, make at least the following information available to **institutional investors and prospective investors** ~~holders of a securitisation position~~ and to the competent authorities referred to in Article 15 of this Regulation.'
Explanation *The first amendment is introduced to clarify the scope of Article 5(1) disclosure. This is fully consistent with the requirements of Article 1 of Regulation (EU) 2015/3.* *The second amendment is designed to ensure that Article 5(1) is flexible enough to distinguish between entities which disclose information under a traditional or synthetic securitisation and those which disclose*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
under an ABCP programme. For trade receivables under an ABCP programme, the originator is typically a non-financial company which has little influence on the operation of the programme, and so the information requirement should allow the sponsors or securitisation special purpose entities (SSPEs) to disclose the required information instead. The third amendment is justified as the reference to persons to which key information is to be disclosed should use the defined term 'institutional investors', as this definition already encompasses holders of a securitisation position. Finally, it is important to require disclosure to prospective investors to facilitate their due diligence process pursuant to Article 3 (see Amendment 26 on Article 5(1), fourth subparagraph).	
Amendment 18 Article 5(1)(a)	
'(a) information on the exposures underlying the securitisation on a quarterly basis, or, in the case of ABCP, information on the underlying receivables or credit claims on a monthly basis;'	'(a) **loan-level** information on the exposures underlying the **traditional** securitisation on a quarterly basis, or, in the case of ABCP **programmes that are not fully-supported, or that are backed by receivables with a maturity longer than one year**, information on the underlying receivables or credit claims on a monthly basis **(redacted where necessary to protect confidentiality), as well as bond-level information (in the case of ABCP programmes, redacted where necessary to protect confidentiality) on a quarterly basis covering, as a minimum, the identifiers, outstanding amounts and maturities of the securities issued under the securitisation and the ABCP programme respectively**;'
Explanation *Given the importance of loan-level data, it is proposed that Article 5(1)(a) expressly requires the provision of such data. This is fully consistent with the requirements of Article 3(a) of Regulation (EU) 2015/3. It is considered that loan-level data is required for ABCP programmes other than those that are both fully supported and have underlying receivable maturity lower than one year. This implies that for fully-supported ABCPs backed entirely by trade receivables loan-level data is not necessary; this is appropriate, considering the very short maturities. Moreover, such loan-level data is necessary for investors in ABCPs other than fully-supported ABCPs with underlying maturities lower than one year, to enable them to undertake the due diligence requirements required by Article 3(3). With reference to*	

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2">additional bond-level information, the amendment aims to ensure that investors are fully informed about the liabilities as well as the assets of the securitisation.
The amendments regarding ABCP confidentiality are designed to ensure that for non-financial companies which generate, for example, trade receivables which underlie an ABCP transaction, the disclosures required by Article 5(1)(a) will not prejudice trade secrets or a sponsor's confidential financing arrangements with corporate clients.</td></tr>
<tr><td colspan="2">Amendment 19
Article 5(1)(b)</td></tr>
<tr><td>'(b) where applicable, the following documents, including a detailed description of the priority of payments of the securitisation:
…'</td><td>'(b) where applicable, the following documents (in the case of ABCP transactions, redacted where necessary to protect confidentiality)<s>, including a detailed description of the priority of payments of the securitisation</s>:
…'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The amendment is designed to ensure that for non-financial companies which generate, for example, trade receivables which underlie an ABCP transaction, the disclosures required by Article 5(1)(b) will not prejudice trade secrets or a sponsor's confidential financing arrangements with corporate clients. The deleted text is covered elsewhere.</td></tr>
<tr><td colspan="2">Amendment 20
Article 5(1)(e)</td></tr>
<tr><td>'(e) quarterly investor reports, or, in the case of ABCP, monthly investor reports, containing the following:</td><td>'(e) quarterly investor reports, or, in the case of ABCP programmes, monthly investor reports<s>,</s> containing the following, at a minimum:'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The amendment is justified as this information will be provided at ABCP programme level only. The requirement to provide the information listed 'as a minimum' gives ESMA the flexibility to require other information if deemed useful and feasible.</td></tr>
<tr><td colspan="2">Amendment 21
Article 5(1)(e)(i)</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
'(i) all materially relevant data on the credit quality and performance of underlying exposures;'	'(i) all materially relevant data on the credit quality and performance of underlying exposures, **including by asset type and industry, on the amount of exposures in default, in arrears and recovered, on prepayment rates, and on credit enhancement types and levels available to each securitisation tranche or, in the case of ABCP programmes, to the ABCP programme and each ABCP transaction**;'
Explanation *While ESMA will have to specify in greater detail the content of investor reports, the additional minimum requirements included will assist investors in carrying out due diligence as required by Article 3. This also provides guidance to ESMA when developing future regulatory technical standards. Credit enhancement levels and the form and duration of such enhancement available to each tranche are particularly important, and are seldom provided to investors in the investor reports. In the case of ABCP programmes, the level of credit enhancement provided both by the originator and the seller, in the form of the purchase price discount, and by the sponsor, in the form of the liquidity and/or credit facility, if any, represents key information for an ABCP investor.*	
Amendment 22 Article 5(1)(e)(ii)	
'(ii) data on the cash flows generated by the underlying exposures and by the liabilities of the securitisation, except for ABCP, and information on the breach of any triggers implying changes in the priority of payments or replacement of any counterparties;'	'(ii) data on the cash flows generated by the underlying exposures and by the liabilities of the securitisation, ~~except for ABCP,~~ and information on the breach of any triggers implying changes in the priority of payments or replacement of any counterparties;'
Explanation *The removal of the exemption of information in respect of ABCP is supported by the fact that, at ABCP transaction level, the amount of outstanding liabilities is relevant to investors.*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Amendment 23 Article 5(1)(e)(iv) (new)	
No text	'**(iv) deal-level, account-level and counterparty-level information;**'
Explanation *The proposed amendment requires the disclosure of additional information for the benefit of investors. This information could include, in relation to deal-level information, elements such as excess spread, over-collateralisation, whether the pool is currently revolving/static, whether the waterfall is currently sequential or pro rata, etc. In relation to account-level information this could include elements such as the target balance and the actual balance of the cash reserve account, the commingling reserve account, the set-off reserve account, the liquidity facility, etc. Finally, counterparty-level information could include the name and legal entity identifier of crucial counterparties such as the account bank, the servicer, the back-up servicer/back-up servicer facilitator, the interest rate or FX swap provider, the liquidity facility provider, etc.*	
Amendment 24 Article 5(1)(g), introductory text, and (vi) (new)	
'(g) where subparagraph (f) does not apply, any significant event such as: …'	'~~(~~g) ~~where subparagraph (f) does not apply,~~ any significant event such as: … **(vi) any change in the status, amount or method of risk retention in accordance with Article 4.**'
Explanation *The amendment is necessary as subparagraph (g) is independent of subparagraph (f). In addition, while information on net economic risk retention is included in investor reports (pursuant to Article 5(1)(e)(iii)), any change in the status of risk retention should also be disclosed without delay.*	
Amendment 25 Article 5(1), second subparagraph	
'The information described in subparagraphs (a), (b), (c) and (d) shall be made available without delay after the closing of the transaction at the	'The information described in subparagraphs (a) **and, for STS securitisations, in (d), shall be made available before the closing of the**

Text proposed by the European Commission	Amendments proposed by the ECB[2]
latest.'	**transaction, and the information described in subparagraphs** (b) **and**~~,~~ (c) ~~and (d)~~ shall be made available without delay **and at the latest 30 days** after the closing of the transaction ~~at the latest~~.'
Explanation *The proposed amendment would mean that loan-level data disclosure and, for STS securitisations, the disclosure of the STS notification pursuant to Article 14, is mandatory prior to the closing of the transaction. The main reason for providing the information under points (b) and (c) (but not (d)) after closing is that many of these documents are not final prior to closing. However, this is not the case for loan-level data. A hard deadline is preferable, as otherwise it is unclear what the final disclosure date is. The proposed 30-day deadline is appropriately less onerous than the 15-day deadline required for STS securitisations[6].*	
Amendment 26 Article 5(1), fourth subparagraph	
'The information described in subparagraphs (f) and (g) shall be made available without delay.'	'The information described in subparagraphs (f) and (g) shall be made available without delay. **With regard to the obligation to disclose the information described in the first subparagraph to prospective investors, this information shall be made publicly available by the originator, sponsor or SSPE where a prospectus has been drawn up in compliance with Directive 2003/71/EC. Where such a prospectus has not been drawn up, the information described in the first subparagraph shall be made available to the prospective investors to which securitising parties or their agents market the transaction.** **In the case of ABCP programmes, the information described in the first subparagraph shall be made available by the sponsor or SSPE to investors and prospective investors at ABCP programme level in the manner specified**

6 See Articles 10(4) and 13(8) of the proposed securitisation regulation.

Text proposed by the European Commission	Amendments proposed by the ECB[2]
	in the previous paragraph. In the case of ABCP transactions, the information described in the first subparagraph shall be made available to investors and prospective investors other than the sponsor in the manner specified in the previous paragraph.'
Explanation *The proposed amendment should be considered together with Amendment 17 on Article 5(1). It adds new fifth and sixth subparagraphs which clarify the type of prospective investors to which the information referred to in the first subparagraph of Article 5(1) should be disclosed, depending on the public or private nature of the transaction. If a prospectus is issued, all of the information referred to in that subparagraph should also be made available to the public. For private and bilateral transactions, the information referred to in that subparagraph should also be disclosed to prospective investors and other securitisation position holders (e.g. collateral agents, swap counterparties, reserve accounts providers, etc.) to which securitising parties or their agents market the transaction in the primary and, if applicable, secondary markets. The proposed amendment preserves the need for confidentiality in private and bilateral transactions.* *A distinction is also necessary between disclosure requirements at ABCP programme level – which should be similar to the requirements for private and bilateral traditional securitisations – and requirements at ABCP transaction level, where the counterparties are the sponsor or entities set up by the sponsor and there is therefore no need for such disclosure. At ABCP transaction level, mandatory disclosure should be made to parties, such as swap counterparties, that hold securitisation positions, to the extent that such parties are different from the sponsor. In such cases, they should have access to underlying data and transaction documentation.*	
Amendment 27 Article 5(2a) (new)	
No text	**'2a. The obligation under paragraph 2 to make information available by means of a website shall not apply to situations in which such disclosure would breach national or Union law on the protection of confidentiality of information sources or the processing of personal data.'**

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Explanation *The proposed amendment is justified from the perspective of data protection rules. The additional text replicates the data protection safeguards already contained in Article 8b(2) of Regulation (EC) No 1060/2009 in relation to website publication of information on structured finance instruments.*	
Amendment 28 Article 5(2b) (new)	
No text	'**2b. Where a prospectus has not been drawn up in compliance with Directive 2003/71/EC, the disclosure requirements in this Article shall not apply if the originator and the investor are part of the same group or if the funding and/or credit protection is entirely provided by one or more institutional investors which are part of the same group.**'
Explanation *The proposed amendment is justified as, in the case of certain private and bilateral transactions, the extensive disclosure requirements under Article 5 are not necessary and can be left to contractual arrangements between the securitising parties. Such cases include retained securitisations, intra-group transactions and synthetic securitisations where the protection is purchased from a single third party investor, or from several institutional investors that are part of the same group. This provision does not prevent an institutional investor from negotiating, by way of bilateral contract with the originator, access to relevant data. In addition, this exemption does not exempt institutional investors from the due diligence requirements under Article 3.*	
Amendment 29 Article 5(3)(a)	
'(a) the information that the originator, sponsor and SSPE should provide to comply with their obligations under paragraph 1(a) and (d) and the format thereof by means of standardised templates;'	'(a) the information that the originator, sponsor and SSPE should provide to comply with their obligations under paragraph 1(a)**, (d)** and (**c**~~d~~) and the format thereof by means of standardised templates;'

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Explanation *The ECB recommends that ESMA undertakes further work to specify the minimum content requirements of investor reports. While Annex VIII of Article 8b of Regulation (EC) No 1060/2009 already specifies such requirements, there is considerable scope to increase the quantity and improve the quality of information provided in investor reporting for the entire Union securitisation market.*	
Amendment 30 Article 6	
'Originators, sponsors and SSPE's shall use the designation "STS" or a designation that refers directly or indirectly to these terms for their securitisation only where the securitisation meets all the requirements of Section 1 or Section 2 of this Regulation, and they have notified ESMA pursuant to Article 14 (1).'	'**1.** Originators, sponsors and SSPE's ~~shall~~ **may** use the designation "STS" or a designation that refers directly or indirectly to these terms for their securitisation only where the securitisation meets all the requirements of Section 1 **of this Chapter for traditional STS securitisations** or Section 2 of this **Chapter**~~Regulation,~~ **for STS ABCP programmes,** ~~and~~ they have notified ESMA pursuant to Article 14 (1) **and the securitisation is registered as an STS on ESMA's website**. **2. Originators, sponsors and SSPEs may only use the designation "STS" if they are subject to the supervisory regime laid down in Chapter 4 or to a supervisory regime assessed as equivalent pursuant to Article 22a.**'
Explanation *The proposed amendment clarifies that the designation 'STS' can encompass both traditional STS securitisations and STS ABCP programmes.* *The strength of the STS framework resides both in the strength of the STS criteria and the efficiency of the STS framework implementation and supervision. Strong STS criteria are not sufficient if not complemented by strong supervision that ensures that they are met. The STS framework should not be restricted to Union entities. At the same time, STS securitisations should be subject to high supervisory standards, i.e. the Union standards in the proposed securitisation regulation or standards that the European Commission assesses as equivalent in third countries. Investors should not be required to check if an STS securitisation is subject to Union or equivalent supervisory standards. ESMA is best placed to make such an assessment. Therefore, ESMA should be empowered to only register on its*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
website STS securitisations from jurisdictions with high supervisory standards, as such jurisdictions will have been assessed by the Commission (see also Amendment 75 on Article 22a).	
Amendment 31 Section 1, heading and Article 7	
‘SECTION 1 GENERAL REQUIREMENTS FOR STS SECURITISATION *Article 7* Simple, transparent and standardised securitisation Securitisations, except ABCP securitisations, that meet the requirements in Articles 8, 9 and 10 of this Regulation shall be considered 'STS'.’	‘SECTION 1 GENERAL REQUIREMENTS FOR **TRADITIONAL** STS SECURITISATION *Article 7* **Traditional,** ~~S~~**s**imple, transparent and standardised securitisation **Traditional** ~~S~~**s**ecuritisations ~~except ABCP securitisations~~ that meet the requirements in Articles 8, 9 and 10 of this Regulation shall be considered 'STS'.’
Explanation *The proposed amendment clarifies that section 1 addresses traditional STS securitisations.*	
Amendment 32 Article 8(1)	
‘1. The underlying exposures shall be acquired by a SSPE by means of a sale or assignment in a manner that is enforceable against the seller or any other third party including in the event of the seller's insolvency. The transfer of the underlying exposures to the SSPE shall not be subject to any severe clawback provisions in the event of the seller's insolvency. Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection should, at a minimum, incorporate the following events: …’	‘1. The underlying exposures shall be acquired by a SSPE by means of a **true** sale or assignment in a manner that is enforceable against the seller or any other third party including in the event of the seller's insolvency. The transfer of the underlying exposures to the SSPE shall not be subject to any severe clawback provisions in the event of the seller's insolvency. **A legal opinion by a third party shall be obtained which supports the assessment of true sale or assignment and the absence of any severe clawback provisions, in the event of the seller's insolvency.** Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a

Text proposed by the European Commission	Amendments proposed by the ECB[2]
	later stage than at the closing of the transaction, the triggers to effect such perfection should, at a minimum, incorporate the following events: …'
Explanation *The proposed amendment recognises that the effective segregation of assets from the seller's estate is at the core of a true sale securitisation structure. However, it also recognises that the determination of a true sale is a question of both fact and law, which will only be confirmed with certainty in the event of a seller's insolvency. To ensure that an STS securitisation is legally structured to achieve such a true sale, a legal opinion issued by a third party should support the assessment of true sale or assignment and that the provisions governing the asset sale or assignment do not include severe clawback provisions. A definitive confirmation of these matters by a legal opinion would not be possible without reservations prior to the seller's insolvency.*	
Amendment 33 Article 8(4)	
'4. The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type. The underlying exposures shall be contractually binding and enforceable obligations with full recourse to debtors, with defined periodic payment streams relating to rental, principal, interest payments, or related to any other right to receive income from assets warranting such payments. The underlying exposures shall not include transferable securities, as defined in Directive 2014/65/EU.'	'4. The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type. The underlying exposures shall be contractually binding and enforceable obligations with full recourse to debtors **that are natural persons or legal persons other than SSPEs**, with defined periodic payment streams relating to rental, principal, interest payments, or related to any other right to receive income from assets warranting such payments. The underlying exposures shall not include transferable securities, as defined in Directive 2014/65/EU.'
Explanation *The proposed amendment would ensure that the type of debtors underlying STS securitisations do not add structural complexity to the transaction by interposing additional SSPEs in the structure.*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Amendment 34 Article 8(6)	
'6. The underlying exposures shall be originated in the ordinary course of the originator's or the original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or the original lender applies to origination of similar exposures that are not securitised. Material changes in underwriting standards shall be fully disclosed to potential investors. In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable intermediaries, were made aware that the information provided might not be verified by the lender. The assessment of the borrower's creditworthiness shall meet the requirements set out in paragraphs 1 to 4, 5(a), and 6 of Article 18 of Directive 2014/17/EU of the European Parliament and of the Council or of Article 8 of Directive 2008/48/EC of the European Parliament and of the Council or equivalent requirements in third countries. The originator or original lender shall have expertise in originating exposures of a similar nature to those securitised.'	'6. The underlying exposures shall be originated in the ordinary course of the originator's or the original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or the original lender applies to origination of similar exposures that are not securitised. **In the case of revolving or replenishing transactions, the exposures added to the pool shall be originated to underwriting standards that are not materially less stringent than those applied to the exposures included in the pool at the establishment of the transaction.** Material changes in underwriting standards shall be fully disclosed to **investors and** ~~potential~~ **prospective** investors. In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable intermediaries, were made aware that the information provided might not be verified by the lender. The assessment of the borrower's creditworthiness shall meet**, 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. The originator or original lender shall have expertise in originating exposures of **the same or** a similar nature to those securitised. **The servicer shall have expertise in servicing exposures of the same or a similar nature to those securitised.**'

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Explanation *The proposed amendment recognises that, in the case of non-static pools, there is a risk that the exposures added after closing are of lower quality than the initial exposures, leaving the investor exposed to a portfolio of deteriorating credit quality. For this reason, the revolving period of STS securitisations should not be permitted to lead to a deterioration in the pool quality arising from overall deteriorating underwriting standards. In addition, material changes in underwriting standards should be disclosed to current, not just prospective, investors. In addition, Article 18 of Directive 2014/17/EU and Article 8 of Directive 2008/48/EC are not applicable in all circumstances. Finally, the requirement regarding the servicer is moved from Article 9(6)(a) (the associated deletion is not included in this Annex).*	
Amendment 35 Article 8(7)(c)	
'(c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not be made is significantly higher than for the average debtor for this type of loans in the relevant jurisdiction.'	'(c) has a credit assessment or a credit score indicating **a highly significant risk of default** ~~that the risk of contractually agreed payments not be made is significantly higher than for the average debtor for this type of loans in the relevant jurisdiction~~.'
Explanation *The proposed amendment would safeguard a key feature of STS securitisations, namely the minimum quality of the underlying assets at the start of the transaction. It is preferable for the text to define asset quality in an objective manner, as otherwise obligors that would be considered credit impaired in one jurisdiction would qualify in another jurisdiction. A credit-impaired debtor is also a debtor that has a highly significant risk of default and the EBA should define what constitutes a highly significant risk of default (see Amendment 61 on Article 14a).*	
Amendment 36 Article 8(8)	
'8. The debtors or the guarantors shall have, at the time of transfer of the exposures, made at least one payment, except in case of revolving securitisations backed by personal overdraft facilities, credit card receivables, trade receivables and dealer floorplan finance loans or exposures	'8. The debtors or the guarantors shall have, at the time of transfer of the exposures, made at least one payment, except in case of revolving securitisations backed by personal overdraft facilities, credit card receivables **and** ~~,~~ trade receivables ~~and dealer floorplan finance loans~~ or

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payable in a single instalment.'	exposures payable in a single instalment.'
Explanation *Dealer floorplan finance loans are, by their nature, repaid from the sale of the underlying collateral. Dealer floorplan securitisations are mainly used to finance dealer auto inventories and depend on the extent to which and the terms on which dealers can sell underlying cars that serve as collateral for the floorplan loans. Securitisations backed by such loans would not meet the requirement in Article 8(9) that prohibits STS securitisations from being reliant for repayment on the sale of the underlying assets. The deletion of the reference to dealer floorplan finance loans therefore avoids implying that such securitisations could qualify as STS securitisations.*	
Amendment 37 Article 8(9)	
'9. The repayment of the holders of the securitisation positions shall not depend, substantially, on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced.'	'9. The repayment of the holders of the securitisation positions shall not depend~~,~~ ~~substantially,~~ on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced.'
Explanation *Securitisations whose underlying assets are dependent on the liquidation of the underlying collateral should not be eligible under the STS framework. These include securitisations depending entirely or to some extent on the sale of underlying collateral to ensure repayment, such as dealer floorplan finance loans, residual value auto leases and certain commercial mortgage-backed securities. The performance of such securitisations is highly dependent on assumptions as to whether market risks have been adequately mitigated, rather than on the performance of the underlying cash flow generating assets. Risks may materialise which go beyond the anticipated stress scenarios, thereby invalidating these assumptions. In addition, securitisations whose repayment depends to any extent on the resale value of the underlying collateral are significantly harder to value.*	
Amendment 38 Article 10(1)	
'1. The originator, sponsor, and SSPE shall provide access to data on static and dynamic historical default and loss performance, such as delinquency	'1. The originator, sponsor~~, and~~ **or** SSPE shall provide access to data on static and dynamic historical default and loss performance, such as

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and default data, for substantially similar exposures to those being securitised to the investor before investing. Those data shall cover a period no shorter than seven years for non-retail exposures and five years for retail exposures. The basis for claiming similarity shall be disclosed.'	delinquency and default data, for substantially similar exposures to those being securitised to ~~the investor~~ **investors and prospective investors** before investing. **The**~~Those~~ data shall cover a period no shorter than seven years for non-retail exposures and five years for retail exposures. The basis for claiming similarity shall be disclosed.'
Explanation *The proposed amendment clarifies that any of the three entities can disclose on behalf of the others. In addition, it clarifies that performance data should also be disclosed to prospective investors to allow them to fulfil their due diligence obligations required to participate in primary market issuances (rather than just participating on secondary markets). This is logical as investors need to be able to exercise due diligence before investing in a securitisation, therefore the information should be available to both prospective and existing investors.*	
Amendment 39 Article 10(2)	
'2. A sample of the underlying exposures shall be subject to external verification prior to issuance of the securities resulting from the securitisation by an appropriate and independent party, including verification that the data disclosed in respect of the underlying exposures is accurate, with a confidence level of 95%.'	'2. A sample of the underlying exposures shall be subject to external verification **of their conformity with the portfolio eligibility criteria,** prior to **the first** issuance of the securities resulting from the securitisation by an appropriate and independent party, including verification that the data disclosed in respect of the underlying exposures is accurate, with a confidence level of ~~95~~**99**%.'

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Explanation *The amendment limits the scope of the external verification to the conformity of the underlying exposures with the portfolio eligibility criteria to ensure that such verification is practically and economically feasible. However, a 95% confidence level threshold is overly permissive. A 99% confidence level is more appropriate. It is also necessary to clarify that verification should only be required at the outset of the transaction. This is of particular relevance for ABCP programmes, which are also subject to this criterion.*	
Amendment 40 Article 10(3)	
'3. The originator or sponsor shall provide a liability cash flow model to investors, both before the pricing of the securitisation and on an ongoing basis.'	'3. The originator or sponsor shall ~~provide~~ **make available** a liability cash flow model to **prospective** investors~~, both~~ before the pricing of the securitisation and **to investors and prospective investors** on an ongoing basis. **Where the cash flow model is provided through a third party, the originator and sponsor shall be responsible for the accuracy of the data provided to the third party.'**
Explanation *At their core, securitisations are dependent for payment of liabilities on the cash flows generated by the underlying exposures and the application of the priority of payments in the terms and conditions of the notes. For this reason, cash flow models are extremely useful to investors. The proposed amendment recognises that sponsors and originators should have the option to provide a liability cash flow model to investors indirectly through specialised service providers. In such cases, however, the sponsor or originator should retain responsibility for the raw data which they provide to the third party as a basis for the model.*	
Amendment 41 Article 10(4)	
'4. The originator, sponsor and SSPE shall be jointly responsible for compliance with Article 5 of this Regulation and shall make all information required by Article 5(1) (a) available to potential investors before pricing. The originator, sponsor and SSPE shall make the information required by	'4. The originator, sponsor and SSPE shall **each** be ~~jointly~~ responsible for **the accuracy of the information they respectively disclose in** compliance with Article 5 of this Regulation and ~~shall make all information required by Article 5(1) (a) available to potential investors before pricing.~~

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Article 5 (1) (b) to (e) available before pricing at least in draft or initial form, where permissible under Article 3 of Directive 2003/71/EC. The originator, sponsor and SSPE shall make the final documentation available to investors at the latest 15 days after closing of the transaction.'	~~The originator, sponsor and SSPE~~ shall make the information required by Article 5 (1) (b) ~~to~~ **and** (~~ec~~) available before pricing **to prospective investors** at least in draft or initial form, where permissible under Article 3 of Directive 2003/71/EC. The originator, sponsor and SSPE shall make the final documentation available to investors at the latest 15 days after closing of the transaction.'
Explanation *The proposed amendment would ensure that the securitising parties are responsible both for the disclosure of the information which each of them provides pursuant to Article 5 as well as for the accuracy of such information.* *In addition, text can be deleted as a result of the recommendation in Amendment 25 on the second subparagraph of Article 5(1) for mandatory loan-level data disclosure for traditional securitisations to be made before closing for all securitisations, not only for STS securitisations. In addition, investor reports are not prepared before transaction closing. The transaction memorandum, where there is no prospectus, should be made available at least in draft form to prospective investors before closing.*	
Amendment 42 Article 10(5) (new)	
No text	'**5. The originator, sponsor and SSPE shall provide investors with quarterly investor reports disclosing all materially relevant data on the credit quality and performance of the underlying assets, 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 the underlying assets and the securitisation's liabilities including separate disclosure of income and disbursements, i.e. scheduled principal, scheduled interest, prepaid principal, past due interest and fees**

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	and charges; loss allocation to liabilities; breach of any triggers causing changes in the priority of payments or replacement of any counterparties; and data on the amount and form of credit enhancement available to each tranche. The stratified data provided to investors through investor reports shall be consistent with the loan-level data provided to investors under Article 5(1)(a).'
Explanation *STS securitisations should meet higher transparency standards than non-STS securitisations as they benefit from preferable regulatory capital treatment which is justified, inter alia, on the basis of a high degree of transparency. Recital 14 lists the items for disclosure. However, provision of this information is not mandatory at present. More extensive mandatory minimum disclosure and consistency requirements should be adopted as part of the transparency requirements for STS securitisations, including a requirement for investor reports. Investor reports represent the main source of information for investors after the closing of a securitisation transaction, providing, inter alia, key information on underlying collateral performance, outstanding tranches, cash flow payments and the status of transaction counterparties. Currently, however, the quality of disclosure in investor reports varies considerably. Often they either omit detailed information on the performance of the underlying collateral or include information contradicting the granular loan-level data. The proposed Article 10(5) clarifies that these are mandatory minimum disclosure requirements for investors reporting on STS securitisations. In addition, a further requirement is included for information provided to investors in investor reports to be consistent with the granular loan-level data to ensure investor report and loan-level data quality.*	
Amendment 43 Article 10(6) (new)	
No text	'**6. The prospectus or, where a prospectus has not been issued, the equivalent transaction documentation, shall state if and how the STS criteria referred to in Articles 8 to 10 have been met**.'
Explanation *The proposed amendment is designed to ensure greater clarity on how securitising parties have fulfilled their responsibilities under Article 14. As currently drafted, Article 14 only requires an originator or*	

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sponsor to notify STS compliance to ESMA. Consequently, investors would have to assess the compliance of the securitisation with the STS criteria on the basis of disclosure documentation such as a prospectus or information memorandum, which may not be structured in a manner facilitating this assessment. It is therefore recommended that originators and sponsors are required to disclose to investors, in a clear and detailed manner, both if the securitisation complies with the STS criteria and, if it does, how it complies, providing cross references to the relevant sections of the prospectus or information memorandum. This would significantly increase the transparency of the originator's and sponsor's STS attestation under Article 14 and ease the administrative burden on investors when conducting their own due diligence on STS compliance.	
Amendment 44 Article 10(7) (new)	
No text	'**7. The disclosure requirements applicable to investors and, where applicable, to prospective investors, in Articles 8 to 10, shall be made in the manner set out in the fifth and sixth subparagraphs of Article 5(1), by an entity designated pursuant to the first subparagraph of Article 5(2).**'
Explanation *Amendment 26 adds new fifth and sixth subparagraphs to Article 5(1), concerning the manner in which information should be disclosed for all securitisations, depending on the public or private nature of the transaction. In line with this, the proposed amendment provides that, in relation to public STS securitisations, the items required for disclosure to investors in Articles 8 to 10, should be disclosed publicly. Similarly, in relation to private transactions, the disclosure to investors should be to existing and prospective investors to which the transactions are marketed according to Article 5(1).*	
Amendment 45 Section 2, heading	
'Requirements for ABCP Securitisation'	'Requirements for **STS** ABCP ~~Securitisation~~ **programmes**'
Explanation *The term 'ABCP securitisation' is not defined and not strictly appropriate in all cases due to the absence of tranching (which is a condition for a transaction to be categorised as a 'securitisation') in those ABCP*	

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programmes where the sponsor provides support at transaction rather than programme level. The proposed amendment builds on the terminology used in Regulation (EU) No 575/2013 ('ABCP programme').	
Amendment 46 Article 11	
'Article 11 Simple, transparent and standardised ABCP Securitisations securitisation ABCP securitisations shall be considered 'STS' where the ABCP programme complies with the requirements in Article 13 of this Regulation and all transactions within that ABCP programme fulfil the requirements in Article 12.'	'Article 11 Simple, transparent and standardised ABCP **programmes** ~~Securitisations securitisation~~ ABCP ~~securitisations~~**programmes** shall be considered 'STS' where the ABCP programme complies with the requirements in Article 13 of this Regulation and all transactions ~~within~~ **funded by** that ABCP programme fulfil the requirements in Article 12.'
Explanation *The proposed amendment should be considered together with Amendment 45. It also accommodates both cases where an ABCP transaction is funded by one ABCP programme, and where it is co-funded by several ABCP programmes. In such cases, the transaction is not 'within' a single ABCP programme, but rather funded by such a programme.*	
Amendment 47 Article 12(1)	
'1. A transaction within an ABCP programme shall meet the requirements of Section 1 of this Chapter, except for Articles 7, Article 8 (4) and (6), Article 9 (3), (4), (5), (6) and (8) and Article 10 (3). For the purposes of this Section, the terms "originator" and "original lender" under Article 8(7) shall be considered the seller.'	'1. A transaction within an ABCP programme shall meet the requirements of Section 1 of this Chapter, except for Articles 7, Article 8 (4) and (6), Article 9 ~~(3),~~ (4), (5), (6) and (8) and Article 10 **(1),** (3)**, (5) and (6)**. ~~For the purposes of this Section, the terms "originator" and "original lender" under Article 8(7) shall be considered the seller.~~'
Explanation *Article 9(3) should not be exempted, as the prohibition on using derivatives other than for hedging purposes should still apply in the case of ABCP transactions.* *In addition, in the case of fully-supported STS ABCP programmes with underlying asset maturities of one*	

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year or less, there is no need to disclose performance data to investors. Therefore, Article 10(1) should also be exempted. However, the sponsor must have access to such data (see Amendment 49 in relation to Article 12(3)). In addition, given that an ABCP transaction is established by the sponsor of the ABCP programme, investor reporting at transaction level under Article 10(5) and prospectus/information memorandum disclosure under Article 10(6) are not applicable and should be exempted. *Finally, for the purposes of Section 2, it is not useful to equate the seller with the original lender or originator in all situations, for example, if there are intra-company sales of the relevant underlying assets originated (by an original lender) prior to sale (by a seller) to the ABCP programme. The term 'originator' covers both seller and original lender. This proposal should be considered together with Amendment 50 on Article 12(5).*	
Amendment 48 Article 12(2)	
'2. Transactions within an ABCP programme shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type and shall have a remaining weighted average life of no more than two years and none shall have a residual maturity of longer than three years. The underlying exposures shall not include loans secured by residential or commercial mortgages or fully guaranteed residential loans, as referred to in paragraph 1(e) of Article 129 of Regulation (EU) No 575/2013. The underlying exposures shall contain contractually binding and enforceable obligations with full recourse to debtors with defined payment streams relating to rental, principal, interest, or related to any other right to receive income from assets warranting such payments. The underlying exposures shall not include transferable securities, as defined in Directive 2014/65/EU.'	'2. Transactions within an ABCP programme shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type and shall have a remaining ~~weighted average life of no more than two years and none shall have a~~ residual maturity of **no** longer than ~~three~~ **one** year~~s~~. The underlying exposures shall not include loans secured by residential or commercial mortgages or fully guaranteed residential loans, as referred to in paragraph 1(e) of Article 129 of Regulation (EU) No 575/2013. The underlying exposures shall contain contractually binding and enforceable obligations with full recourse to debtors with defined payment streams relating to rental, principal, interest, or related to any other right to receive income from assets warranting such payments. The underlying exposures shall not include transferable securities, as defined in Directive 2014/65/EU.'
Explanation *Underlying assets in STS ABCP transactions should have a maximum residual maturity of one year rather than three years. STS criteria for ABCP programmes should remain prudential and not encourage arbitrage opportunities vis-à-vis term true sale securitisations. The EBA's recommendation that*	

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underlying assets in STS ABCP transactions should have a maximum residual maturity of one year is underpinned by strong policy and prudential considerations, and is supported by the ECB. From a policy perspective, the one-year maturity cap still permits ABCP programmes that finance trade receivables with a maturity of less than one year to qualify as STS ABCP programmes and therefore does not undermine the proposed securitisation regulation's goal of helping to finance small and medium-sized enterprises (SMEs). Such trade receivables underlying ABCP programmes represent the largest asset class currently funded in the European ABCP market and, as such, should allow most of the market to move towards STS status in the future. Moreover, the volume of traditional STS securitisations of medium-term assets such as auto and some shorter maturity consumer loans could be affected if the maturity cap was longer than one year, as the regulatory framework would then incentivise the financing of such assets via the short-term ABCP markets. From a prudential perspective, it is not sound to encourage the financing of long-term assets via short-term paper; the cap limits the differentiated regulatory treatment to ABCP transactions that are essentially self-liquidating, where short-term liabilities are matched by short duration assets. While the STS ABCP programmes are fully supported by sponsors, in times of severe market stress the liquidity provider may not be able to fulfil its contractual obligations, exposing investors to potential losses. Alternatively, if investors reduce their exposure to ABCP programmes financing medium and longer-term assets, the sponsor bank will be impacted if liquidations in its liquidity buffers are difficult and/or lead to losses.	
Amendment 49 Article 12(3)	
'3. Any referenced interest payments under the securitisation transaction's assets and liabilities shall be based on generally used market interest rates, but shall not reference complex formulae or derivatives.'	'3. ~~Any referenced interest payments under the securitisation transaction's assets and liabilities shall be based on generally used market interest rates, but shall not reference complex formulae or derivatives.~~ **The sponsor shall have access to the data referred to in Article 10(1).**'
Explanation *The proposed deletion is justified as the deleted text is contained in Article 9(3).* *The proposed new text should be considered together with Amendment 47 on Article 12(1). Disclosure of the data referred to in Article 10(1) only for the benefit of the sponsor is justified as, in the case of fully-supported STS ABCP programmes with underlying asset maturities of one year or less, investors and prospective investors can rely on their due diligence on the creditworthiness of the sponsor.*	

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Amendment 50 Article 12(5)	
'5. The underlying exposures shall be originated in the ordinary course of the seller's business pursuant to underwriting standards that are no less stringent than those that the seller applies to origination of similar exposures that are not securitised. Material changes in underwriting standards shall be fully disclosed to potential investors. In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable intermediaries, were made aware that the information provided might not be verified by the lender. The seller shall have expertise in originating exposures of a similar nature to those securitised.'	'5. The underlying exposures shall be originated in the ordinary course of the ~~seller's~~ **originator's or original lender's** business pursuant to underwriting standards that are no less stringent than those that the **originator or original lender** ~~seller~~applies to origination of similar exposures that are not securitised. Material changes in underwriting standards shall be fully disclosed **to the sponsor.** ~~potential investors.~~ In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable**,** intermediaries, were made aware that the information provided might not be verified by the lender. The **sponsor shall verify that the** seller ~~shall~~ ha~~s~~ve expertise in originating exposures of a similar nature to those securitised **and that the servicer and its management team have expertise in servicing the underlying exposures.**'
Explanation *The first proposed amendment allows for cases where the seller is not also the original lender, as may be the case in intra-company transactions where the seller only plays a pass-through selling role. In such cases, the proposal would limit the exposures securitised to those originated by the seller and, consequently, ABCP programmes where the seller of receivables to the ABCP is not the receivables originator could not qualify as STS. The replacement of the term 'seller' by 'originator' does not otherwise affect the meaning, as the seller in an ABCP programme is also an originator.* *The proposed amendment also adjusts the requirement concerning the seller's expertise and focuses on the sponsor's responsibilities. This avoids the need to designate a competent authority under Article 15 to supervise the originator or seller, which in most cases is a non-financial company. The requirement regarding the servicer is moved from Article 12(7)(a) (see also Amendment 52).*	

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Amendment 51 Article 12(6)(c)	
'(c) a failure to generate sufficient new underlying exposures that meet the pre-determined credit quality;'	'~~(c) a failure to generate sufficient new underlying exposures that meet the pre-determined credit quality;~~'
Explanation *The proposed amendment is necessary as this requirement is not always appropriate for ABCP programmes, as the purpose of an ABCP transaction is to provide continuous financing to the sponsor bank's corporate clients. As such, temporary or seasonal decreases in volume should not inadvertently lead to the termination of ABCP transactions.*	
Amendment 52 Article 12(7)(a)	
'(a) the contractual obligations, duties and responsibilities of the sponsor, the servicer and its management team who shall have expertise in servicing the underlying exposures, and, where applicable, the trustee and other ancillary service providers;'	'(a) the contractual obligations, duties and responsibilities of the sponsor, the servicer and its management team~~who shall have expertise in servicing the underlying exposures,~~ and, where applicable, the trustee and other ancillary service providers;'
Explanation *The proposed amendment should be considered together with Amendment 50 which moved the requirement for a servicer to have experience to a more suitable location in Article 12(5).*	
Amendment 53 Article 13(4)	
'4. The sponsor of the ABCP programme shall be a credit institution supervised under Directive 2013/36/EU. The sponsor shall be a liquidity facility provider and shall support all securitisation positions at transaction level within the ABCP programme and cover all liquidity and credit risks and any material dilution risks of the securitised exposures as well as any other transaction costs	'4. The sponsor of the ABCP programme shall be a credit institution supervised under Directive 2013/36/EU. **The ABCP programme shall be fully supported.** The sponsor shall be a liquidity facility provider and shall support all securitisation positions at transaction level within the ABCP programme~~and cover all liquidity and credit risks and any material dilution risks of the securitised exposures as well as any other transaction costs~~

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and programme-wide costs.'	~~and programme-wide costs~~. **The sponsor and its management team shall have expertise in underwriting the types of receivables securitised.**'
Explanation *The proposed amendment should be considered together with Amendment 9 on the definition of 'fully-supported ABCP programme' in Article 2(20). The deleted text is no longer necessary as it is covered by the new definition in Article 2(20). The final sentence is moved from Article 13(7)(c) (see Amendment 54)).*	
Amendment 54 Article 13(7)	
'7. The documentation relating to the programme shall clearly specify: (a) the responsibilities of the trustee and other entities with fiduciary duties to investors; (b) provisions that facilitate the timely resolution of conflicts between the sponsor and the holders of securitisation positions; (c) contractual obligations, duties and responsibilities of the sponsor, and its management team, who shall have expertise in credit underwriting, trustee and other ancillary service providers; (d) processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing; (e) provisions for replacement of derivative counterparties, and the account bank at ABCP programme level upon their default, insolvency and other specified events, where applicable. (f) that upon specified events, default or insolvency of the sponsor remedial steps shall be provided for to achieve, as appropriate,	'7. The documentation relating to the programme shall clearly specify: ~~(a) the responsibilities of the trustee and other entities with fiduciary duties to investors;~~ (~~b~~**a**) provisions that facilitate the timely resolution of conflicts between the sponsor and the holders of securitisation positions; (~~c~~**b**) contractual obligations, duties ~~and~~ responsibilities of the sponsor, its management team, ~~who shall have expertise in credit underwriting,~~ trustee **and other entities with fiduciary duties to investors,** and other ancillary service providers; (~~d~~) ~~processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;~~ (~~e~~**c**) provisions for replacement of derivative counterparties, and the account bank at ABCP **transaction and/or** programme level upon their default, insolvency and other specified events, where applicable**;** (~~f~~**d**) that upon specified events, default or

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collateralisation of the funding commitment or replacement of the liquidity facility provider. In case the liquidity facility provider does not renew the funding commitment within 30 days of its expiry, the liquidity facility shall be drawn down, the maturing securities shall be repaid and the transactions shall cease to purchase exposures while amortising the existing underlying exposures. Policies, procedures and risk management controls shall be well documented and effective systems shall be in place.'	insolvency of the sponsor remedial steps shall be provided for to achieve, as appropriate, collateralisation of the funding commitment or replacement of the liquidity facility provider. In case the liquidity facility provider does not renew the funding commitment within 30 days of its expiry, the liquidity facility shall be drawn down, the maturing securities shall be repaid and the transactions shall cease to purchase exposures while amortising the existing underlying exposures~~;.~~ **(e) forms, conditions and levels of transaction level credit enhancements available for each ABCP transaction.** Policies, procedures and risk management controls shall be well documented and effective systems shall be in place.'
Explanation *The proposed amendment is necessary as Article 13(7)(a) overlaps with point (c) (now (b)). In addition, Article 13(7)(d) is not needed as this information is already required at transaction level pursuant to Article 12(7)(b) and therefore is not also required at programme level. It is also necessary to clarify in Article 13(7)(e) (now (c)) that counterparty replacement issues are also relevant at ABCP transaction level. The form, level and conditions of credit enhancements provided at transaction level are some of the most important issues from an investor's point of view and a provision on these should therefore be included.*	
Amendment 55 Article 13(8)	
'8. The originator, sponsor and SSPE shall be jointly responsible for compliance at ABCP programme level with Article 5 of this Regulation and shall make all information required by Article 5(1) (a) available to potential investors before pricing. The originator, sponsor and SSPE shall make the information required by Article 5 (1) (b) to (e) available before pricing at least in draft or initial	'8. The ~~originator,~~ sponsor and SSPE shall **each** be ~~jointly~~ responsible for **the accuracy of the information they respectively disclose in** compliance, at ABCP programme level, with Article 5 of this Regulation ~~and shall make all information required by Article 5(1) (a) available to potential investors before pricing~~. The ~~originator,~~ sponsor and SSPE shall make the information required by

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form, where permissible under Article 3 of Directive 2003/71/EC. The originator, sponsor and SSPE shall make the final documentation available to investors at the latest 15 days after closing of the transaction.'	Article 5–(1)–(b) **and** ~~to~~ –(**ce**~~)~~ **and by paragraph 9** available **to prospective investors entitled to receive such information in accordance with the fifth and sixth subparagraphs of Article 5(1) and in the manner specified by the first subparagraph of Article 5(2),** before pricing **and** at least in draft or initial form, where permissible under Article 3 of Directive 2003/71/EC. The originator, sponsor and SSPE shall make the final documentation available to investors at the latest 15 days after closing of the transaction**.**'
Explanation *The proposed amendment recognises that it is not appropriate for the originator to be liable for all of Article 5's requirements, which would include joint liability for disclosures in the prospectus or information memorandum. These are disclosures over which the originator in an ACBP transaction has no influence.* *The deletion in the first sentence should be considered together with Amendment 18 on Article 5(1)(a). This amendment provides that loan-level data need not be disclosed for fully-supported ABCP programmes that are backed by receivables with a residual maturity of less than one year. For STS ABCP programmes, the originator is usually a non-financial company and, as such, it is not appropriate to require that it discloses information to investors in the ABCP programme.* *Article 13(8) requires disclosure of more information than does Article 5. As such, this information should be disclosed to the same audience as are entitled to receive information pursuant to subparagraphs 5 and 6 of Article 5(1), considering the private nature of ABCP programmes. The reference to Article 5(2) allows ABCPs to report to investors without the involvement of the originator (which is, in the case of STS ABCP programmes which are fully supported and backed by underlying assets with a residual maturity of less than one year, a non-financial company).*	
Amendment 56 Article 13(9) (new)	
No text	'**9. The prospectus or, where a prospectus has not been issued, the equivalent transaction documentation, shall state if and how the STS criteria referred to in Articles 11 to 13 have been met.**'
Explanation	

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The proposed amendment is designed to ensure greater clarity on how securitising parties have fulfilled their responsibilities under Article 14. Currently, an originator and sponsor may issue an STS securitisation without making any disclosure as to the status of the securitisation as 'STS' in the transaction documentation – the notification is only provided to ESMA pursuant to Article 14. Consequently, investors would have to assess the securitisation's STS compliance in disclosure documentation which may not be structured in a manner facilitating this assessment. The proposed amendment therefore requires originators and sponsors to disclose to investors, in a clear and detailed manner, how they have complied with the STS criteria, providing cross references to the relevant sections of the prospectus or information memorandum, as applicable. This would significantly increase the transparency of the originator's and sponsor's STS attestation under Article 14 and considerably ease the administrative burden on investors when conducting their own due diligence on STS compliance.	
Amendment 57 Article 14(1)	
'1. Originators, sponsors and SSPE's shall jointly notify ESMA by means of the template referred to in paragraph 5 of this Article that the securitisation meets the requirements of Articles 7 to 10 or Articles 11 to 13 of this Regulation ('STS notification'). ESMA shall publish the STS notification on its official website pursuant to paragraph 4. They shall also inform their competent authority. The originator, sponsor and SSPE of a securitisation shall designate amongst themselves one entity to be the first contact point for investors and competent authorities.'	'1. Originators, sponsors and SSPE**'**s shall jointly notify ESMA by means of the template referred to in paragraph 5 of this Article that the securitisation meets the requirements of Articles 7 to 10 or Articles 11 to 13 of this Regulation ('STS notification'). ESMA shall publish the STS notification on its official website pursuant to paragraph 4**, amended, in the case of STS ABCP programmes, to take account of any confidentiality agreements**. They shall also inform their competent authorit**ies**~~y~~. The originator, sponsor and SSPE of a securitisation shall designate ~~amongst themselves~~ **either the originator or the sponsor** to be the first contact point for investors and competent authorities. **The notification shall specify the authorities competent for the supervision of the originator, sponsor and SSPE.**'
Explanation *The proposed amendment recognises the fact that the identity of originators and original lenders in*	

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ABCP transactions is currently not disclosed to ABCP programme investors in order to protect commercial confidentiality. Recognising that SSPEs are not operational companies and do not have any employees, it is instead appropriate that the main actors in an STS securitisation should be the first contact point, rather than the SSPE. In addition, a single STS securitisation may have several competent authorities. The inclusion, in the STS notification, of the supervisory authorities responsible for the STS supervision increases the transparency of the process to investors.	
Amendment 58 Article 14(3)	
'3. The originator, sponsor and SSPE shall immediately notify ESMA and their competent authority when a securitisation no longer meets the requirements of either Articles 7 to 10 or Articles 11 to 13 of this Regulation.'	'3. The originator, sponsor ~~and~~ **or** SSPE shall immediately notify ESMA and their competent authority when a securitisation **or an ABCP programme** no longer meets the requirements of ~~either~~ Articles 7 to 10 or Articles 11 to 13 of this Regulation. **A securitisation shall retain its STS status until a final decision has been made by by the competent authority or authorities (as applicable) in accordance with Article 21.**'
Explanation *The proposed amendment clarifies that a securitisation should retain its STS status until it is determined otherwise. While this may be implicit in the proposed text, the amendment seeks to make it explicit.*	
Amendment 59 Article 14(4)	
'4. ESMA shall maintain a list of all securitisations for which the originators, sponsors and SSPEs have notified that they meet the requirements of Articles 7 to 10 or Articles 11 to 13 of this Regulation on its official website. ESMA shall update the list where the securitisations are no longer considered to be STS following a decision of competent authorities a notification by the originator, sponsor or SSPE. Where the competent authority has imposed administrative sanctions or remedial measures in accordance with Article 17, it	'4. ESMA shall maintain a list of all securitisations ~~for~~ **in respect of** which the originators, sponsors and SSPEs have notified that they meet the requirements of Articles 7 to 10 or Articles 11 to 13 of this Regulation **and in respect of which the originators, sponsors and SSPEs are subject to the supervisory requirements referred to in Article 6(2),** on its official website. ESMA shall update the list where the securitisations are no longer considered to be STS following a decision of competent authorities **or if the supervisory**

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shall immediately notify ESMA thereof. ESMA shall immediately indicate on the list that a competent authority has imposed administrative sanctions or remedial measures in relation to the securitisation concerned.'	**requirements referred to in Article 6(2) are no longer meta** ~~notification by the originator, sponsor or SSPE~~. Where the competent authority has imposed administrative sanctions or remedial measures in accordance with Article**s** 17 **and 21**, ~~it shall immediately notify ESMA thereof.~~ ESMA shall immediately indicate on the list that a competent authority has imposed administrative sanctions or remedial measures in relation to the securitisation concerned.'
Explanation *STS securitisations from all jurisdictions should be subject to the high supervisory standards proposed in this Regulation or equivalent standards, as assessed by the Commission (see the proposed new Article 6(2)). ESMA should only accept for STS registration on its website securitisations that meet both the STS requirements and the required supervisory standards. Conversely, if an STS securitisation is no longer subject to high supervisory standards it should no longer qualify as an STS securitisation. Article 21 regulates the cooperation between competent authorities and ESMA and should therefore be referred to in Article 14(4).*	
Amendement 60 Article 14(5)	
'5. ESMA, in close cooperation with EBA and EIOPA, shall develop draft regulatory technical standards that specify the information that the originator, sponsor and SSPE provide to comply with their obligations under paragraph 1 and shall provide the format by means of standardised templates.'	'5. ESMA, in close cooperation with EBA and EIOPA, shall develop draft regulatory technical standards that specify the information that the originator, sponsor and SSPE **must** provide to comply with their obligations under paragraph 1 and shall provide the format by means of standardised templates. **Consideration shall be given to the scope of and arrangements for disclosure for private and bilateral STS securitisations so as to preserve confidentiality agreements.**'
Explanation *The proposed amendment clarifies that, for private and bilateral transactions such as ABCP programmes where there is sensitive commercial information at ABCP transaction level, the content of the STS*	

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securitisation notification that can be disclosed to investors should be such as to preserve confidentiality agreements. See Amendment 57 on Article 14(1).	
Amendment 61 Article 14a (new)	
No text	'***Article 14a*** **Ensuring consistent interpretation and application of the STS requirements** **The EBA, in close cooperation with EIOPA and ESMA, shall develop draft regulatory technical standards to specify, where appropriate, in greater detail the requirements of Articles 8 to 13. The EBA shall submit the draft standards to the Commission within 12 months after the entry into force of this Regulation. The power is delegated to the Commission to adopt the standards in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'**
Explanation *The proposed amendment recommends that the EBA leads the process of developing regulatory technical standards to further specify selected STS criteria. The ECB considers that the majority of the STS criteria are clear and do not require further clarification. Nevertheless there are some instances where greater clarity and certainty is needed, both for the securitising parties and for investors, e.g. the conditions that the servicer and originator need to meet to qualify as 'experienced' in Article 8(6) and Article (12)(5) (both as amended); and what qualifies as exposures with 'highly significant risk' of default (see Amendment 35 on Article 8(7)(c)). While this could take up to one year, it would also ensure legal certainty for securitising parties and encourage market participants to apply the new STS framework.*	
Amendment 62 Article 15(1)(e)	
'(e) for credit institutions or investments firms, the competent authority designated according to Article 4 of Directive 2013/36/EU, including the ECB in accordance with Council Regulation (EU)	'(e) for credit institutions or investments firms, the competent authority designated according to Article 4 of Directive 2013/36/EU~~, including the ECB in accordance with Council Regulation (EU)~~

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No 1024/2013.'	~~No 1024/2013~~.'
Explanation *Only a regulation adopted on the basis of Article 127(6) of the Treaty may confer tasks on the ECB. Therefore any reference to an assignment of tasks to the ECB under the proposed securitisation regulation could be of a declaratory nature only, and would therefore be superfluous. Although the task of ensuring compliance by significant credit institutions with the due diligence requirements mentioned in Article 3 of the proposed securitisation regulation was conferred on the ECB by Regulation (EU) No 1024/2013, it is not necessary to refer to this in Article 15(1)(e). The principle is outlined in the proposed Recital 24a.*	
Amendment 63 Article 15(2)	
'2. Competent authorities responsible for the supervision of sponsors in accordance with Article 4 of Directive 2013/36/EU, including the ECB in accordance with Council Regulation (EU) No 1024/2013, shall ensure that sponsors comply with the obligations set out in Articles 4 to 14 of this Regulation.'	'2. Competent authorities responsible for the supervision of sponsors in accordance with Article 4 of Directive 2013/36/EU~~, including the ECB in accordance with Council Regulation (EU) No 1024/2013,~~ shall ensure that sponsors comply with the obligations set out in Articles 4 to 14 of this Regulation.'
Explanation *The proposed amendment is necessary as the ECB does not consider that tasks were conferred on it by Regulation (EU) No 1024/2013 with regard to the matters specified in Articles 4 to 14 of the proposed securitisation regulation. In this respect, mentioning the ECB in Article 15(2) and (3) would be misleading.* *As an alternative the Council compromise text[7], which permits Member States to designate the competent authorities responsible for supervision of compliance instead of directly assigning this task to competent authorities responsible for the supervision in accordance with Directive 2013/36/EU, could be viewed as acceptable.*	
Amendment 64 Chapter 4, Article 15(3)	
'3. Where originators, original lenders and SSPEs are supervised entities in accordance with Directive	'3. Where originators, original lenders and SSPEs are supervised entities in accordance with Directive

7 Article 15 of the Council compromise text (2015/0226 (COD), 14537/15).

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2013/36/EU, Regulation (EU) No 1024/2013, Directive 2009/138/EC, Directive 2003/41/EC, Directive 2011/61/EU or Directive 2009/65/EC, the relevant competent authorities designated according to those acts, including the ECB in accordance with Council Regulation (EU) No 1024/2013, shall ensure compliance with the obligations set out in Articles 4 to 14 of this Regulation.'	2013/36/EU, Regulation (EU) No 1024/2013, Directive 2009/138/EC, Directive 2003/41/EC, Directive 2011/61/EU or Directive 2009/65/EC, the relevant competent authorities designated according to those acts~~, including the ECB in accordance with Council Regulation (EU) No 1024/2013,~~ shall ensure compliance with the obligations set out in Articles 4 to 14 of this Regulation.'
Explanation *The proposed amendment is necessary as the ECB was not conferred tasks by Regulation (EU) No 1024/2013 over the matters specified in Articles 4 to 14 of the proposed securitisation regulation. In this respect, mentioning the ECB in Article 15(2) and 15(3) would be misleading.* *As an alternative the Council compromise text[8], which permits Member States to designate the competent authorities responsible for supervision of compliance instead of directly assigning this task to competent authorities responsible for the supervision in accordance with the relevant sectorial Union legislation, could be viewed as acceptable.*	
Amendment 65 Article 17(1)	
'1. Without prejudice to the right for Member States to provide for and impose criminal sanctions pursuant to Article 19 of this Regulation, Member States shall lay down rules establishing appropriate administrative sanctions and remedial measures applicable to situations where: …'	'1. ~~Without prejudice to the right for Member States to provide for and impose criminal sanctions pursuant to Article 19 of this Regulation,~~ Member States shall lay down rules establishing appropriate administrative sanctions and remedial measures applicable to situations where**, by reason of its wilful misconduct or negligence**: …'
Explanation *There are many aspects of the proposed securitisation regulation which will require further definition, guidance and interpretation by competent authorities, the ESAs and securitisation market participants. As such definitions, guidance and interpretation do not yet exist, the imposition of heavy administrative or even criminal sanctions on a strict liability basis is inappropriate and could discourage market participants*	

8 Article 15 of the Council compromise text (2015/0226 (COD), 14537/15).

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from using the new framework. This principle is already recognised in the existing liability standards for securitisations in Article 407 of Regulation (EU) No 575/2013. Sanctions should therefore instead be imposed under Article 17 only where there is wilful misconduct or negligence, rather than on a strict liability basis. The existing fault-based standard from Article 407 of Regulation (EU) No 575/2013 should be further developed in Article 17(1) so that the imposition of sanctions would be conditional on breaches arising 'by reason of the wilful misconduct or negligence' of the party in question. However, this amendment is without prejudice to existing, more general provisions of national criminal law to which the activities of securitising parties are already subject. These may include provisions establishing criminal liability for fraudulent, reckless or other dishonest activities by financial institutions, their employees or directors under national financial regulation or corporate law, which would naturally remain applicable. See also Amendment 68 on Article 19 regarding the removal of the possibility of criminal sanctions.	
Amendment 66 Article 17(2), introductory text and (f)	
'2. Those sanctions and measures shall be effective, proportionate and dissuasive and shall include, at least the following: … (f) or in the case of a legal person, the maximum administrative fines referred to in point (e) or of up to 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;'	'2. Those sanctions and measures shall be effective, proportionate **to the seriousness of identified deficiencies** and dissuasive and **may** ~~shall~~ include~~, at least t~~he following: … (f) or in the case of a legal person, the maximum administrative fines referred to in point (e) or of up to **5**~~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;'

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Explanation *The proposed amendment is necessary to ensure proportionality in the sanctions imposed having regard to the infringements to which they relate. In addition, considering the turnover of credit institutions and other large market participants, a limit of 5% appears more likely to be proportionate than 10%. In the alternative, the maximum fines for legal persons should be limited to a fixed amount.*	
Amendment 67 Article 18(2)(b)	
'(b) the degree of responsibility of the natural or legal person responsible for the infringement;'	'(b) the degree of responsibility of the natural or legal person responsible for the infringement**, including any element of interpretation of this Regulation which led to the infringement**;'
Explanation *This Amendment should be considered together with Amendment 65 and Amendment 66 on Article 17(1) and (2) and Amendment 68 on Article 19.*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Amendment 68 Article 19	
'*Article 19* **Provision of criminal sanctions** 1. Member States may decide not to lay down rules for administrative sanctions or remedial measures for infringements which are subject to criminal sanctions under their national law. 2. Where Member States have chosen, in accordance with paragraph 1, to lay down criminal sanctions for the infringement referred to Article 17 (1) of this Regulation, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for the infringements referred to in Article 17 (1), and to provide the same information to other competent authorities and ESMA; EBA and EIOPA to fulfil their obligation to cooperate for the purposes of this Regulation.'	'~~*Article 19*~~ ~~**Provision of criminal sanctions**~~ ~~1. Member States may decide not to lay down rules for administrative sanctions or remedial measures for infringements which are subject to criminal sanctions under their national law.~~ ~~2. Where Member States have chosen, in accordance with paragraph 1, to lay down criminal sanctions for the infringement referred to Article 17 (1) of this Regulation, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for the infringements referred to in Article 17 (1), and to provide the same information to other competent authorities and ESMA; EBA and EIOPA to fulfil their obligation to cooperate for the purposes of this Regulation.~~'
Explanation *There are many aspects of the proposed securitisation regulation which both impose new obligations on market participants and which will require further definition, guidance and interpretation by competent authorities, the ESAs and market participants. As such definitions, guidance and interpretation do not yet exist and will be subject to future developments, the imposition of criminal sanctions on a strict liability basis contravenes the well-established principle of legal certainty in criminal matters. Article 19 should therefore be removed in full. This would be without prejudice to existing, more general provisions of national criminal law to which the activities of securitising parties are already subject. These may include provisions establishing criminal liability for fraudulent, reckless or other dishonest activities by financial institutions, their employees or directors under national financial regulation or corporate law, which would naturally remain applicable.* *If it is not removed in full, the ECB recommends that the scope of potential criminal sanctions should, as a minimum, be limited. In addition, Article 19 should, if it is retained, make the imposition of criminal*	

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sanctions conditional on consideration of the mitigating or aggravating circumstances listed in Article 18(2). The reference to criminal sanctions in Articles 20 and 22(6) should also be removed as a consequence of this deletion.	
Amendment 69 Article 21(3)	
'3. Where a competent authority finds that this Regulation has been infringed or has reason to believe so, it shall inform the competent supervisor of the originator, sponsor, original lender, SSPE or investor of its findings in a sufficient detailed manner. The competent authorities concerned shall closely coordinate their supervision and ensure consistent decisions.'	'3. Where a competent authority finds that this Regulation has been infringed or has reason to believe so, it shall inform the competent ~~supervisor~~ **authorities** of the originator, sponsor, original lender, SSPE ~~or~~ **and** investor of its findings in a sufficient**ly** detailed manner. The competent authorities concerned shall closely coordinate their supervision and ensure consistent decisions, **without prejudice to paragraph 4a**. **The competent authorities concerned shall inform the EBA, ESMA, and EIOPA of their decision.'**
Explanation *The proposed amendment clarifies that the competent authority of the investor should always be informed of actual or suspected infringements of the STS framework as these can have implications for the capital or other regulatory treatment applied to investors' securitisation exposures. The competent authority of the investor should also be able to take part in decisions involving sanctioning, including the option of triggering a fast resolution of the issue in cases where it considers that the relevant securitisation should be disallowed STS status (see Amendment 71 introducing a new Article 21(4a)). Finally, the ESAs should be informed of all decisions regarding infringements.*	
Amendment 70 Article 21(4)	
'4. Where the infringement referred to in paragraph 3 concerns, in particular, an incorrect or misleading notification pursuant to Article 14 (1) of this Regulation, the competent authority finding that infringement shall also notify without delay ESMA, EBA and EIOPA of its findings.'	'4. Where the infringement referred to in paragraph 3 concerns, in particular, a~~n~~ **materially** incorrect or misleading notification pursuant to Article 14 (1) of this Regulation, the competent authority finding that infringement shall ~~also~~ notify without delay **the EBA,** ESMA~~, EBA~~ and EIOPA of its findings. **The competent authorities referred to in paragraph**

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	3 shall coordinate their actions under this paragraph (but not in the cases referred to in paragraph 4a) with the EBA, ESMA and EIOPA to ensure consistent decisions.'
Explanation *The proposed amendment is designed to ensure that only material infringements will trigger the ESAs' involvement. For infringements related to STS securitisations which are not serious enough to require expedited action (such as revocation of STS status which is addressed separately in Amendment 71 introducing a the new Article 21(4a)), the ESAs should be involved in the decision-making process. ESA cooperation ensures uniformity of supervisory action across the Union. In the case of non-STS securitisations, decisions related to infringements can be taken by the local competent authorities alone. However, in the case of STS securitisations it is important that decisions are centralised and coordinated among the ESAs to ensure consistent application of the STS framework and a level playing field, especially since some infringements could potentially lead to the revocation of a securitisation's STS status.*	
Amendment 71 Article 21(4a) (new)	
No text	'**4a. If, following the procedure set out in paragraph 3, one of the authorities referred to therein decides that an incorrect or misleading notification under Article 14(1) should invalidate the STS status of a securitisation or an ABCP programme, it shall notify without delay the EBA, ESMA and EIOPA of its decision that the securitisation or the ABCP programme shall, following the expiry of a one-month objection period, no longer be considered to be STS. If one of the other competent authorities referred to in paragraph 3, the EBA or EIOPA disagree within one month with that decision, the procedure laid down in Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010 shall apply.**'
Explanation	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Article 21(3) implies that there should first be cooperation between the competent authorities involved. However, this may lead to stalemates and unacceptable delays in certain cases where fast action is required. The ECB recommends that any of the competent authorities responsible for the supervision of an STS securitisation as well as that of the investor should be permitted, once it has determined that a securitisation should lose its STS status, to notify the EBA, ESMA and EIOPA of its decision. The EBA, EIOPA and all other competent authorities would have a defined but limited period in which to object to the decision. The details of the objection procedure could be determined through regulatory technical standards developed by ESMA. In the event of an objection, ESMA's binding mediation should be triggered as provided for in Article 21(5). ESMA is appropriately placed to resolve such disputes, given the nature of the proposed securitisation regulation as a securities product framework. This adjusted procedure could minimise prolonged uncertainty, which could otherwise have detrimental effects on both securitising parties and investors.	
Amendment 72 Article 21(5)	
'5. Upon reception of the information referred to in paragraph 3, the competent authority shall take any necessary action to address the infringement identified and notify the other competent authorities concerned, in particular those of the originator, the sponsor, SSPE and the competent authorities of the holder of a securitisation position, when known. In case of disagreement between the competent authorities, the matter may be referred to ESMA and the procedure of Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010 shall apply.'	'5. ~~Upon reception of the information referred to in paragraph 3,~~ **For infringements referred to in paragraphs 3 and 4, where there is agreement regarding the necessary remedial action among the competent authorities referred to in paragraph 3 or 4, as applicable,** the **responsible** competent authority shall take any necessary action to address the infringement identified and notify the other competent authorities concerned, in particular those of the originator, the sponsor, SSPE and the competent authorities of the holder of a securitisation position, when known. In case of disagreement between the competent authorities, the matter may be referred to ESMA and the procedure of Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010 shall apply. **In such cases, ESMA shall notify the EBA and EIOPA of the final decision taken**.'
Explanation *When an infringement concerns cases other than a revocation of an STS securitisation status, and where*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
there is agreement between the national competent authorities (for non-STS securitisations) or national competent authorities and the ESAs (for STS securitisations), the competent authority overseeing the infringing entity should apply the remedial measures. In the case of disagreements, following ESMA's mediation procedure the other ESAs should be informed of the decision taken.	
Amendment 73 Article 21(5a)	
No text	'**5a. ESMA shall keep a record of all remedial action taken with respect to a securitisation, which shall be made available to all competent authorities.**'
Explanation *The proposed amendment is designed to ensure consistency of supervisory actions across the Union, by requiring ESMA to keep a record of all remedial action imposed in relation to securitisations falling under the scope of the proposed securitisation regulation.*	
Amendment 74 Article 21(6)	
'6. ESMA shall, in close cooperation with EBA and EIOPA, develop draft regulatory technical standards to specify the general cooperation obligation and the information to be exchanged under paragraph 1 and the notification obligations pursuant to paragraph (3) and (4). ESMA shall, in close cooperation with EBA and EIOPA submit those draft regulatory technical standards to the Commission [twelve months after entry into force of this Regulation].'	'6. ESMA shall, in close cooperation with EBA and EIOPA, develop draft regulatory technical standards to specify the general cooperation obligation and the information to be exchanged under paragraph 1 and the notification and **coordination** obligations pursuant to paragraph**s** ~~(3)~~ and ~~(4)~~, **the notification mechanism under paragraph 4a and the notification obligation under paragraph 5. The regulatory technical standards should ensure that appropriately streamlined mechanisms are put in place to facilitate swift decision-making processes.** 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].'

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Explanation *The proposed amendment should be considered together with Amendments 70 and 71 on Article 21(4) and (4a). The precise coordination and notification mechanism for all cases of infringement should be clearly specified. ESMA is best suited for this. Considering the multitude of competent authorities involved, ESMA should ensure that appropriately swift decision-making processes are established.*	
Amendment 75 Article 22a (new)	
No text	'***Article 22a*** **Equivalence of third country supervision** **For STS securitisations or STS ABCP programmes where any one of the originator, sponsor or SSPE is established in a third country, the Commission shall assess whether the originator, sponsor or SSPE, as applicable, is subject to an equivalent supervision of STS securitisations with regard to the supervisory powers and sanctions laid down in Chapter 4.**'
Explanation *As currently drafted, the STS criteria can potentially be met by non-Union securitisations and Union institutional investors may invest in STS securitisations originated outside the Union. Although this is positive, the strength of any STS framework, including the Union STS framework, is strongly dependent on its adequate supervision. Article 22a should be introduced to permit Union institutional investors to invest in STS securitisations only if the originator, sponsor or SSPE are subject to an adequate supervisory framework in relation to their STS securitisation-related activities. This would prevent arbitrage with non-Union STS securitisations and ensure a prudential STS framework. Non-Union supervisory frameworks in relation to STS securitisations should be assessed by the Commission for equivalence with the Union framework. As such, ESMA, under Article 14(4), should only accept as valid STS notifications from an originator, sponsor or SSPE subject to the STS supervisory framework provided by Article 15, namely Union entities, or frameworks assessed as equivalent.*	
Amendment 76 Article 25(5) (new)	
No text	**'(5) Article 8b of Regulation (EC) 1060/2009 is**

Text proposed by the European Commission	Amendments proposed by the ECB[2]
	repealed.'
Explanation *The proposed securitisation regulation sets out the disclosure obligations of the originator or sponsor of a securitisation or the SSPE, which are in parts identical to and generally similar to those of Article 8b of Regulation (EC) No 1060/2009 along with the related Regulation (EU) No 2015/3. However, it does not repeal Article 8b which leads to unnecessary regulatory overlap and duplication. As drafted, the proposed securitisation regulation leaves it unclear how the requirements of each legal act would operate and be applied in parallel. Article 8b should be repealed (see also Amendment 78 on Article 27a), and replaced by Article 5 of the proposed securitisation regulation to ensure comprehensive consolidation of the transparency and disclosure rules applicable to securitisation market participants.*	
Amendment 77 Article 27a (new)	
No text	'***Article 27a*** **Repeal of Regulation (EU) No 2015/3** **Regulation (EU) No 2015/3 shall be repealed after the entry into force and application of the regulatory technical standards referred to in Article 28(6).**'
Explanation *In order to achieve full consolidation and harmonisation of transparency requirements and disclosure rules applicable to securitisation market participants, Article 8b of Regulation (EC) No 1060/2009 and the related Regulation (EU) No 2015/3 (see Amendment 76 introducing a new Article 25(5)) should be repealed and replaced by Article 5 of the proposed securitisation regulation. Any provisions of Regulation (EU) No 2015/3 which have not been reproduced in Article 5 of the proposed securitisation regulation, but which are required should be included therein.*	

Drafting proposals in relation to the proposed CRR amendment

Text proposed by the European Commission	Amendments proposed by the ECB
Amendment 78 Citations	
Having regard to the opinion of the European Economic and Social Committee,	**Having regard to the opinion of the European Central Bank,** Having regard to the opinion of the European Economic and Social Committee,
Explanation *The proposed amendment is necessary to record the adoption of the Regulation in compliance with the obligation to consult the European Central Bank (ECB) on any proposed Union act in its fields of competence under Articles 127(4), first indent, and 282(5) of the Treaty.*	
Amendment 79 Article 242(3)	
'(3) "liquidity facility" means the securitisation position arising from a contractual agreement to provide funding to ensure timeliness of cash flows to investors;'	'(3) "liquidity facility" means ~~the securitisation position arising from a contractual agreement to provide funding to ensure timeliness of cash flows to investors~~**a liquidity facility as defined in Article 2(13) of [Securitisation Regulation]**;'
Explanation *This amendment seeks to achieve consistency with the defined term in the proposed securitisation regulation.*	
Amendment 80 Article 242(12)	
'(12) "STS securitisation" means a securitisation meeting the requirements set out in Chapter 3 of [Securitisation regulation] and the requirements set out in Article 243;'	'(12) "STS securitisation **qualifying for differentiated capital treatment**" means a **traditional STS** securitisation **or an STS ABCP programme qualifying for differentiated capital treatment;**' ~~meeting the requirements set out in Chapter 3 of [Securitisation regulation] and the requirements set out in Article 243;~~

Text proposed by the European Commission	Amendments proposed by the ECB
Explanation *This amendment aims to avoid confusion with the term STS securitisation used in the proposed securitisation regulation, as not every STS securitisation will automatically qualify for differentiated capital treatment.*	
Amendment 81 Article 242(12a)	
No text	'**(12a) "Traditional STS securitisation qualifying for differentiated capital treatment" means a securitisation meeting the requirements set out in Chapter 3 Section 1 of [Securitisation Regulation] and the requirements set out in Article 243(2);**'
Explanation *The proposed amendment adds this definition to avoid confusion with traditional securitisations which are also STS securitisations referred to in the proposed securitisation regulation, as not every traditional STS securitisation will automatically qualify for differentiated capital treatment.*	
Amendment 82 Article 242(13a) (new)	
No text	**(13a) "STS ABCP programme qualifying for differentiated capital treatment" means an ABCP programme meeting the requirements set out in Chapter 3 Section 2 of [Securitisation Regulation] and the requirements set out in Article 243(1);**'
Explanation *This definition has been added to avoid confusion with ABCP programmes which are also STS securitisations referred to in the proposed securitisation regulation, as not every STS ABCP programme will automatically qualify for differentiated capital treatment.*	
Amendment 83 Article 242(13b) (new)	
No text	'**(13b) "position in an STS ABCP transaction qualifying for differentiated capital treatment"**

Text proposed by the European Commission	Amendments proposed by the ECB
	means a position in an ABCP transaction that is part of an STS ABCP programme qualifying for differentiated capital treatment;'
Explanation *This amendment seeks to clarify that an ABCP transaction meeting the STS criteria on the transaction level alone will not qualify for STS status and lower capital requirements unless it is also part of an STS ABCP programme.*	
Amendment 84 Article 242(20) (new)	
No text	'**(20) "balance sheet synthetic securitisation" means a synthetic securitisation where the originator or original lender credit institution transfers a portion of the credit risk of a pool of own balance sheet exposures in one or more tranches to one or more third parties, and the risk transferred and the risk retained are of different seniority.**'
Explanation *The introduction of a definition of balance sheet synthetic securitisations aims to distinguish balance sheet synthetic securitisations, which can support lending to the real economy, from arbitrage synthetic securitisations, which are not directly supportive of such lending. It seeks to clearly define the type of synthetic securitisations qualifying for lower capital charges under Article 270. The definition largely follows the definition of 'tranched cover' defined in paragraph 199 of Basel II[9], modified to focus on a portfolio of exposures on which protection is purchased synthetically.*	
Amendment 85 Article 243, heading	
'Criteria for STS Securitisations'	'Criteria for STS securitisations **qualifying for differentiated capital treatment**'
Explanation *This amendment should be considered together with Amendment 80 concerning Article 242(12) which*	

9 See the Basel II standards (http://www.bis.org/publ/bcbs128.pdf).

Text proposed by the European Commission	Amendments proposed by the ECB
included this defined term.	
Amendment 86 Article 243(1)	
'(1) Positions in an ABCP programme shall qualify as positions in an STS securitisation for the purposes of Articles 260, 262 and 264 where the following requirements are met:'	'(1) Positions in an **STS** ABCP programme **or transaction** shall qualify ~~as positions in an STS securitisation for the purposes of~~ **for the treatment referred to in** Articles 260, 262 and 264 where the following requirements are met:'
Explanation *This proposed amendment seeks to clarify that the differentiated STS treatment could apply both at the programme and transaction level.*	
Amendment 87 Article 243(1)(a)	
'(a) for all transactions within the ABCP programme the underlying exposures at origination meet the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than 75% on an individual exposure basis where the exposure is a retail exposure or 100% for any other exposures;'	'(a) for all transactions within the ABCP programme**,** the underlying exposures ~~at origination~~ meet**, at the time of their inclusion in the ABCP transaction pool,** the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than 75% on an individual exposure basis where the exposure is a retail exposure or 100% for any other exposures;'
Explanation *The proposed amendment is necessary to ensure that underlying exposures meet the STS criteria for the duration of a transaction or ABCP programme.*	
Amendment 88 Article 243(1)(b)	
'(b) the aggregate exposure value of all exposures to a single obligor at ABCP programme level does not exceed 1% of the aggregate exposure value of all exposures within the ABCP programme at the time the	'(b) ~~the aggregate exposure value of all exposures to a single obligor at ABCP programme level does not exceed 1% of the aggregate exposure value of all exposures within the ABCP programme at the time the~~

Text proposed by the European Commission	Amendments proposed by the ECB
exposures were added to the ABCP programme. For the purposes of this calculation, loans or leases to a group of connected clients as referred to in Article 4(1) point (39) shall be considered as exposures to a single obligor.'	~~exposures were added to the ABCP programme.~~ **any addition of exposures at ABCP transaction level does not increase beyond 1% the aggregate exposure to a single obligor, computed at ABCP programme level and in relation to the aggregate exposure value after replenishment. The aggregate exposure to a single obligor, at ABCP programme level, shall be computed as the ratio between the aggregate exposure value of all exposures to the respective obligor in the ABCP programme and the aggregate outstanding exposure value of the ABCP programme exposures.** For the purposes of this calculation, loans or leases to a group of connected clients as referred to in Article 4(1) point (39) shall be considered as exposures to a single obligor.'
Explanation *The proposed amendment allows the addition of exposures to an obligor if that addition does not increase the exposure to that obligor above 1%. The 1% threshold should be measured in relation to the composition and size of the pool following replenishment. The proposed requirement does not allow the exposure to an obligor in the pool to be increased if such exposure is already above 1% at the replenishing date (due to pool dynamics).*	
Amendment 89 Article 243(2)(a)	
'(2)(a) the underlying exposures are originated in accordance with sound and prudent credit granting criteria as required under Article 79 of Directive 2013/36/EU;'	~~'(2) (a) the underlying exposures are originated in accordance with sound and prudent credit granting criteria as required under Article 79 of Directive 2013/36/EU;~~'
Explanation *As currently drafted in the proposed CRR amendment, Article 243(2)(a) places investors under an obligation to check whether positions in a traditional STS securitisation comply with sound and prudent*	

Text proposed by the European Commission	Amendments proposed by the ECB
credit-granting criteria, as required under Article 79 of Directive 2013/36/EU of the European Parliament and of the Council[10]. However, compliance with Article 79 of Directive 2013/36/EU is verified by competent authorities. In contrast to competent authorities, a credit institution investor in a traditional securitisation does not have access to the data required to check compliance with Article 79. As such, it cannot readily meet such due diligence requirements. The proposed deletion acknowledges this impossibility. If this text is deleted, investors would still be required to fulfil the due diligence requirements under Article 3 of the proposed securitisation regulation, which are also sufficient for credit institutions in their capacity as investors.	
Amendment 90 Article 243(2)(b)	
'(2)(b) at the time of inclusion in the securitisation, the aggregate exposure value of all exposures to a single obligor in the pool does not exceed 1% of the exposure values of the aggregate outstanding exposure values of the pool of underlying exposures. For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in point (39) of Article 4(1), shall be considered as exposures to a single obligor;'	'(2)(b) at **origination,** ~~the time of inclusion in the securitisation,~~ the aggregate exposure ~~value of all exposures~~ to a single obligor in the pool does not exceed 1% of the **pool** exposure value**.**~~s of the aggregate outstanding exposure values of the pool of underlying exposures~~. **For revolving and replenishing securitisations, the addition of exposures shall not increase beyond 1% the aggregate exposure to a single obligor in the pool resulting after replenishment. The aggregate exposure to a single obligor in the pool shall be computed as the ratio between the aggregate exposure value of all exposures to the respective obligor in the pool and the aggregate outstanding exposure value of pool exposures.** For the purposes of this calculation, loans or leases to a group of connected clients, as referred to in point (39) of Article 4(1), shall be considered as exposures to a single obligor;'
Explanation *The proposed amendment addresses the same issues as, and should be considered together with, Amendment 88 in relation to Article 243(1)(b).*	

10 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

Text proposed by the European Commission	Amendments proposed by the ECB
Amendment 91 Article 244(2)(b)	
‘(b) the originator institution does not hold more than 20 % of the exposure value of the first loss tranche in the securitisation, provided that the following conditions are met: (i) the originator can demonstrate that the exposure value of the first loss tranche exceeds a reasoned estimate of the expected loss on the underlying exposures by a substantial margin; (ii) there are no mezzanine positions in the securitisation.’	‘(b) the originator institution does not hold more than 20 % of the exposure value of the **securitisation positions that would be subject to a 1 250% risk weight** ~~first loss tranche in the securitisation~~, provided that the following conditions are met: (i) the originator can demonstrate that the exposure value of the **securitisation positions that would be subject to a 1 250% risk weight** ~~first loss tranche~~ exceeds a reasoned estimate of the expected loss on the underlying exposures by a substantial margin; (ii) there are no mezzanine positions in the securitisation.’
Explanation *This drafting amendment is necessary as the proposed CRR amendment would make material changes to the current provisions of Article 243(2)(b). However the rationale for those changes is unclear and the changes themselves are difficult to assess. It appears that the proposed changes dilute the significant risk transfer requirements (under Article 243) by allowing the originator to retain a larger portion of the first loss piece (and consequently transfer less risk to the protection seller(s) than currently required by Regulation (EU) No 575/2013. This is because under the proposed changes the maximum 20% portion which may be retained by the originator is computed in relation to a first loss tranche that can have a significantly higher exposure value than the exposure value for the tranche or tranches subject to the 1 250% risk weight, as no limit is imposed on the risk weight of the first loss piece (a thick first loss piece may have a risk weight which is significantly less than 1 250%). The ECB recommends that the existing requirements under Regulation (EU) 575/2013 are preserved and that instead a full review of the significant risk transfer test is mandated (see Amendment 94 on Article 244(6)).*	

Text proposed by the European Commission	Amendments proposed by the ECB
Amendment 92 Article 244(2), third subparagraph	
'For the purposes of this paragraph, a position in a securitisation shall be considered a mezzanine securitisation position where it meets the following requirements: (a) it is subject to a risk weight lower than 1,250% in accordance with this Section or, in the absence of a position with that risk weight, it is more senior than the first loss tranche; and (b) it is subordinated to the senior securitisation position.	'For the purposes of this paragraph, a position in a securitisation shall be considered a mezzanine securitisation position where it meets the following requirements: (a) it is subject to a risk weight lower than 1 250% in accordance with this Section ~~or, in the absence of a position with that risk weight, it is more senior than the first loss tranche~~; and (b) **it is more senior than the first loss tranche and** ~~it~~ is subordinated to the senior securitisation position.'
Explanation *The proposed amendment aims to preserve the existing requirements of Article 243(3). The addition of the words 'or, in the absence of a position with that risk weight' introduces a material change to the current requirements under Article 243(3), whereby a mezzanine tranche needs to have a risk weight lower than 1 250% in all cases. The additional words inadvertently permit a tranche to qualify as a mezzanine tranche (for the purposes of assessing significant risk transfer) where such a tranche is economically equivalent to a first loss tranche. Such a tranche would detach below Ksa (i.e the capital required for the underlying pool under the standardised approach) or K_{IRB} (i.e. the capital required for the underlying pool under the internal ratings-based approach) but is senior to the first loss tranche. The attachment point of a tranche represents the threshold at which losses within the underlying pool would first be allocated to the securitisation exposure. The detachment point of a tranche represents the threshold at which losses within the underlying pool result in a total loss of principal for the tranche in which a securitisation exposure resides. Both are expressed as decimal values between zero and one*[11]. *Under the existing requirements of Article 243(3), such a tranche would not qualify as mezzanine. For the purposes of assessing significant risk transfer, however, it would qualify as mezzanine under the proposed CRR amendment. Consequently, under the proposed provision, point (a) of Article 244(2) would apply instead of point (b), i.e. a significant risk transfer could be achieved by applying conditions intended for mezzanine tranches rather than for first loss tranches. In contrast, if the current requirements under Article 243(3) are preserved point (b) will apply. As such, the application and outcome of the significant risk transfer test would be significantly less onerous than it was before in some cases.*	

11 See paragraphs 53 and 54 of Basel III Document Revisions to the securitisation framework, 11 December 2014 (http://www.bis.org/bcbs/publ/d303.pdf).

Text proposed by the European Commission	Amendments proposed by the ECB
Amendment 93 Article 244(4)(f)	
'(4)(f) where applicable the transaction documentation makes it clear that the originator or the sponsor may only purchase or repurchase securitisation positions or repurchase, restructure or substitute the underlying exposures beyond their contractual obligations where such arrangements are executed in accordance with prevailing market conditions and the parties to them act in their own interest as free and independent parties (arm's length);'	'(4)(f) where applicable, the transaction documentation makes it clear that **any future transaction, defined to include, without limitation, any amendments to the securitisation documentation and changes to the coupon, yields or other features of the securitisation exposures or positions, entered into by the sponsor or originator with respect to the securitisation will not be entered into with a view to reducing the potential or actual losses to investors as specified in Article 250;**~~the originator or the sponsor may only purchase or repurchase securitisation positions or repurchase, restructure or substitute the underlying exposures beyond their contractual obligations where such arrangements are executed in accordance with prevailing market conditions and the parties to them act in their own interest as free and independent parties (arm's length);~~'
Explanation *The proposed amendment reflects the issue identified in the context of assessing implicit support under Article 250 (see related Amendment 99). Under the current rules, a transaction potentially qualifying as implicit support can be cured by demonstrating that it was conducted on an arm's length basis. Amendment 99 proposed by the ECB addresses the fact that transactions conducted on an arm's length basis can still provide implicit support to a transaction in certain cases. Therefore, the proposed amendments to Article 244(4)(f), Article 245(4)(e) and Article 250 ensure consistency by removing references to transactions conducted on an arm's length basis.*	
Amendment 94 Article 244(6)	
'(6) EBA shall monitor the range of supervisory practices in relation to the recognition of significant risk transfer in traditional securitisations in accordance with this Article and report its findings to the Commission by 31 December 2017. The Commission, where appropriate after having taken into account the	'(6) EBA shall monitor the range of supervisory practices in relation to the recognition of significant risk transfer in traditional securitisations in accordance with this Article~~ and report its findings to the Commission by 31 December 2017. The Commission, where~~

Text proposed by the European Commission	Amendments proposed by the ECB
Report from EBA, may adopt a Delegated Act to specify further the following items:	~~appropriate after having taken into account the Report from EBA, may adopt a Delegated Act to specify further the following items~~**. In addition, the EBA shall review the following items**:
(a) the conditions for the transfer of significant credit risk to third parties in accordance with paragraphs 2, 3 and 4;	(a) **whether** the conditions **for derogation** ~~for the transfer of significant credit risk to third parties in accordance with~~ **in** paragraph~~s 2,~~ 3 ~~and 4~~ **and the additional requirements in paragraph 4 are sufficiently specified**; **(aa) whether the assessment of credit risk transfer pursuant to paragraph 2 is adequate;**
[…]	[…]
(c) the requirements for the competent authorities' assessment of securitisation transactions in relation to which the originator seeks recognition of significant credit risk transfer to third parties in accordance with paragraphs 2 or 3.'	(c) the requirements for the competent authorities' assessment of securitisation transactions in relation to which the originator seeks recognition of significant credit risk transfer to third parties in accordance with paragraphs 2 or 3. **The EBA shall report its findings in relation to such monitoring and review to the Commission by 31 December 2017. The Commission, where appropriate after having taken into account the Report from the EBA, may adopt a Delegated Act to specify further the items listed under points (a) to (c).**'

Explanation

The ECB recommends that the quantitative significant risk transfer test established in Article 244(2) is reviewed, and not just further specified, by the EBA. The quantitative test is not appropriate in all cases and can lead to arbitrage and, as such, should be reviewed. The EBA should undertake this review and submit its findings to the Commission so that a Delegated Act may be adopted to address deficiencies.

Text proposed by the European Commission	Amendments proposed by the ECB
Amendment 95 Article 245(2)(b)	
‘(b) the originator institution does not hold more than 20 % of the exposure value of the first loss tranche in the securitisation, provided that the following conditions are met: (i) the originator can demonstrate that the exposure value of the first loss tranche exceeds a reasoned estimate of the expected loss on the underlying exposures by a substantial margin; (ii) there are no mezzanine positions in the securitisation.’	‘(b) the originator institution does not hold more than 20 % of the exposure value of the **securitisation positions that would be subject to a 1 250% risk weight** ~~first loss tranche in the securitisation~~, provided that the following conditions are met: (i) the originator can demonstrate that the exposure value of the **securitisation positions that would be subject to a 1 250% risk weight** ~~first loss tranche~~ exceeds a reasoned estimate of the expected loss on the underlying exposures by a substantial margin; (ii) there are no mezzanine positions in the securitisation.’
Explanation *This amendment should be considered together with Amendment 91 concerning Article 244(2)(b).*	
Amendment 96 Article 245(4)(e)	
‘(e) where applicable, the transaction documentation makes it clear that the originator or the sponsor may only purchase or repurchase securitisation positions or repurchase, restructure or substitute the underlying exposures beyond their contractual obligations where such transactions are executed in accordance with prevailing market conditions and the parties to them act in their own interest as free and independent parties (arm's length);’	‘(e) where applicable, the transaction documentation **makes it clear that any future transaction, defined to include, without limitation, any amendments to the securitisation documentation and any changes to the coupon, yields or other features of the securitisation positions, entered into by the sponsor or originator with respect to the securitisation will not be entered into with a view to reducing the potential or actual losses to investors as specified in Article 250;**~~makes it clear that the originator or the sponsor may only purchase or repurchase securitisation positions or repurchase, restructure or substitute the underlying exposures beyond their contractual obligations where such transactions are executed in accordance with prevailing~~

Text proposed by the European Commission	Amendments proposed by the ECB
	~~market conditions and the parties to them act in their own interest as free and independent parties (arm's length);~~'
Explanation *This amendment should be considered together with Amendments 93 and 99 concerning Articles 244(4)(f) and 250(2), respectively.*	
Amendment 97 Article 245(6)	
'(6) EBA shall monitor the range of supervisory practices in relation to the recognition of significant risk transfer in synthetic securitisations in accordance with this Article and report its findings to the Commission by 31 December 2017. The Commission, where appropriate after having taken into account the Report from EBA, may adopt a Delegated Act to specify further the following items:	'(6) EBA shall monitor the range of supervisory practices in relation to the recognition of significant risk transfer in synthetic securitisations in accordance with this Article ~~and report its findings to the Commission by 31 December 2017. The Commission, where appropriate after having taken into account the Report from EBA, may adopt a Delegated Act to specify~~ **. In addition, the EBA shall review** the following items:
	(a) whether the assessment of credit risk transfer pursuant to paragraph 2 is adequate and if any changes are necessary;
(a) the conditions for the transfer of significant credit risk to third parties in accordance with paragraphs 2, 3 and 4;	(a**a**) **whether** the conditions **for derogation** ~~for the transfer of significant credit risk to third parties in accordance with~~ **in** paragraph 2~~, 3 and 4~~ **and the additional requirements in paragraph 4 are sufficiently specified**;
(b) the interpretation of "commensurate transfer of credit risk to third parties" for the purposes of the competent authorities' assessment provided for in the penultimate subparagraph of paragraph 2 and paragraph 3;	(b) the interpretation of "commensurate transfer of credit risk to third parties" for the purposes of the competent authorities' assessment provided for in the ~~penultimate~~ **last** subparagraph of paragraph 2 and paragraph 3;
(c) the requirements for the competent authorities' assessment of securitisation transactions in relation to which the	(c) the requirements for the competent authorities' assessment of securitisation transactions in relation

Text proposed by the European Commission	Amendments proposed by the ECB
originator seeks recognition of significant credit risk transfer to third parties in accordance with paragraphs 2 or 3.'	to which the originator seeks recognition of significant credit risk transfer to third parties in accordance with paragraphs 2 or 3. **The EBA shall report its findings in relation to such monitoring and review to the Commission by 31 December 2017. The Commission, where appropriate after having taken into account the Report from the EBA, may adopt a Delegated Act to specify further the items listed under points (a) to (c).**'
Explanation *This amendment should be considered together with Amendment 94 concerning Article 244(6).*	
Amendment 98 Article 250(1)	
'(1) An originator institution which has transferred significant credit risk associated with the underlying exposures of the securitisation in accordance with Section 2 and a sponsor institution shall not provide support to the securitisation beyond its contractual obligations with a view to reducing potential or actual losses to investors.'	'(1) An originator institution which has transferred significant credit risk associated with the underlying exposures of the securitisation in accordance with Section 2 and a sponsor institution shall not provide support**, directly or indirectly,** to the securitisation beyond its contractual obligations with a view to reducing potential or actual losses to investors.'
Explanation *The proposed drafting aims to ensure that indirect support is also captured under implicit support, i.e. that cases where the originator institution provides indirect support to a securitisation through a connected third party are also captured.*	
Amendment 99 Article 250(2)	
'(2) A transaction shall not be considered as support for the purposes of paragraph 1 where the transaction has been duly taken into account in the assessment of significant risk	'(2) A transaction shall not be considered ~~as~~ **to provide** support for the purposes of paragraph 1 where the transaction ~~has been duly taken into account in~~ **does**

Text proposed by the European Commission	Amendments proposed by the ECB
transfer and both parties have executed the transaction acting in their own interest as free and independent parties (arm's length). For these purposes, the institution shall undertake a full credit review of the transaction and, at a minimum, take into account all of the following items:'	**not invalidate** the **initial** assessment of significant risk transfer~~ and both parties have executed the transaction acting in their own interest as free and independent parties (arm's length)~~. For these purposes, the institution shall undertake a full credit review of the transaction and, at a minimum, take into account all of the following items:'
Explanation *The proposed amendment aims to simplify and clarify the circumstances invalidating implicit support. The only relevant condition for determining whether a transaction constitutes implicit support is the assessment that the previous significant risk transfer status of the transaction has not been invalidated. The second condition set out in Article 250(2), the arm's length condition, is neither appropriate nor sufficient in all situations. A transaction providing support to one or more securitisation positions, executed between two third parties unrelated to the originator or sponsor at conditions other than at arm's length, should not invalidate the significant risk transfer status for the originator. On the other hand, a sponsor can support a securitisation while undertaking arm's length transactions if, for example, that transaction enhances the credit of one or more of the securitisation positions. See related Amendments 93 and 96 concerning Articles 244(4)(f) and 245(4)(e), respectively.*	
Amendment 100 Article 250(4)	
'(4) EBA shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines on what constitutes "arm's length" for the purposes of this Article and when a transaction is not structured to provide support.'	'(4) EBA shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines on ~~what constitutes "arm's length" for the purposes of this Article and~~ when a transaction is not structured to provide support.'
Explanation *This proposed deletion is connected with Amendment 99 which proposes the deletion of the arm's length condition in Article 250(2).*	
Amendment 101 Article 254(3)	
'(3) By derogation from paragraph 2(b), institutions may use the SEC-SA instead of the SEC-ERBA in relation to all the positions they	'~~(3) By derogation from paragraph 2(b), institutions may use the SEC-SA instead of the SEC-ERBA in relation to~~

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hold in a securitisation where the risk-weighted exposure amounts resulting from the application of the SEC-ERBA is not commensurate to the credit risk embedded in the exposures underlying the securitisation. Where the institution has decided to apply the SEC-SA in accordance with this paragraph, it shall promptly notify the competent authority. Where an institution has applied the SEC-SA in accordance with this paragraph, the competent authority may require the institution to apply a different method.'	~~all the positions they hold in a securitisation where the risk-weighted exposure amounts resulting from the application of the SEC-ERBA is not commensurate to the credit risk embedded in the exposures underlying the securitisation. Where the institution has decided to apply the SEC-SA in accordance with this paragraph, it shall promptly notify the competent authority. Where an institution has applied the SEC-SA in accordance with this paragraph, the competent authority may require the institution to apply a different method.~~'
Explanation *This proposal to delete Article 254(3) should be considered together with Amendment 103 which proposes a new Article 254a and Amendment 105 proposing a new Article 258a to address the case of STS securitisations qualifying for differentiated capital treatment.*	
Amendment 102 Article 254(7)	
'(7) The competent authorities shall inform EBA of any notifications received and decisions made in accordance with paragraph 3. EBA shall monitor the range of practices in connection with paragraph 3 and issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010.'	'~~(7) The competent authorities shall inform EBA of any notifications received and decisions made in accordance with paragraph 3. EBA shall monitor the range of practices in connection with paragraph 3 and issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010.~~'
Explanation *This amendment is consequential on the proposal to delete Article 254(3) and should be considered together with Amendment 103 which proposes a new Article 254a and Amendment 105 proposing a new Article 258a to address the case of STS securitisations qualifying for differentiated capital treatment.*	
Amendment 103 Article 254a (new)	
No Text	'**Article 254a** **Hierarchy of methods for STS securitisations and STS ABCPs** **For securitisation positions in STS securitisations**

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	and STS ABCP programmes and transactions the methods set out in Subsection 3 shall be applied in accordance with the following hierarchy: **(a) an institution shall use the Internal Ratings-Based Approach (SEC-IRBA) in accordance with Article 260 where the conditions set out in Article 258 are met;** **(b) where the SEC-IRBA may not be used, institutions shall use the Securitisation Standardised Approach (SEC-SA) in accordance with Articles 264 where the conditions set out in Article 258a are met;** **(c) in all other cases, a risk weight of 1 250 % shall be assigned to securitisation positions.**'

Explanation

The proposed amendment both simplifies and strengthens the conditions for changes to the hierarchy of approaches by disallowing, for STS securitisations, the use of SEC-ERBA in all cases.

From a policy perspective, this addresses the issue of ratings caps and thus provides for a more equal regulatory treatment for STS securitisations issued in the Union, allows for fairer treatment between STS securitisations issued in the Union and securitisations issued in other jurisdictions where the use of external ratings has been disallowed, and reduces the reliance on ratings in a prudent manner.

The existing hierarchy of approaches recognises that SEC-ERBA is generally more risk sensitive than SEC-SA and is therefore a sufficient alternative to SEC-IRBA for credit institutions subject to the Standardised Approach. However, from a supervisory perspective, the application of SEC-SA instead of SEC-ERBA is warranted for STS securitisations in the new framework, given that such securitisations have low structural risk and that the proposed capital charges for STS securitisations are sufficient to ensure that the prudential nature of the securitisation framework is preserved. This also increases the consistency of the framework, given that capital charges resulting from the application of the SEC-IRBA and SEC-SA approaches have greater similarity than capital charges resulting from the application of SEC-ERBA. Moreover, it eliminates the possibility for hierarchy arbitrage. Article 254 of the proposed CRR amendment and of the Council's compromise text (2015/0225 (COD), 14536/15) permit banks, unless restricted by supervisors, to selectively use SEC-SA. Banks can choose to cap the risk weights resulting from the application of SEC-ERBA only for those exposures where applying SEC-SA is more advantageous than SEC-ERBA. The hierarchy arbitrage would not be allowed under the proposed amendment, since SEC-SA would need to be used at all times.

Finally, the prudential character of the framework is preserved. Where SEC-IRBA and SEC-SA cannot be

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applied, for example because the necessary inputs are not available, a 1 250% risk weight should apply. Where SEC-SA can be applied but where competent authorities assess that its application results in capital charges that are too low given certain residual risks, competent authorities retain mechanisms to take prudential measures (see proposed Amendment 105 introducing new Article 258a). *Non-STS securitisations should however apply the full hierarchy in all instances, as such securitisations have considerably higher structural risks and, in many cases, also higher asset risk that may not be appropriately captured by SEC-SA. In such cases, it appears warranted to take into consideration the input of rating agencies when setting regulatory capital charges.* *These recommendations are contingent on the implementation of a prudent STS framework in terms of strength of the STS criteria, implementation and supervision. If one or more of the pillars of the STS framework in the proposed securitisation regulation is significantly weakened, for example with regard to the underlying asset quality or STS attestation, maintaining supervisory discretion when using SEC-SA instead of SEC-ERBA – as envisaged in Article 254 of the proposed CRR amendment – would likely be warranted, in order to maintain the prudential nature of the STS framework.*	
Amendment 104 Article 258(1)(a)	
‘(a) the position is backed by an IRB pool or a mixed pool, provided that, in the latter case, the institution is able to calculate K_{IRB} in accordance with Section 3 on at a minimum of 95% of the underlying risk-weighted exposure amount;’	‘(a) the position is backed by an IRB pool or a mixed pool, provided that, in the latter case, the institution is able to calculate K_{IRB} in accordance with Section 3 on ~~at~~ a minimum of 95% of the underlying ~~risk-weighted~~ exposure amount;’
Explanation *The proposed deletion clarifies that the 95% threshold in the case of mixed pools, to which SEC-IRBA can be applied, should be calculated on the basis of the ratio between the exposure amount of the exposures for which K_{IRB} can be computed (IRB exposures) and the total pool exposure amount. For the purpose of the calculation of the 95% threshold, the exposure amount of the exposures in the underlying pool need not also be multiplied by their risk weights, as this would allow the application of SEC-IRBA to pools in cases where exposures accounting for a smaller proportion of the pool than 95% are IRB exposures. This would be the case for pools where a small number of IRB exposures have very high risk weights (for example, delinquent exposures), with the rest of the exposures (SA exposures for which K_{IRB} cannot be calculated) of high quality.*	

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Amendment 105 Article 258a (new)	
No text	‘**Article 258a** **Discretion to preclude the use of the Standardised Approach (SEC-SA)** **1. Competent authorities may preclude, on a case-by-case basis, the use of the SEC-SA where securitisations have highly complex or risky features, or the repayment of the relevant securitisation positions are highly dependent on risk drivers not sufficiently reflected in K_A, such as securitisations that have the features specified in Article 258(2)(a) to (d).** **2. In the case of STS securitisations where an ECAI credit assessment is available, if competent authorities assess that the conditions referred to in paragraph 1 also apply, they may impose, on a case-by-case basis, a risk weight equal to 75% of the risk weights in Table 1 or 2, as applicable, or 1 250%. For this purpose, competent authorities may impose the risk weights pursuant to the first sentence for first loss tranches and mezzanine positions as defined in Article 243(2), when the risk-weights produced by SEC-SA are at least 25% lower than the risk weights produced by either Table 1 or Table 2, as applicable.** **3. For exposures with short-term credit assessments or where a rating based on a short-term credit assessment may be inferred in accordance with Article 261(7), for the purposes of paragraph 2 the following risk weights shall apply:**

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Table 1

Credit Quality Step	1	2	3	All other ratings
Risk weight	10%	35%	70%	1,250%

4. For exposures with long-term credit assessments or where a rating based on a long-term credit assessment may be inferred in accordance with Article 261(7), for the purposes of paragraph 2 the risk weights shall be determined in accordance with Table 2, adjusted for tranche maturity (M_T) in accordance with Article 257 and Article 261(4) and for tranche thickness for non-senior tranches in accordance with Article 261(5):

Table 2

Credit Quality Step	Senior tranche		Non-senior (thin) tranche	
	Tranche maturity (MT)		*Tranche maturity (MT)*	
	1 year	*5 years*	*1 year*	*5 years*
1	10%	15%	15%	50%
2	10%	20%	15%	55%
3	15%	25%	20%	75%
4	20%	30%	25%	90%
5	25%	35%	40%	105%
6	35%	45%	55%	120%
7	40%	45%	80%	140%
8	55%	65%	120%	185%
9	65%	75%	155%	220%
10	85%	100%	235%	300%
11	105%	120%	355%	440%
12	120%	135%	470%	580%
13	150%	170%	570%	650%
14	210%	235%	755%	800%
15	260%	285%	880%	880%
16	320%	355%	950%	950%
17	395%	430%	1,250%	1,250%
All other	1,250%	1,250%	1,250%	1,250%

5. The EBA shall report to the Commission assessing the adequacy of both the 75% factor and the 25% threshold specified in paragraph 2 within 12 months of [insert date of entry into force of this amending Regulation].

6. After having taken into account the report from the EBA, the Commission shall be empowered to adopt a delegated act in accordance with Article 462 amending the 75% factor and/or the 25% threshold specified in paragraph 2.'

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Explanation

The proposed amendment in paragraph 1 aims to mirror the provision for Securitisation Internal Ratings Based Approach (SEC-IRBA). The conditions that make SEC-IRBA inappropriate to be applied to a securitisation position due to the type of structural or asset risk specified in Article 258(2)(a) to (d) should also disallow the use of Securitisation Standardised Approach (SEC-SA). Under the provisions of the proposed hierarchy of approaches set out in Article 254 (which implements the provisions of the Basel Committee's text on securitisation rules published in December 2014[12]), SEC-SA can be applied for unrated securitisation positions and those where no rating is inferred. This could lead to arbitrage if insufficiently conservative risk weights are applied to an unrated position in a highly complex securitisation under SEC-SA or to a securitisation where K_A[13] does not sufficiently capture key risk drivers. In such cases, the competent authorities should be able to disallow the use of SEC-SA and require the application of risk weights under SEC-ERBA.

The proposed amendment in paragraph 2 provides, for STS securitisations, competent authorities with the discretion, on a case by case basis, to disallow the application of SEC-SA in the same circumstances as those applicable to non-STS securitisations, i.e. where STS criteria do not sufficiently capture certain structural complexities or where they assess that risk weights under SEC-SA insufficiently capture key risk drivers. Such cases are described under Article 258(2). In these cases, the proposed amendments permit supervisors to apply either 75% of the risk weights in Table 1 or 2, as applicable, or 1 250%. Tables 1 and 2[14], referencing risk weights indexed to external ratings, serve as an additional tool for competent authorities acting in their supervisory control function. Supervisors should retain the option to apply a 1 250% risk weight for cases where they assess that the risk weights computed under both the SEC-SA and Table 1 or 2, as applicable, are insufficient.

The proposed amendment in the second sentence of paragraph 2 clarifies that, in cases where the application of SEC-SA results, for non-senior tranches of STS securitisations, in risk weights that are at least 25% lower than the amounts produced by applying the risk weights in Table 1 or 2, supervisors may assess whether the conditions for disallowing SEC-SA, as specified in paragraph 1, are met and may require the application of risk weights in accordance with paragraph 2. The use of the 25% threshold specified in paragraph 2 as a reference point for supervisory scrutiny reflects the fact that, for countries subject to ratings caps, some mezzanine tranches can, like senior tranches, benefit from high levels of credit enhancements, while being subject to the same rating methodologies affecting the senior tranches. In such cases, the lower level of risk weights assigned by SEC-SA may be more reflective of the application of rating methodologies than actual residual structural complexities or asset risks not captured

12 Available at http://www.bis.org/bcbs/publ/d303.pdf.

13 KA instead of KSA is referenced, as, according to Article 263(2) of the proposed CRR amendment, KA serves as input into the KSSFA formula; KA adjusts KSA to significantly increase its sensitivity to pool delinquencies.

14 The risk weights in Tables 1 and 2 correspond to the risk weights used in Tables 3 and 4 of Article 262 *(Treatment of STS securitisations under SEC-ERBA)* (proposed for deletion, see Amendment 106).

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by K_{SA}. Therefore, using the 25% threshold as a supervisory reference point ensures that supervisory scrutiny is not inadvertently triggered by cases that paragraph 1 does not intend to capture. In the limited cases where the competent authority determines that the residual structural complexities and/or asset risk are insufficiently covered both by the SEC-SA and application of a factor of 75% to the risk weights in Tables 1 and 2, the supervisors may impose a 1 250% risk weight. The 75% factor is justified from a technical perspective as a starting point to ensure that, if supervisors use the 25% threshold as a reference point to switch from SEC-SA, this does not result in a cliff effect. The cliff effect would otherwise result from the switch from SEC-SA, i.e. from 75% to 100% of the risk weights in Tables 1 or 2. In cases where a more conservative approach is warranted, paragraph 2 still preserves the supervisor's option to apply 1 250% of the risk weight, and is therefore sufficiently prudent. *Overall, the proposed amendments in paragraphs 2, 3 and 4 aim, on the one hand, to give supervisory authorities tools for those limited cases where the STS hierarchy of approaches may result in risk weights which are perceived to be too low given the inherent risks and, on the other hand, to discourage structuring of STS securitisations that take advantage of any risk insensitivities in the STS framework.* *Finally, paragraphs 5 and 6 propose that the EBA should undertake in-depth analysis to assess the adequacy of the 25% threshold and 75% factor and report to the Commission within 12 months of the entry into force of the amending Regulation and that the Commission is empowered to subsequently issue a delegated act amending the threshold and/or factor if necessary (in line with the powers of delegated legislation which the Commission already has pursuant to Article 456).*	
Amendment 106 Article 262	
'Article 262 Treatment of STS securitisations under SEC-ERBA	~~'Article 262~~ ~~Treatment of STS securitisations under SEC-ERBA~~
'(1) Under the SEC-ERBA, the risk weight for a position in an STS securitisation shall be calculated in accordance with Article 261, subject to the modifications laid down in this Article. (2) For exposures with short-term credit assessments or when a rating based on a short-term credit assessment may be inferred in accordance with Article 261(7), the following risk weights shall apply:	'~~(1) Under the SEC-ERBA, the risk weight for a position in an STS securitisation shall be calculated in accordance with Article 261, subject to the modifications laid down in this Article.~~ ~~(2) For exposures with short-term credit assessments or when a rating based on a short-term credit assessment may be inferred in accordance with Article 261(7), the following risk weights shall apply:~~
Table 3	~~Table 3~~

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Credit Quality Step	1	2	3	All other ratings
Risk weight	10 %	35 %	70 %	1,250 %

(3) For exposures with long-term credit assessments or when a rating based on a long-term credit assessment may be inferred in accordance with Article 261(7), risk weights shall be determined in accordance with Table 4, adjusted for tranche maturity (MT) in accordance with Article 257 and Article 261(4) and for tranche thickness for non-senior tranches in accordance with Article 261(5):

Table 4

[…]'

,

~~Credit Quality Step~~	~~1~~	~~2~~	~~3~~	~~All other ratings~~
~~Risk weight~~	~~10%~~	~~35%~~	~~70%~~	~~1,250%~~

~~(3) For exposures with long-term credit assessments or when a rating based on a long-term credit assessment may be inferred in accordance with Article 261(7), risk weights shall be determined in accordance with Table 4, adjusted for tranche maturity (MT) in accordance with Article 257 and Article 261(4) and for tranche thickness for non-senior tranches in accordance with Article 261(5):~~

~~Table 4~~

~~[…]~~'

Explanation

This proposal to delete Article 262 in its entirety should be considered together with Amendment 103 on a new Article 254a which disallows the use of SEC-ERBA for STS securitisations.

Amendment 107

Article 263(2)

[…]	
'W = ratio of the sum of the nominal amount of underlying exposures in default to the nominal amount of all underlying exposures. For these purposes, an exposure in default shall mean an underlying exposure which is either: (i) 90 days or more past due; (ii) subject to bankruptcy or insolvency proceedings; (iii) subject to foreclosure or similar proceeding; or	'W = ratio of the sum of the nominal amount of underlying exposures in default to the nominal amount of all underlying exposures. For these purposes, an exposure **shall be considered** in default ~~shall mean an underlying~~ ~~exposure which is either: (i) 90 days or more past due; (ii) subject to bankruptcy or insolvency proceedings; (iii) subject to foreclosure or similar proceeding; or (iv) in default in accordance with the~~

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(iv) in default in accordance with the securitisation documentation.'	~~securitisation documentation~~**in accordance with Article 178(1)**.'
Explanation *The proposed amendment aims to use the existing definition of an exposure in default for reasons of simplicity, standardisation and practical implementation.*	
Amendment 108 Article 265(1)	
'(1) Institutions may calculate the risk-weighted exposure amounts for unrated positions in ABCP programmes under the IAA in accordance with Article 266 where they have been granted permission by their competent authorities in accordance with paragraph 2.'	'(1) Institutions may calculate the risk-weighted exposure amounts for unrated positions in ABCP programmes **and ABCP transactions** under the IAA in accordance with Article 266 where they have been granted permission by their competent authorities in accordance with paragraph 2.'
Explanation *The proposed amendment is a drafting clarification.*	
Amendment 109 Article 265(2)	
'The competent authorities may grant institutions permission to use the IAA within a clearly defined scope of application where all of the following conditions are met: (a) all positions in the commercial paper issued from the ABCP programme are rated positions; […]'	'The competent authorities may grant institutions permission to use the IAA within a clearly defined scope of application where all of the following conditions are met: **(a) the institution is authorised to use the IRB approach for at least some of the underlying exposures;** (a**a**) ~~all positions in~~ the commercial paper issued from the ABCP programme ~~are~~ **is** rated ~~positions~~; […]'
Explanation *The amendment adds a further condition for institutions which wish to use the internal assessment approach for unrated positions. The rationale for requiring the institution to be authorised to use the IRB*	

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approach, for at least some of the underlying exposures, is that it provides evidence that the institution in question has relevant experience of modelling risk on an independent basis as part of its internal risk management procedures, i.e. using an IRB model for some of the exposures financed under the ABCP programme. The amendment is also broadly in line with the recommendation in paragraph 74 of the Basel Committee's text on securitisation rules published in December 2014[15]*.*	
Amendment 110 Article 267(2), introductory text, (a) and (b)	
'In the case of mixed pools the maximum risk weight shall be calculated as follows: (a) where the institution applies the SEC-IRBA, the Standardised Approach portion and the IRB portion of the underlying pool shall each be assigned the corresponding Standardised Approach risk weight and IRB risk weight respectively; (b) where the institution applies the SEC-SA or the SEC-ERBA, the maximum risk weight for senior securitisation positions shall be equal to the Standardised Approach weighted-average risk weight of the underlying exposures.'	'In the case of mixed pools the maximum risk weight shall be calculated ~~as follows.~~ **by assigning the SA risk weight and the IRB risk weight to**~~(a) where the institution applies the SEC-IRBA,~~ the SA portion and **the** IRB portion of the underlying pool ~~shall each be assigned the corresponding Standardised Approach risk weight and IRB risk weight~~, respectively~~.~~**, and by calculating the maximum risk weight for senior securitisation positions as the exposure weighted-average risk weight of the risk weights for the SA and IRB portions of the underlying pool.**~~;~~ ~~(b) where the institution applies the SEC-SA or the SEC-ERBA, the maximum risk weight for senior securitisation positions shall be equal to the Standardised Approach weighted-average risk weight of the underlying exposures,~~.'
Explanation *The first amendment clarifies that the calculation of the caps for senior securitisation positions in the case of mixed pools should not be limited only to cases where SEC-IRBA can be applied (according to Article 258). Article 258 requires that SEC-IRBA can only be applied to mixed pools in cases where the pools contain exposures for which K_{IRB} can be computed for a minimum of 95% of the underlying exposure amount. However, it should be permitted to calculate the senior cap for all mixed pools, in the manner clarified below, irrespective of the share of the IRB portion of the mixed pool.* *The second amendment aims to clarify the calculation of the risk weight cap for senior tranches, in the case of mixed pools, to mirror the guidance for institutions when calculating maximum risk weights for senior securitisation positions in Article 267(1) and the first subparagraph of Article 267(2).*	

15 Available at http://www.bis.org/bcbs/publ/d303.pdf.

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Point (b) should be deleted, as for the purpose of calculating caps for senior securitisation positions in the case of mixed pools the approach that the institution uses to compute risk weights for its senior securitisation position is irrelevant. The first amendment clarifies the calculation of risk weight caps for senior securitisation positions in all cases.	
Amendment 111 Article 270(a)	
'(a) the securitisation meets the requirements set out in Article 6(2) of the [Securitisation Regulation], other than point (a) of that paragraph;'	'(a) the securitisation meets **specific requirements determined by the Commission in accordance with the procedure specified in the final paragraph. Those requirements may include one or more of** the requirements **set out in Section 1, Chapter 3** ~~set out in~~ **of [Securitisation Regulation]**~~, other than point (a) of that paragraph;~~ ;'
Explanation *The amendment aims to clarify that the reference to STS criteria for traditional securitisations is inappropriate given that the criteria were not created, and therefore are not suited, for synthetic securitisation structures. Moreover, unlike the approach taken for traditional securitisations, the criteria for qualifying synthetic securitisations proposed by the ECB take an originator and not investor approach. The appropriate qualifying criteria should be adopted at a later stage based on the EBA's recommendations on criteria specific to synthetic securitisations (see Amendment 114 in relation to Article 270(e)).*	
Amendment 112 Article 270(c)	
'(c) the securitisation is backed by a pool of exposures to undertakings, provided that at least 80% of those in terms of portfolio balance qualify as SMEs as defined in Art 501 at the time of issuance of the securitisation;'	'(c) the securitisation is backed by a pool of ~~exposures~~ **outstanding loans** to ~~undertakings~~ **SMEs or corporates**, provided that at least 80 % of those in terms of portfolio balance qualify as SMEs as defined in Art**icle** 501 at the time of issuance of the securitisation**. In the case of revolving pools, the addition of corporate exposures is only allowed to the extent that it does not increase the overall porfolio exposure beyond the 20 % limit**;'

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Explanation *The proposed amendment clarifies that credit default swaps (CDS) may not be underlying exposures, and that underlying exposures can only be SMEs or corporates as understood in Regulation (EU) No 575/2013 terminology. Moreover, a clarification is proposed to limit exposures to corporates, given that, due to pool dynamics, such exposure can increase above the 20 % initial limit if, for example, SME loans in relation to which protection is purchased amortise faster than corporate loans. The principle applied is the same as in Amendment 88 and Amendment 90 in relation to Articles 243(1)(b) and 243(2)(b), for the 1 % threshold.*	
Amendment 113 Article 270(d)	
'(d) the credit risk associated with the positions not retained by the originator institution is transferred through a guarantee or a counter-guarantee meeting the requirements for unfunded credit protection set out in Chapter 4 for the Standardised Approach to credit risk;'	'(d) **the securitisation is a balance sheet synthetic securitisation**~~the credit risk associated with the positions not retained by the originator institution is transferred through a guarantee or a counter-guarantee meeting the requirements for unfunded credit protection set out in Chapter 4 for the Standardised Approach to credit risk~~;'
Explanation *The proposed amendment aims to strengthen the key criterion for qualifying synthetic securitisations, namely that it is a balance sheet synthetic securitisation as defined in Amendment 84 introducing Article 242(20). Moreover, the approach of referring to the manner in which the credit protection is granted limits the scope of protection to guarantees only. Therefore, the ECB proposes the deletion of point (d) as drafted and the amendment of Article 270(e) to allow capturing entities to provide protection through means other than guarantees (such as through credit default swaps).*	
Amendment 114 Article 270(e)	
'(e) the guarantor or counter-guarantor, as applicable, is the central government or the central bank of a Member State, a multilateral development bank or an international organisation, provided that the exposures to the guarantor or counter-guarantor qualify for a 0% risk weight under Chapter Two of Part	'(e) the **third party or parties to which credit risk is transferred, which can act also as** guarantor or counter-guarantor, ~~as applicable,~~ **is one or more of the following:** ~~is~~ the central government or the central bank of a Member State, a multilateral development bank**,** ~~or~~ an international organisation, **or a public sector entity,** provided that the exposures to the

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Three.'	~~guarantor or counter-guarantor~~ **third party** qualify for a 0% risk weight under Chapter Two of Part Three. **No later than [six months] after entry into force of this Article, the Commission, taking into consideration the EBA's recommendation on synthetic securitisations, shall adopt a Delegated Act on the eligibility criteria referred to in point (a).**'
Explanation *The proposed amendment aims to extend the scope of the provision to also allow 'public sector entities', defined in Article 4(1)(8) of Regulation (EU) No 575/2013, as eligible protection providers. This allows capturing as eligible protection providers or guarantors public sector entities which are not otherwise captured by the list in the provision. In addition, the ECB proposes that the Commission should assess the EBA's recommendations[16] on criteria for qualifying synthetic securitisations and use these as a basis for a Delegated Act. The scope of synthetic securitisations eligible for lower capital requirements should nevertheless be strictly limited to the narrow scope proposed under Article 270, as amended.*	
Amendment 115 Article 270a(2)	
'2. EBA shall develop draft implementing technical standards to facilitate the convergence of supervisory practices with regard to the implementation of paragraph 1 of the present Article, including the measures to be taken in the case of breach of the due diligence and risk management obligations. EBA shall submit those draft implementing technical standards to the Commission by 1 July 2014.'	'2. EBA shall develop draft implementing technical standards to facilitate the convergence of supervisory practices with regard to the implementation of paragraph 1 ~~of the present Article~~, including the measures to be taken in the case of breach of the due diligence and risk management obligations. EBA shall submit those draft implementing technical standards to the Commission by 1 July ~~2014~~**2018**.'
Explanation *The proposed amendment is a drafting clarification as the deadline for the draft implementing technical standards to be submitted to the Commission occurs in the past. In the ECB's view, 1 July 2018 is a reasonable timeframe for the completion of this task.*	

16 See *The EBA Report on Synthetic Securitisation*, 18 December 2015.

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Amendment 116 Article 270e	
'EBA shall submit those draft implementing technical standards to the Commission by 1 July 2014.'	'EBA shall submit those draft implementing technical standards to the Commission by **3**1 **December** ~~July~~ 201**74**.'
Explanation *The amendment proposes that the deadline for the EBA to submit draft implementing technical standards (ITS) to the Commission is set at end 2017, given the EBA's intention to revise the mapping of structured finance instruments within a similar timeframe*[17]*.*	
Amendment 117 Article 377(9)	
'Part Five is deleted.'	'Part Five is deleted **and all references to Part Five shall be read as referring to Articles 3, 4 and 5 of the [Securitisation Regulation].**'
Explanation *The amendment clarifies that references to the former Part Five, in particular, in Article 14, should refer to the new equivalent provisions in the proposed securitisation regulation.*	

17 See *Consultation on draft implementing technical standards on the mapping of ECAIs' credit assessments for securitisation positions under Article 270 of Regulation (EU) No 575/2013*, 7 May 2015, EBA.