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To:	Permanent Representatives Committee (Part 2)
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 pandemic - Mandate for negotiations with the European Parliament

Delegations will find below the Presidency compromise text on the above-mentioned Commission proposal.

2020/0151 (COD)

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 pandemic

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The COVID-19 pandemic is severely affecting people, companies, health systems and the economies of Member States. The Commission, in its Communication to the European Parliament, the European Council, the Council, the European economic and social committee and the Committee of the regions of 27 May 2020 entitled 'Europe's moment: Repair and Prepare for the Next Generation'[1] stressed that liquidity and access to finance will be a continued challenge in the months to come. It is therefore crucial to support the recovery from the severe economic shock caused by the COVID-19 pandemic by introducing targeted amendments to existing pieces of financial legislation. This package of measures is adopted under the label "Capital Markets Recovery Package".

(2) The severe economic shock caused by the COVID-19 pandemic and the exceptional containment measures have a far-reaching impact on the economy. Businesses are facing disruption in supply chains, temporary closures and reduced demand, while households are confronted with unemployment and a fall in income. Public authorities at Union and Member State level have taken decisive actions to support households and solvent undertakings in withstanding the severe but temporary slowdown in economic activity and the resulting liquidity shortages.

(3) It is important that credit institutions and investment firms ('institutions') employ their capital where it is most needed and the Union regulatory framework facilitates their doing so while ensuring that institutions act prudently. In addition to the flexibility provided in the existing rules, targeted changes to Regulation (EU) No 2017/2402 should ensure that the Union securitisation framework provides for an additional tool to foster economic recovery in the aftermath of the COVID-19 pandemic.

[1] COM/2020/456 final of 27.5.2020.

(4) The extraordinary circumstances of the COVID-19 crisis and the unprecedented magnitude of challenges triggered a call for immediate action to ensure that institutions have the ability to channel sufficient funds to businesses and so to help absorbing the economic shock caused by the COVID-19 pandemic.

(5) As pointed out by the European Banking Authority ('EBA') in its Opinion on the Regulatory Treatment of Non-Performing Exposure Securitisation[1], the risks associated with the assets backing non-performing asset (NPE) securitisations are economically distinct from those of securitisations of performing assets. The NPEs are securitised at a discount on their nominal or outstanding value and reflect the market's assessment of, inter alia, the likelihood that the debt workout process will generate sufficient cash flows and asset recoveries. The risk for investors is, therefore, that the debt workout of the assets generates insufficient recoveries to cover the net value at which those NPEs have been purchased. The actual loss risk for investors does, therefore, not represent the nominal value of the portfolio, but the discounted value, net of the price discount at which the underlying assets are transferred. It is therefore appropriate, in the case of NPE securitisations, to calculate the amount of the risk retention on the basis of that discounted value. However, in the specific case of the use of the retention option according to which 5% of the nominal value of each of the tranches sold or transferred to investors are retained an amendment of the requirements is not necessary as the nominal value of the securitisation tranches already reflects the net value of the non-performing assets, because the nominal values of the tranches were determined based on the discounted price of the non-performing assets.

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1 Opinion of the European Banking Authority to the European Commission on the Regulatory Treatment of Non-Performing Exposure Securitisations, EBA-OP-2019-13, published on 23 October 2019.

(6) The risk retention requirement aligns the interests of originators, sponsors and original lenders that are involved in a securitisation and investors in the performance of the underlying assets. Typically, in securitisations of performing assets, the prevalent interest on the sell-side is that of the originator, who is often also the original lender. In NPE securitisations, however, originators seek to offload the defaulted assets from their balance sheets, as they may no longer wish to be associated with those defaulted assets in any way. In those cases, the servicer of the assets has more substantive interest in the workout of the assets and value recovery.

(7) Before the financial crisis, some securitisation activities followed an "originate to distribute" model. In that model, assets of inferior quality were selected for securitisation to the detriment of investors, who ended up with more risk then they might have intended to undertake. The requirement to verify the credit granting standards used in the creation of the securitised assets was introduced to prevent such practices for the future. For NPE securitisations, however, the credit granting standards applicable at origination of the securitised assets are of minor importance due to the specific circumstances including the purchase of those non-performing assets and the type of securitisation. Instead, the application of sound standards in the selection and pricing of the exposures are more important factors with respect to investments in NPE securitisations. It is therefore necessary to amend the verification of credit granting standards to enable the investor to carry out a due diligence on the quality and performance of the non-performing assets in order to make a sensible and well-informed investment decision.

(8) A synthetic securitisation involves transferring the credit risk of a set of loans, typically large corporate loans or SME loans, by a credit protection agreement where the originator buys credit protection from the investor. The credit protection is achieved by the use of financial guarantees or credit derivatives while the ownership of the assets remains with the originator and it is not transferred to a securitisation special purpose entity, as is the case in traditional securitisations. The originator as protection buyer commits to pay a credit protection premium, which generates the return for investors. In turn, the investor as protection seller commits to pay a specified credit protection payment at the occurrence of a pre-determined credit event.

(9) It should be ensured that the overall complexity of the securitisations structures and associated risks are appropriately mitigated and that no regulatory incentives are provided to originators to prefer synthetic securitisations over traditional securitisations. The requirements for simple, transparent and standardised (STS) on-balance-sheet securitisations should therefore be highly consistent with the STS criteria for traditional true sale securitisations.

(10) However, there are certain requirements for STS traditional securitisations that do not work for STS on-balance-sheet securitisations due to inherent differences between those two types of securitisation, in particular due to the fact that in synthetic securitisations the risk transfer is achieved via a credit protection agreement instead of a sale of the underlying assets. Therefore, the STS criteria should be adapted where necessary in order to take these differences into account. Furthermore, it is necessary to introduce a set of new requirements, specific to synthetic securitisations, to ensure that the STS framework only targets on-balance-sheet synthetic securitisations and that the credit protection agreement is structured to adequately protect the position of both the originator and the investor. This new set of requirements should seek to address counterparty credit risk for both the originator and the investor.

(11) Object of the credit risk transfer should be exposures originated or purchased by a Union regulated institution within its core lending business activity and held on its balance sheet or, in the case of a group structure, on its consolidated balance sheet at the closing date. This requirement of the originator to hold the securitised exposures on the balance sheet should exclude arbitrage securitisations from the scope of the STS label.

(12) The originator should make sure that it does not hedge the same credit risk more than once by obtaining credit protection in addition to the credit protection provided by the STS on-balance-sheet securitisation. In order to ensure its robustness, the credit protection agreement should meet the credit risk mitigation requirements laid down in Article 249 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[2] that have to be met by institutions seeking significant risk transfer through a synthetic securitisation.

(13) To avoid conflicts between the originator and the investor and to ensure legal certainty in terms of the scope of the credit protection purchased for underlying exposures, such credit protection should reference clearly identified reference obligations, giving rise to the underlying exposures, of clearly identified entities or obligors. Therefore, the reference obligations on which protection is purchased should be clearly identified at all times, via a reference register, and kept up to date. This requirement should also be indirectly part of the criterion defining the STS on-balance-sheet securitisation and excluding arbitrage securitisation from the STS framework.

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2 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 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1).

(14) Credit events triggering payments under the credit protection agreement should include at least those referred to in Part Three, Title II, Chapter 4 of Regulation (EU) No 575/2013. Those events are well-known and recognisable from the market's perspective and should serve to ensure consistency with the prudential framework. Forbearance measures, which consist of concessions towards a debtor that is experiencing or about to experience difficulties in meeting its financial commitments, should not preclude the triggering of the credit protection event.

(15) The right of the originator as protection buyer to receive timely payments on actual losses should be adequately protected. Accordingly, the transaction documentation should provide for a sound and transparent settlement process for the determination of actual losses in the reference portfolio to prevent the originator from being underpaid. As working out the losses may be a lengthy process and to ensure timely payments to the originator, interim payments should be made at the latest six months after such credit event has occurred. Furthermore, there should be a final adjustment mechanism to ensure that interim payments cover actual losses and to prevent that those interim losses do not overpay to the detriment of investors. The loss settlement mechanism should also clearly specify the maximum extension period that should apply to the workout process for those exposures and such extension period should be no longer than two years. That loss settlement mechanism should, thus, ensure the effectiveness of the credit protection arrangement from the originator's perspective, and give investors legal certainty on the termination date of their obligation to make payments, contributing to a well-functioning market.

(16) Having a third-party verification agent is a widespread market practice that enhances legal certainty in the transaction for all parties involved, thus decreasing the likelihood of disputes and litigations that could arise in relation to the loss allocation process. To enhance the soundness of the transaction's loss settlement mechanism, a third-party verification agent should be appointed to carry out a factual review of the correctness and accuracy of certain aspects of the credit protection when a credit event has been triggered

(17) Credit protection premiums should depend only on the outstanding size and credit risk of the protected tranche. Non-contingent premiums should not be permitted in STS on-balance-sheet securitisations as they could be used to undermine the effective risk transfer from the originator as protection buyer to the protection sellers. Other arrangements, such as up-front premium payments, rebate mechanisms or overly complex premium structures, should also be prohibited for STS on-balance-sheet securitisations.

(18) To ensure the stability and continuity of credit protection, the early termination of an STS on-balance-sheet securitisation by the originator should only be possible in certain limited, well-defined circumstances. Whilst the originator should be entitled to close out the credit protection early upon the occurrence of certain specified regulatory events, those events should constitute actual changes in legislation or taxation with a material adverse effect on the originator's capital requirements or the economics of the transaction relative to the parties' expectation at the time of entering the transaction and provided that such changes could not have been reasonably anticipated at that time. STS on-balance-sheet securitisations should not feature complex call clauses for the originator, in particular very short-dated time calls with the aim of temporarily changing the representation of their capital position on a case by case basis.

(19) Synthetic excess spread is widely present in certain types of transactions, and it is a helpful mechanism for both investors and originators, in order to reduce the cost of the credit protection and the exposure at risk respectively. In this regard, synthetic excess spread is essential for some specific retail asset classes, such as small and medium-sized enterprises (SME) and consumer lending, that show both higher yield and credit losses than other asset classes, and for which the securitised exposures generate excess spread to cover for those losses. However, where the amount of synthetic excess spread subordinated to the investor position is too high, it is possible that under no realistic scenario the investor in the securitisation positions will experience any losses, resulting in no effective risk transfer. To mitigate supervisory concerns and further standardise this structural feature, it is important to specify strict criteria for STS on-balance-sheet securitisations and to ensure full disclosure on the use of synthetic excess spread.

(20) Only high quality credit protection arrangements should be eligible for STS on-balance-sheet securitisations. In the case of unfunded credit protection, this should be ensured by restricting the scope of eligible protection providers to those entities that are eligible providers in accordance with Regulation (EU) No 575/2013 and recognised as counterparties with a 0% risk-weight in accordance with Title II, Part Three, Chapter 2 of that Regulation. In the case of funded credit protection, the originator as protection buyer and the investors as protection sellers should have recourse to high quality collateral, which should refer to collateral of any form which may be assigned a 0% risk weight under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013, subject to appropriate deposit or custody arrangements. When the collateral provided is in the form of cash, it should be held either with a third-party credit institution or on deposit with the protection buyer, subject in both cases to a minimum credit quality standing.

(21) Member States should designate the competent authorities that would be responsible to supervise the requirements that the synthetic securitisation have to meet in order to qualify for the STS designation. The competent authority could be the same as the one designated to supervise the compliance of originators, sponsors and SSPEs with the requirements that traditional securitisations have to meet in order to acquire the STS designation. Like in the case of traditional securitisations, such competent authority could be different from the competent authority responsible to supervise the compliance of originators, original lenders, SSPEs, sponsors and investors with the prudential obligations incumbent under Articles 5 to 9 of Regulation (EU) 2017/2402, and the compliance of which, given the prudential dimension of those obligations, was specifically entrusted to the competent authorities in charge of the prudential supervision of the relevant financial institutions.

(22) Regulation (EU) No 2017/2402 should therefore be amended accordingly.

(23) Since the objectives of this Regulation, namely to extend the STS securitisation framework to synthetic securitisation and to remove regulatory obstacles to securitisation of NPEs to further increase lending capacities without lowering the prudential standards for bank lending, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EU) No 2017/2402

Regulation (EU) No 2017/2402 is amended as follows:

(1) in Article 2, the following points (24), (25), (26), (27) and (28) are added:

"(24) 'non-performing exposure (NPE) securitisation' means a securitisation backed by a pool of non-performing exposures that meet the conditions set out in Article 47a(3) of Regulation (EU) No 575/2013 and the nominal value of which makes up at least 90% of the pool's nominal value at the time of origination and at a later time where assets are added to or removed from the underlying pool due to replenishment, restructuring or any other relevant reason;

(25) 'credit protection agreement' means an agreement concluded between the originator and the investor to transfer the credit risk of securitised exposures from the originator to the investor by the use of credit derivatives or guarantees, whereby the originator commits to pay a credit protection premium to the investor and the investor commits to pay a credit protection payment to the originator in case one of the contractually defined credit events occurs;

(26) 'credit protection premium' means the amount the originator has committed under the credit protection agreement to pay to the investor for the credit protection promised by the investor;

(27) ‘credit protection payment’ means the amount the investor has committed under the credit protection agreement to pay to the originator in case a contractually defined credit event defined in the credit protection agreement has occurred;

(28) ‘synthetic excess spread’ means the amount that, according to the documentation of a synthetic securitisation, is contractually designated by the originator to cover any losses of the securitised exposures that might occur during the life time of the transaction.;”

(2) Article 5 is amended as follows:

(a) in paragraph 1 letter f is added:

"In the case of non-performing exposures, as referred to in Article 47a(3) of Regulation (EU) No 575/2013, sound standards in the selection and pricing of the exposures are applied;"

(3) Article 6 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

“In case of NPE securitisations, the requirement of this paragraph may also be fulfilled by the servicer provided that the servicer can demonstrate that it has expertise in servicing exposures of a similar nature to those securitised and has well-documented and adequate policies, procedures and risk-management controls relating to the servicing of exposures.”;

(b) The following paragraph [3a] is inserted:

“3a. By way of derogation from points (b) to (e) of paragraph 3, in the case of NPE securitisations where a non-refundable purchase price discount was agreed at the level of the individual securitised exposures or, where applicable, on the level of the pool of underlying exposures, the retention of a material net economic interest for the purposes of those points shall not be less than 5% of the sum of the net value of the securitised exposures that qualify as non-performing exposures as referred to in Article 47a(3) of Regulation (EU) No 575/2013 and, if applicable, the nominal value of any performing securitised exposures.

The net value of a non-performing exposure shall result from deducting the non-refundable purchase price discount agreed at the level of the individual securitised exposure or, where applicable, a corresponding share of the non-refundable purchase price discount agreed at the level of the pool of underlying exposures, at the time of origination from the exposure’s nominal value or, where applicable, its outstanding value at the time of origination.”;

(4) in Article 9(1), the following subparagraph is added:

“By way of derogation from the first subparagraph, with regard to underlying exposures that are non-performing exposures as referred to in Article 47a(3) of Regulation (EU) No 575/2013 at the time the originator purchased them from the relevant third party, sound standards shall apply in the selection and pricing of the exposures. “

(5) in Article 18(1), point (a) is replaced by the following:

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

(6) Article 19 is amended as follows:

(a) the title of the article is replaced by the following:

"Simple, transparent and standardised traditional securitisation";

(b) paragraph 1 is replaced by the following:

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

(7) the following Section 2a is inserted:

"Section 2a Requirements for simple, transparent and standardised on-balance-sheet securitisations

Article 26 a

Simple, transparent and standardised on-balance-sheet securitisation

1. Synthetic securitisations that meet the requirements set out in Articles 26b to 26e shall be considered STS on-balance-sheet securitisations.

2. The EBA, in close cooperation with ESMA and EIOPA, may adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised interpretation and application of the requirements set out in Articles 26b to 26e.

Article 26 b

Requirements relating to simplicity

1. The originator shall be an entity that is authorised or licenced in the Union. It shall be the originator with respect to the underlying exposures.

An originator that purchases a third party's exposures on its own account and then securitises them shall apply to the purchased third party's exposures policies with regard to credit, collection, debt workout and servicing that are no less stringent than those that the originator applies to comparable exposures that have not been purchased.

2. The underlying exposures shall be originated as part of the core business activity of the originator.

3. At the closing of the transaction, the underlying exposures shall be held on the balance sheet of the originator or of an entity of the same group to which the originator belongs.

For the purposes of this paragraph, a group shall be either of the following:

(a) a group of legal entities subject to prudential consolidation in accordance with Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013/;

(b) a group as defined in point (c) of Article 212(1) of Directive 2009/138/EC.

4. The originator shall not further hedge its exposure to the credit risk of the underlying exposures of the securitisation beyond the protection obtained through the credit protection agreement.

5. The credit protection agreement shall comply with the credit risk mitigation rules laid down in Article 249 of Regulation (EU) No 575/2013/, or where that Article is not applicable, with requirements that are no less stringent that the requirements of that Article.

6. The originator shall provide representations and warranties that the following requirements have been met:

(a) the originator or an entity of the group to which the originator belongs has full legal and valid title to the underlying exposures and their associated ancillary rights;

(b) where the originator is a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, or an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC, the originator or an entity which is included in the scope of supervision on a consolidated basis keeps the credit risk of the underlying exposures on their balance sheet;

(c) each underlying exposure complies, at the date it is included in the securitised portfolio, with the eligibility criteria and with all conditions, other than the occurrence of a credit event as referred to in Article 26e, for a credit protection payment in accordance with the credit protection agreement within the securitisation documentation;

(d) to the best of originator's knowledge, the contract for each underlying exposure contains a legal, valid, binding and enforceable obligation to the obligor to pay the sums of money specified in that contract;

(e) the underlying exposures comply with underwriting criteria that are no less stringent than the standard underwriting criteria that the originator applies to similar exposures that are not securitised;

(f) to the best of originator's knowledge, none of the obligors are in material breach or default of any of their obligations in respect of an underlying exposure on the date on which that underlying exposure is included in the securitised portfolio;

(g) to the best of originator's knowledge, the transaction documentation does not contain any false information on the details of the underlying exposures;

(h) at the closing of the transaction or when the underlying exposure is included in the securitised portfolio, the contract between the obligor and the original lender in relation to that underlying exposure has not been amended in such way that the enforceability or collectability of that underlying exposures has been affected.

7. The underlying exposures shall meet predetermined, clear and documented eligibility criteria that do not allow for active portfolio management of those exposures on a discretionary basis.

For the purpose of this paragraph, the substitution of exposures that are in breach of representations or warranties or, where the securitisation includes a replenishment period, the addition of exposures that meet the defined replenishment conditions, shall not be considered active portfolio management.

Any exposure added after the closing date of the transaction shall meet eligibility criteria that are no less stringent than those applied in the initial selection of the underlying exposures.

An underlying exposure may be removed from the transaction where that underlying exposure:

(a) has been fully repaid or matured otherwise;

(b) has been disposed of during the ordinary course of the business of the originator, provided that such disposal does not constitute implicit support as referred to in Article 250 of Regulation (EU) No 575/2013;

(c) is subject to an amendment that is not credit driven, such as refinancing or restructuring of debt, and which occurs during the ordinary course of servicing of that underlying exposure;

(d) did not meet the eligibility criteria at the time it was included in the transaction.

8. The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of assets type, taking into account the specific characteristics relating to the cash flows of the asset type including their contractual credit-risk and prepayment characteristics. A pool of underlying exposures shall comprise only one asset type.

The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors.

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

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

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

10. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to potential investors without undue delay. The underlying exposures shall be underwritten with full recourse to an obligor that is not an SSPE. No third parties shall be involved in the credit or underwriting decisions concerning the underlying exposures.

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

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

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

11. The underlying exposures shall not include, at the time of selection of exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013, or exposures to a credit-impaired debtor or guarantor who to the best of the originator's or original lender's knowledge:

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

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

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

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

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

12. The debtors shall, at the time of selection of the underlying exposures, have made at least one payment, except where:

(a) the securitisation is a revolving securitisation, backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits;

(b) the exposure represents the refinancing of an exposure that is already included in the transaction..

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

The EBA shall submit those draft regulatory technical standards to the Commission by [*6 months after the date of entry into force of this amending Regulation*].

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

Article 26 c

Requirements relating to standardisation

1. The originator or original lender shall satisfy the risk retention requirements in accordance with Article 6.

2. The interest rate and currency risks arising from the securitisation and their possible effects on the payments to the originator and the investors shall be described in the transaction documentation. Those risks shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Any collateral securing the obligations of the investor under the credit protection agreement shall be denominated in the same currency in which the credit protection payment is denominated.

In case of a securitisation using a SSPE, the amount of liabilities of the SSPE concerning the interest payments to the investors shall at payment date be equal to or be less than the amount of the SSPE's income from the originator and any collateral arrangements.

Except for the purpose of hedging interest rate or currency risks of the underlying exposures, the pool of underlying exposures shall not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

3. Any referenced interest rate payments in relation to the transaction shall be based on any of the following:

(a) generally used market interest rates, or generally used sectoral rates that are reflective of the costs of funds, and shall not reference complex formulae or derivatives;

(b) income generated by the collateral securing the obligations of the investor under the protection agreement.

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

4. Following the occurrence of an enforcement event in respect of the originator, the investor shall be permitted to take enforcement action.

In case of a securitisation using a SSPE, where an enforcement or termination notice of the credit protection agreement is delivered, no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of that SSPE, the payment of the protection payments for defaulted underlying exposures that are still being worked out at the time of the termination, or the orderly repayment of investors in accordance with the contractual terms of the securitisation.

5. Losses shall be allocated to the holders of a securitisation position in the order of seniority of the tranches, starting with the most junior tranche.

Sequential amortisation shall be applied to all tranches to determine the outstanding amount of the tranches at each payment date, starting from the most senior tranche.

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

As tranches amortise, an amount of the collateral equal to the amount of the amortisation of those tranches shall be returned to the investors, provided the investors have collateralised those tranches.

Where a credit event as referred to in Article 26e has occurred in relation to underlying exposures and the debt workout process for those exposures has not been completed, the amount of credit protection remaining at any payment date shall be at least equivalent to the outstanding notional amount of those underlying exposures, minus the amount of any interim payment made in relation to those underlying exposures

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

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

(b) a rise in losses above a predetermined threshold;

(c) a failure to generate sufficient new underlying exposures that meet the predetermined credit quality during a specified period.

7. The transaction documentation shall clearly specify:

(a) the contractual obligations, duties and responsibilities of the servicer and the trustee, if any, and other ancillary service providers or the third-party verification agent referred to in Article 26e(4), as applicable;

(b) the provisions that ensure the replacement of the servicer, trustee, other ancillary service providers or the third-party verification agent referred to in Article 26e(4) in the event of default or insolvency of either of those service providers, in a manner that does not result in the termination of the provision of those services;

(c) the servicing procedures that apply to the underlying exposures at the closing date and thereafter and the circumstances under which those procedures may be modified;

(d) the servicing standards that the servicer is obliged to adhere to in servicing the underlying exposures within the entire maturity of securitisation.

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

The servicer shall apply servicing procedures to the underlying exposures that are at least as stringent as the ones applied by the originator to similar exposures that are not securitised.

9. The originator shall maintain an up-to-date reference register to identify the underlying exposures at all times. That register shall identify the reference obligors, the reference obligations from which the underlying exposures arise, and, for each underlying exposure, the notional amount that is protected and that is outstanding.

10. The transaction documentation shall include clear provisions that facilitate the timely resolution of conflicts between different classes of investors. In case of a securitisation using a SSPE, voting rights shall be clearly defined and allocated to bondholders and the responsibilities of the trustee and other entities with fiduciary duties to investors shall be clearly identified.

Article 26 d

Requirements relating to transparency

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

2. A sample of the underlying exposures shall be subject to external verification prior to the closing of the transaction by an appropriate and independent party, including verification that the underlying exposures are eligible for credit protection under the credit protection agreement.

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

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

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

Article 26 e

Requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread

1. The credit protection agreement shall at least cover the following credit events:

(a) where the transfer of risk is achieved by the use of guarantees, the credit events referred to in point (a) of Article 215(1) of Regulation (EU) No 575/2013;

(b) where the transfer of risk is achieved by the use of credit derivatives, the credit events referred to in point (a) of Article 216(1) of Regulation (EU) No 575/2013.

All credit events shall be documented.

Forbearance measures, as referred to in Annex V, Section 30, paragraphs 163 to 183, to Commission Implementing Regulation (EU) 2015/227* that are applied to the underlying exposures shall not preclude the triggering of eligible credit events.

2. The credit protection payment following the occurrence of a credit event shall be calculated based on the actual realised loss suffered by the originator or the original lender, as worked out in accordance with their standard recovery policies and procedures for the relevant exposure types and recorded in their financial statements at the time the payment is made. The final credit protection payment shall be payable within a specified period of time following the end of the debt workout process for the relevant underlying exposure where the end of the debt workout process occurs before the scheduled legal maturity or early termination of the credit protection agreement.

An interim credit protection payment shall be made at the latest six months after a credit event as referred to in paragraph 1 has occurred in cases where the debt workout of the losses for the relevant underlying exposure has not been completed by the end of that six months period. The interim credit protection payment shall be at least the higher of the following:

(a) the expected loss amount that is equivalent to the impairment recorded by the originator in its financial statements in accordance with the applicable accounting framework at the time the interim payment is made under the assumption that the credit protection agreement does not exist and does not cover any losses;

(b) where applicable, the expected loss amount as determined in accordance with Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013.

Where an interim credit protection payment is made, the final credit protection payment referred to in the second subparagraph shall be made in order to adjust the interim settlement of losses to the actual realised loss.

The method for the calculation of interim and final credit protection payments shall be specified in the credit protection agreement.

The credit protection payment shall be proportional to the share of the outstanding notional amount of the corresponding underlying exposure that is covered by the credit protection agreement.

The right of the originator to receive the credit protection payment shall be enforceable. The amounts payable by investors under the credit protection agreement shall be clearly set out in the credit protection agreement and limited. It shall be possible to calculate those amounts in all circumstances. The credit protection agreement shall clearly set out the circumstances under which investors shall be required to make payments. The third-party verification agent referred to in paragraph 4 shall assess whether such circumstances have occurred.

The amount of the credit protection payment shall be calculated at the level of the individual underlying exposure for which a credit event has occurred.

3. The credit protection agreement shall specify the maximum extension period that shall apply for the debt workout process for the underlying exposures in relation to which a credit event as referred to in paragraph 1 has occurred, but where the debt workout process has not been completed upon the scheduled legal maturity or early termination of the credit protection agreement. Such an extension period shall not be longer than two years. The credit protection agreement shall provide that by the end of that extension period a final credit protection payment shall be made on the basis of the originator’s final loss estimate that would have to be recorded by the originator in its financial statements at that time under the assumption that the credit protection agreement does not exist and does not cover any losses.

In case of a termination of the credit protection agreement, the debt workout process shall continue in respect of any outstanding credit events that occurred prior to that termination in the same way as that described in the first subparagraph.

The credit protection premiums to be paid under the credit protection agreement shall be structured as contingent on the outstanding nominal amount of the performing securitised exposures at the time of the payment and reflect the risk of the protected tranche. For those purposes, the credit protection agreement shall not stipulate guaranteed premiums, upfront premium payments, rebate mechanisms or other mechanisms that may avoid or reduce the actual allocation of losses to the investors or return part of the paid premiums to the originator after the maturity of the transaction.

By way of derogation from the third subparagraph, upfront premium payments shall be allowed where the guarantee scheme is specifically provided for in the national law of a Member State and benefits from a counter-guarantee of any of the entities listed in points (a) to (d) of Article 214(2) of Regulation (EU) No 575/2013.

The transaction documentation shall describe how the credit protection premium and any note coupons, if any, are calculated in respect of each payment date over the maturity of the securitisation.

The rights of the investors to receive credit protection premiums shall be enforceable.

4. The originator shall appoint a third-party verification agent before the closing date of the transaction. The third party verification agent shall verify, at a minimum all of the following for each of the underlying exposures for which a credit event notice is given:

(a) that the credit event referred to in the credit event notice is a credit event as specified in the terms of the credit protection agreement;

(b) that the underlying exposure was included in the reference portfolio at the time of the occurrence of the credit event concerned;

(c) that the underlying exposure met the eligibility criteria at the time of its inclusion in the reference portfolio;

(d) where an underlying exposure has been added to the securitisation as a result of a replenishment, that such a replenishment complied with the replenishment conditions;

(e) that the final loss amount is consistent with the losses recorded by the originator in its profit and loss statement;

(f) that, at the time the final credit protection payment is made, the losses in relation to the underlying exposures have correctly been allocated to the investors.

The third-party verification agent shall be independent from the originator and investors, and, where applicable, from the SSPE and shall have accepted the appointment as third-party verification agent by the closing date.

The third-party verification agent may perform the verification on a sample basis instead of on the basis of each individual underlying exposure for which credit protection payment is sought. Investors may however request the verification of the eligibility of any particular underlying exposure where they are not satisfied with the sample-basis verification.

The originator shall include a commitment in the transaction documentation to provide the third-party verification agent with all the information necessary to verify the requirements set out in the first subparagraph.

5. The originator may not terminate a transaction prior to its scheduled maturity for any other reason than any of the following events:

(a) the insolvency of the investor;

(b) the investor's failures to pay any amounts due under the credit protection agreement or a breach by the investor of any material obligation laid down in the transaction documents;

(c) relevant regulatory events, including:

(i) relevant changes in Union or national law, relevant changes by competent authorities to officially published interpretations of such laws, where applicable, or relevant changes in the taxation or accounting treatment of the transaction that have a material adverse effect on the economic efficiency of a transaction, in each case compared with that anticipated at the time of entering into the transaction and which could not reasonably be expected at that time;

(ii) a determination by a competent authority that the originator or any affiliate of the originator is not or is no longer permitted to recognise significant risk transfer in accordance with Article 245(3) of Regulation (EU) No 575/2013 in respect of the securitisation;

(d) exercise of an option to call the transaction at a given point in time (time call), when the time period measured from the closing date is equal to or greater than the weighted average life of the initial reference portfolio at closing;

(e) the exercise of a clean-up call option as defined in point (1) of Article 242 of Regulation (EU) No 575/2013;

(f) in the case of unfunded credit protection the investor does no longer qualify as an eligible protection provider in accordance with the requirements set out in paragraph 7.

The transaction documentation shall specify whether any of the call rights referred to in points (d) and (e) are included in the transaction concerned.

For the purposes of point (d), the time call shall not be structured to avoid allocating losses to credit enhancement positions or other positions held by investors and shall not be otherwise structured to provide credit enhancement.

In the case of funded credit protection, upon termination of the credit protection agreement, collateral shall be returned to investors in order of the seniority of the tranches subject to the provisions of the relevant insolvency law, as applicable to the originator.

5a. The investors may not terminate a transaction prior to its scheduled maturity for any other reason than a failure to pay the credit protection premium or any other material breach of contractual obligations by the originator.

6. The originator may commit synthetic excess spread, which shall be available as credit enhancement for the investors, where all of the following conditions are met:

(a) the amount of the synthetic excess spread that the originator commits to using as credit enhancement at each payment period is specified in the transaction documentation and expressed as a fixed percentage of the total outstanding portfolio balance at the start of the relevant payment period (fixed synthetic excess spread);

(b) the synthetic excess spread which is not used to cover credit losses that materialise during each payment period shall be returned to the originator;

(c) for originators using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013, the total committed amount per year shall not be higher than the one-year regulatory expected loss amounts on the underlying portfolio of underlying exposures, calculated in accordance with Article 158 of Regulation (EU) No 575/2013;

(d) for originators not using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013, the calculation of the one-year expected loss of the underlying portfolio shall be clearly determined in the transaction documentation;

(e) the transaction documentation specifies the conditions laid down in this paragraph.

7. The credit protection agreements shall meet one of the following conditions:

(a) a guarantee meeting the requirements set out in Chapter 4 of Part Three, Title II, of Regulation (EU) No 575/2013, by which the credit risk is transferred to any of the entities listed in points (a) to (d) of Article 214(2) of Regulation (EU) No 575/2013, provided that the exposures to the investor qualify for a 0% risk weight under Chapter 2 of Part Three, Title II, of that Regulation;

(b) a guarantee meeting the requirements set out in Chapter 4 of Part Three, Title II, of Regulation (EU) No 575/2013, which benefits from a counter-guarantee of any of the entities referred to in point (a) of this paragraph;

(c) other credit protection not referred to in points (a) and (b) of this paragraph in the form of guarantees, credit derivatives or credit linked notes that meet the requirements set out in Article 249 of Regulation (EU) No 575/2013, provided that the obligations of the investor are secured by collateral meeting the requirements laid down in paragraphs 8 and 9 of this Article.

8. The other credit protection referred to in point (c) of paragraph 7 shall meet the following requirements:

(a) the right of the originator to use the collateral to meet protection payment obligations of the investors is enforceable and the enforceability of that right is ensured through appropriate collateral arrangements;

(b) the right of the investors, when the securitisation is unwound or as the tranches amortise, to return any collateral that has not been used to meet protection payments is enforceable;

(c) where the collateral is invested in securities, the transaction documentation sets out the eligibility criteria and custody arrangement for such securities.

The transaction documentation shall specify whether investors remain exposed to the credit risk of the originator.

The originator shall obtain an opinion from a qualified legal counsel confirming the enforceability of the credit protection in all relevant jurisdictions.

9. Where other credit protection is provided in accordance with point (c) of paragraph (7) of this Article, the originator shall have recourse to high-quality collateral, which shall be either of the following:

(a) collateral in the form of 0% risk-weighted debt securities referred to in Chapter 2, of Part Three, Title II, of Regulation (EU) No 575/2013 that meet all of the following conditions:

(i) those debts securities have a remaining maximum maturity of up to three months which matches the payment dates;

(ii) those debt securities can be redeemed into cash in an amount equal to the outstanding balance of the protected tranche;

(iii) those debt securities are held by a custodian independent of the originator and the investors;

(b) collateral in the form of cash held with a third-party credit institution or in the form of cash on deposit with the originator, subject to a minimum credit quality step 2 as referred to in Article 136 of Regulation (EU) No 575/2013 The competent authorities designated pursuant to Article 29(5) of Regulation (EU) No 2402/2017 may, after consulting EBA, allow collateral in the form of cash held with a third-party credit institution or in the form of cash on deposit with the originator, subject to a credit quality step 3 provided that market difficulties, objective impediments related to the credit quality step assigned to the Member States of the institution or significant potential concentration problems in the Member States concerned due to the application of a minimum credit quality step 2 requirement referred to in this paragraph can be documented.

For the purposes of point (b), where the third-party credit institution or the originator no longer satisfies the minimum credit quality step 2, the collateral shall be promptly transferred to a third-party credit institution with a credit quality step of 2 or higher or the collateral shall be invested in securities meeting the criteria laid down in point (a) of this paragraph. The requirements set out in point (b) shall be deemed satisfied in the case of investments in credit linked notes issued by the originator, in accordance with Article 218 of Regulation (EU) No 575/2013.

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* Commission Implementing Regulation (EU) 2015/227 of 9 January 2015 amending Implementing Regulation (EU) No 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 48, 20.2.2015, p. 1).";

(8) Article 27 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in the first subparagraph:

- the first sentence is replaced by the following:

"Originators and sponsors shall jointly notify ESMA by means of the template referred to in paragraph 7 of this Article where a securitisation meets the requirements of Articles 19 to 22 or Articles 23 to 26, Articles 26a to 26e ('STS notification').";

- the following sentence is added:

"In case of an STS on-balance-sheet securitisation, only the originator shall be responsible for the notification.";

(ii) the second subparagraph is replaced by the following:

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

(b) paragraph 2 is amended as follows:

(i) in the first subparagraph, the first sentence is replaced by the following:

"The originator, sponsor or SSPE may use the service of a third party authorised under Article 28 to check whether a securitisation complies with Articles 19 to 22, Articles 23 to 26 or Articles 26a to 26e.";

(ii) in the second subparagraph, the first sentence is replaced by the following:

"Where the originator, sponsor or SSPE uses the service of a third party authorised pursuant to Article 28 to assess whether a securitisation complies with Articles 19 to 22, Articles 23 to 26 or Articles 26a to 26e, the STS notification shall include a statement that compliance with the STS criteria was confirmed by that authorised third party.";

(c) paragraph 4 is replaced by the following:

“4. The originator and, where applicable, sponsor, shall immediately notify ESMA and inform their competent authority when a securitisation no longer meets the requirements of Articles 19 to 22, Articles 23 to 26, or Articles 26a to 26e.”;

(d) in paragraph 5, the first sentence is replaced by the following:

“ ESMA shall maintain on its official website a list of all securitisations which the originators and sponsors have notified to it as meeting the requirements of Articles 19 to 22, Articles 23 to 26, or Articles 26a to 26e.”.

(e) in paragraph 6, the second subparagraph is replaced by the following:

“ESMA shall submit those draft regulatory technical standards to the Commission by [6 months after the date of entry into force of this amending Regulation].”;

(f) in paragraph 7, the second subparagraph is replaced by the following:

“ESMA shall submit those draft implementing technical standards to the Commission by [6 months after the date of entry into force of this amending Regulation].”;

(9) in Article 28(1) the first sentence is replaced by the following:

"1. A third party as referred to in Article 27(2) shall be authorised by the competent authority to assess the compliance of securitisations with the STS criteria provided for in Articles 19 to 22, Articles 23 to 26, or Articles 26a to 26e.";

(10) in Article 29(5), the second sentence is replaced by the following:

"Member States shall inform the Commission and ESMA of the designation of competent authorities pursuant to this paragraph by [6 months after date of entry into force]. Until the designation of a competent authority to supervise the requirements in accordance with Article 26a to 26e the competent authority designated to supervise the requirements in accordance with Article 18 to 27 applicable at [one day before date of entry into force] shall also supervise the requirements pursuant to Article 26a to 26e.";

(11) in Article 30(2), the following point (d) is added:

'(d) for STS on-balance-sheet securitisations, the processes and mechanism to ensure compliance with Articles 26b to 26e.';

(12) in Article 32(1), point (e) is replaced by the following:

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

(12a) in Article 32(2), point (d) is replaced by the following:

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

(12b) in Article 32(2), point (h) is replaced by the following:

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

(13) the following Article 43a is inserted:

"Article 43a

Transitional provision for STS on-balance-sheet securitisations

1. In respect of synthetic securitisations for which the credit protection agreement has become effective before [*date of entry into force*], originators and SSPEs may use the designation 'STS' or 'simple, transparent and standardised', or a designation that refers directly or indirectly to those terms, only where the requirements set out in Article 18 and the conditions set out in paragraph 3 of this Article are complied with at the time of the notification referred to in Article 27(1).

2. Until the day of application of the regulatory technical standards referred to in Article 27(6), originators shall, for the purposes of the obligation set out in Article 27(1), make the necessary information available to ESMA in writing.";

3. Securitisations the initial securitisation positions of which were created before [date of entry into force] shall be considered 'STS' provided that:

(a) they met, at the time of the creation of the initial securitisation positions, the requirements set out in Article 26b(1) to (5), (7) to (9) and (11) to (12) , Article 26c(1) and (3) and Article 26e(1), (2) first subparagraph, (3) third and fourth subparagraph, (6) to (9); and

(b) they meet, as of the time of notification pursuant to Article 27(1), the requirements set out in Article 26b(6) and (10), Article 26c(2) and (4) to (10), Article 26d(1) to (5) and Article 26e(2) second to seventh subparagraph, (3) first, second and fifth subparagraph and (4) to (5).

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

(a) in Article 26d(2), ‘prior to the closing of the transaction’ shall be deemed to read ‘prior to notification under Article 27(1)’;

(b) in Article 26d(3), ‘before the pricing of the securitisation’ shall be deemed to read ‘prior to notification under Article 27(1)’;

(c) in Article 26d(5):

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

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

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

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

(14) Article 45 is deleted.

Article 2

Entry into force

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

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

Done at Brussels,

For the European Parliament	For the Council
The President	The President