

ALLEN & OVERY

A step closer to an EU STS framework for balance sheet synthetic securitisations – European Commission legislative proposals published

August 2020



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1. Summary and Next Steps

At the end of July 2020, the European Commission published legislative proposals for a package of measures dubbed the “Capital Markets Recovery Package” (linked [here](#)). The proposals are aimed at supporting recovery from the economic shock caused by the COVID-19 pandemic through targeted amendments to existing financial legislation. Recognising that securitisation can foster economic recovery, and that risk transfer from banks to the non-banking sector is a key objective of the Capital Markets Union, the proposals include the introduction of a regulatory regime for simple, transparent and standardised (**STS**) synthetic securitisations via amendments to the EU Securitisation Regulation (the **Securitisation Regulation**)¹ and Capital Requirements Regulation (the **CRR**)² (the **Securitisation Regulation Proposals**,³ the **CRR Proposals**⁴ and, collectively, the **Commission Proposals**). The Commission Proposals are accompanied by a report from the European Commission to the European Parliament and Council on the creation of a specific framework for balance sheet synthetic STS securitisation (the **Commission Report**).⁵

The Commission Proposals and the Commission Report are based, closely, on the European Banking Authority (**EBA**)’s final report of 6 May 2020 (the **EBA Report**)⁶ (which the EBA was mandated to prepare under Article 45 of the Securitisation Regulation). For our discussion of the EBA Report, please refer to our earlier briefing “Towards an EU STS framework for balance sheet synthetic securitisation – EBA final report published” of July 2020 (linked [here](#)). In line with the EBA recommendations (and related recommendations set out in the final report of the High-Level Forum on the Capital Markets Union of 10 June 2020 (linked [here](#))), the Commission Report and the Commission Proposals support the creation of a cross-sectoral STS framework for balance sheet synthetic securitisations (excluding arbitrage synthetic securitisations) (the **Proposed Balance Sheet Synthetic STS Framework**), and adopt, via amendments to Article 270 of the CRR, the differentiated prudential treatment for such transactions that was outlined (albeit not positively recommended) in the EBA Report.

This briefing provides an overview of the key points to note about the Commission Proposals. Appendix 1 contains an overview table of the Proposed Balance Sheet Synthetic STS eligibility criteria as set out in the EBA Report, and the eligibility criteria as set out in the Commission Proposals. Appendix 2 contains a redline showing differences between the eligibility criteria as set out in EBA Report and the eligibility criteria as set out in the Commission Proposals. Appendix 3 contains a mark-up showing changes other than eligibility criteria (grandfathering etc.) made by the Commission Proposals to the Securitisation Regulation and the CRR.

The Commission Proposals and this briefing will be of interest to originators and investors currently active in the synthetic securitisation markets and to entities that may be interested in participating in those markets. We continue our involvement in the relevant AFME working group and will be providing input to the industry response to the Commission Proposals.

The Commission Proposals correspond closely to the proposals in the EBA Report. The most significant changes to the Proposed Balance Sheet Synthetic STS Framework **eligibility criteria** relative to the proposals in the EBA Report are as follows:

¹ Regulation (EU) 2017/2402: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32017R2402>.

² Regulation (EU) No 575/2013, as amended.

³ See the text of the Securitisation Regulation Proposals at: https://ec.europa.eu/finance/docs/law/200724-securitisation-review-proposal_en.pdf.

⁴ See the text of the CRR Proposals at: https://ec.europa.eu/finance/docs/law/200724-crr-review-proposal_en.pdf.

⁵ See the text of the Commission Report at: https://ec.europa.eu/finance/docs/law/200724-report-synthetic-securitisation_en.pdf.

⁶ See <https://eba.europa.eu/eba-proposes-framework-sts-synthetic-securitisation>.

- **Mandatory sub-CQS 2 ratings downgrade trigger for holder of cash collateral (if any)**⁷: rather than leaving it to the parties to set the appropriate level for the trigger following which cash collateral (if any) held by the originator or a third-party bank must be transferred to an appropriately rated third-party bank, or invested in high-quality securities (as proposed in the EBA Report), the amended requirement mandates a trigger where the cash collateral holder's credit rating falls below credit quality step (CQS) 2. CQS 2 maps⁸ to an A rating for Fitch, Moody's, or S&P and may not be achievable for all protection buyers (though, for protection buyers with weaker credit ratings, transactions may, in any case, be structured to include a third party account bank or alternative forms of collateral arrangements).
- **Servicer replacement mechanics now required even where the protection buyer is servicer**: the EBA Report contained a carve-out to the requirement for contractual provisions effecting servicer replacement (for default/insolvency) where the servicer was the protection buyer itself. This carve-out has been deleted. Replacement of a protection buyer servicer may be impractical in a synthetic securitisation context (though we have seen deals in which the credit protection survives protection buyer insolvency if a suitable servicer replacement can be appointed, including by a resolution authority appointee).
- **Lack of explicit regulation of investor termination events**: changes to the drafting of the requirements relating to early termination events mean there is now no explicit regulation, in the Proposed Balance Sheet Synthetic STS Framework⁹, of events leading to early termination by the protection seller (as opposed to events leading to early termination by "the originator", which remain regulated)¹⁰. In particular, there is no explicit prohibition on early termination by the protection seller based on protection buyer insolvency (although termination for protection buyer insolvency was discussed and disapproved in the EBA Report¹¹). It is not clear whether this is intentional.
- **Clear that interest and currency rate risks must be "appropriately mitigated" as well as disclosed**: Although less onerous than the original EBA DP proposals, which required the protection *buyer* to bear *no* currency or interest rate risk in relation to the credit protection, the Commission Proposals still require interest and currency rate risks arising from the securitisation, and their possible effects on payments to the protection purchaser and investors, to be "*appropriately mitigated*" as well as disclosed (it was not wholly clear from the EBA Report whether disclosure alone would suffice).
- **Omission, from the name used to refer to the regime/transactions benefiting from regime, of the word "synthetic"**: in the proposed operative provisions of the Securitisation Regulation and CRR Article 270, the regime/transactions benefiting from the regime are referred to as "simple, transparent and standardised on-balance sheet securitisations", rather than as "simple, transparent and standardised on-balance sheet *synthetic* securitisations". This change (although conceivably a drafting error) is sufficiently widespread to appear intentional¹². The modern industry has, for some time, vocally rejected the term "synthetic" for its unjustified connotations. The change (if intentional)

⁷ I.e. the trigger for cash collateral (if any) held by the originator or a third party bank to be transferred to an appropriately rated third-party bank, or invested in high quality securities

⁸ ⁸ In this case, it is the general CQS mapping standards (<https://eur-lex.europa.eu/legal-content/EN/TEXT/?uri=CELEX:02016R1799-20191224>, see Art 16 and Annex III) that apply and not the mapping standards for securitisation positions, because the requirement here is for an ECAI rating in respect of the collateral holder and not in respect of a securitisation position.

⁹ For CRR regulated protection buyers, the credit risk mitigation requirements of the CRR imposes a prohibition on clauses (among other things) permitting a protection seller to terminate for matters that are "outside the direct control" of the protection purchaser.

¹⁰ The criterion dealing with early termination refers only to circumstances in which "an originator" may "terminate a transaction prior to its scheduled maturity". Proposed Article 26c(4) of the Securitisation Regulation refers to enforcement action by investors following "enforcement event[s]" in respect of the protection buyer, but the criteria do not articulate any permitted investor enforcements events (other than – by implication – breach of the protection buyer representations and warranties required by proposed Article 26b); there is, for example, no express permission for investor early termination for failure to pay by the protection buyer (which is clearly fundamental), or change of tax law. Neither, however, is there any express restriction of investor early termination for other matters.

¹¹ Termination for protection purchaser insolvency is included widely in transactions structured for credit risk mitigation eligibility. The view has been taken, historically, that a protection purchaser's insolvency is within its direct control.

¹² The term is used without inclusion of the word "synthetic" in Article 19, the title to section S2, Article 26a, Article 30(2)(d) and Recital 17 of the Securitisation Regulation and in Article 270 CRR. Conversely, Articles 27 and 42a retain references to "on-balance-sheet synthetic securitisation" as do certain of the Recitals to the Commission Proposals.

could be seen as a response to that lobbying. It would be cosmetic, rather than substantive, in that only transactions falling within the defined term ‘synthetic securitisation’ in Article 2(10) of the Securitisation Regulation could satisfy the proposed eligibility criteria, and it is otherwise apparent that only synthetic securitisations are targeted¹³.

- **No express reference to ‘hybrid amortisation structures’:** unlike the EBA Report, the Commission Proposals do not refer to hybrid amortisation structures (involving a ‘combination of pro rata and sequential’ amortisation or in which pro rata amortisation applies to certain tranches only) as permitted (although they are also not expressly disallowed).
- The provisions of the Commission Proposals relating to **grandfathering** and **timing for development of regulatory technical standards (RTS) and implementing technical standards (ITS)** are also important to note.
- **No grandfathering for existing Article 270 CRR deals:** as discussed further below, current Article 270 of the CRR provides a limited, STS-like capital treatment for originators’ retained senior positions in balance sheet synthetic securitisations of SME exposures. Under the Commission Proposals, the current Article 270 CRR regime is replaced, without any provision for grandfathering. Hopefully, this is an oversight, and grandfathering will be introduced for deals currently qualifying under Article 270 CRR as part of the legislative process. Otherwise, such deals will need to comply with the Commission Proposals (for which they were not structured), or face loss of their differentiated capital treatment.
- **Deals closing before entry into force of the Commission Proposals are required to meet the eligibility criteria only on notification as STS:** For deals closing before entry into force of the Commission Proposals, compliance with the requirements of the proposals is required only at the time of *notification* of a transaction as STS – leaving open the possibility of amendment to such deals to achieve compliance with the final requirements. It is to be confirmed, however, whether this means that references in the eligibility criteria to the ‘closing date’ can be interpreted as references to the time of STS notification/whether other issues in this respect will be identified.
- **Homogeneity RTS to be developed within six months of entry into force of changes to the Securitisation Regulation (and to take into account contractual credit risk and prepayment characteristics):** The Commission Proposals envisage development, by the EBA (in cooperation with ESMA and EIOPA) of the homogeneity RTS envisaged in the eligibility criteria within six months of entry into force of the Securitisation Regulation changes. The RTS are required to take into account asset cash flow characteristics, including contractual credit risk and prepayment characteristics. The homogeneity standards proved a contentious aspect of the development of an STS regime for traditional securitisations. It is to be hoped that the standards for balance sheet synthetic securitisations reflect the fact that (as noted by the EBA in the EBA Report) the ability to accommodate pools of less homogenous assets (in particular, assets from multiple jurisdictions) that are hard to securitise in a traditional format, is a core strength of the synthetic securitisation format.
- **STS Notification RTS and ITS to be developed within six months of entry into force of changes to the Securitisation Regulation:** The Commission Proposals envisage development, by the EBA (in cooperation with ESMA and EIOPA) of the RTS and ITS in relation to STS notifications (which are to be made by the protection buyer alone) within six months of entry into force of the Securitisation Regulation changes. Pending development of these standards, protection buyers must make the necessary information available to ESMA in writing.

¹³ See e.g. proposed Article 26a Securitisation Regulation “STS on-balance-sheet securitisations are synthetic securitisations that meet the requirements set out in Articles 26b to 26e” and use of the term synthetic excess spread.

In terms of the next steps, the Commission Proposals will now be subject to the approval by the European Parliament and the Council and it is generally expected that the final (or near final) position will be confirmed by the end of 2020 (with the date of the entry into force and the direct application of the amending regulations in the EU member states on the 20th day following their publication in the Official Journal).

The Securitisation Regulation framework will, separately, be subject to a comprehensive review by January 2022, so that the European Commission, when preparing its report to the European Parliament and the Council, as required under Article 46 of the Securitisation Regulation, will have an opportunity to assess the functioning of the Proposed Balance Sheet Synthetic STS Framework and, if appropriate, put forward other legislative proposals.

The clear support of the European Commission for balance sheet synthetic securitisations are positive news for the industry. Maintaining momentum on these reforms and ensuring that the industry is provided, as soon as possible, with clarity on the final position, and the ability of new or existing balance sheet synthetic securitisations to be structured to meet the new STS requirements, will be key for its success and for achieving relevant objectives of the EU Capital Markets Recovery Package.

An electronic version of this briefing and the earlier briefings on the EBA Report and a related EBA discussion paper of September 2019 (the **EBA DP**)¹⁴ (as well as our briefing entitled “Navigating the EU Securitisation Regulation”, which provides a general overview of the Securitisation Regulation regime) is available via our online services for clients through our online portal “AOHub”, in particular, our ABS Regulatory Reform Roadmap website and the STS Spotlight website. Please visit <http://www.allenoverly.com/Online-Services/Pages/default.aspx> for more information. Alternatively, please speak to your Allen & Overy contact or email capitalmarkets@allenoverly.com.

¹⁴ See: <https://eba.europa.eu/documents/10180/2963923/EBA+Discussion+Paper+on+STS+syntehtic+securitisation.pdf>

2. Background

By way of background (and as defined in Article 2(10) of the Securitisation Regulation), a “*synthetic securitisation*” is a securitisation in which the transfer of risk is achieved through the use of credit derivatives or guarantees, and the securitised exposures remain exposures of the originator. By contrast (and as defined in Article 2(9) of the Securitisation Regulation), in a “*traditional securitisation*”, the economic interest in the securitised exposures is transferred through the transfer of ownership of those securitised exposures from the originator to an SSPE or through sub-participation by an SSPE (i.e. so-called “*true sale*” securitisation). Synthetic securitisations are precluded from benefitting from the existing STS regime available to traditional securitisations.

In line with the EBA Report, the term “*balance sheet synthetic securitisation*” is used in the Commission Report to refer to a synthetic securitisation in which the protection buyer’s primary objective is the transfer of credit risk relating to exposures held on its balance sheet and originated or purchased within a core lending/business activity. It is distinguished from the term “*arbitrage synthetic securitisation*”, which refers to transactions where the protection buyer purchases exposures outside its core lending/business activity for the sole purpose of buying credit protection on them (i.e. securitising them) and thus creating an arbitrage on the yields resulting from the transaction. In line with the EBA’s recommendations, the Commission Proposals exclude arbitrage synthetic securitisations from the potential new STS framework for synthetic deals, limiting it to balance sheet synthetic securitisations only.

As indicated above, existing Article 270 of the CRR provides a limited, STS-like capital treatment for originators’ retained senior positions in balance sheet synthetic securitisations of SME exposures. The treatment is available where significant credit risk is transferred to either: (i) national or supranational entities (central banks, central governments, multilateral development banks or international organisations) that are 0% risk weighted through unfunded guarantees; or (ii) institutional investors through fully cash-collateralised guarantees (i.e. cash on deposit with the institution) and, in each case, the STS requirements for traditional securitisations are met (other than in respect of true sale and non-encumbrance) (the **Existing Art 270 Regime**). The CRR Proposals amend the Article 270 CRR regime to create the differentiated prudential treatment for balance sheet synthetic STS securitisations discussed in this briefing which is not restricted by asset class, is subject to different eligibility criteria, and is subject to the prudential requirements of Article 243(2) CRR (please refer to Appendix 3 below for a mark-up of Article 270 showing the proposed amendments).

3. Key takeaways on the differentiated regulatory treatment

As indicated above, in line with the EBA Report, the Commission Proposals provide for the creation of a cross-sectoral STS framework for balance sheet synthetic securitisations (excluding arbitrage synthetic securitisations) (the **Proposed Balance Sheet Synthetic STS Framework**). The Commission Proposals adopt the associated differentiated prudential regime that was outlined (although not positively recommended) in the EBA Report.

The differentiated prudential regime is limited to senior securitisation positions¹⁵ retained by the originator (there is no investor benefit), and matches the treatment for senior securitisation positions in STS traditional securitisations. The risk weight floor applicable to an originator's retained senior securitisation position is reduced to 10% (from 15%) and each risk weighting approach in hierarchy is re-calibrated to generate lower capital charges (for detail see footnote¹⁶). The exclusion of investors from the differentiated prudential regime does not represent a significant limitation at present, given the composition of the investor base for balance sheet synthetic securitisations (investors – other than insurers - are typically not prudentially regulated), but could, potentially, have relevance in terms of future market development (e.g. no incentive is provided for expansion of the insurer investor base). The limitation of the benefit to senior securitisation positions could potentially prove relevant under the external ratings-based approach to securitisation position risk weighting (SEC-ERBA) to the extent that retained tranches are required to be split for ratings purposes. However, we note that the SEC-ERBA is subordinate in the risk weighting hierarchy to the SEC-IRBA and (save where CRR-specified exceptions apply) the SEC-SA, producing typically higher risk weights in any case.

As noted in the EBA Report, the differentiated prudential regime to accompanying the Proposed Balance Sheet Synthetic STS Framework entails non-compliance with Basel (which does not contain, and is not expected to develop, a 'simple transparent and comparable' (STC) framework for synthetic securitisations akin to its STC regime for traditional securitisations). The EU has, however (as the EBA noted), diverged from Basel in certain other respects (for example, in extending a more favourable regime for covered bonds). For further details of the pros and cons articulated in the EBA Report for introducing a differentiated prudential treatment – which potentially remain relevant to the EU Parliament and Council's reception of the Commission Proposals – see the footnote¹⁷.

¹⁵ This term is defined in Article 242 CRR as a "position backed or secured by a first claim on the whole of the underlying exposures, disregarding for these purposes amounts due under interest rate or currency derivative contracts, fees or similar payments, and irrespective of any difference in maturity with one or more other senior tranches with which that position shares losses on a pro rata basis".

¹⁶ P would be reduced by 50% (subject to p parameter floor of 0.3) on the SEC IRBA; P would be reduced to 0.5 (rather than 1 for other securitisations) [and the W delinquency parameter adjusted to reduce Ksa (Basel only, not in CRR?)] on the SEC-SA; and regulatory risk weights would be reduced on the ERBA.

¹⁷ Other negative factors articulated in the EBA Report were the limitations of the performance data on which the analysis in the EBA Report was based and the market's limited experience to date with the traditional STS framework. The EBA noted, however, that the available data had increased as a result of the consultation process, and would increase further through market compliance with the transparency requirements of the Securitisation Regulation (which require loan level disclosures in relation to private as well as public securitisations). The EBA articulated a concern about potential large-scale replacement of regulatory capital by credit risk mitigation. This appeared an unlikely consequence of the limited amendments envisaged by the Proposed Balance Sheet Synthetic STS Framework in the context of the existing synthetic securitisation, and broader credit risk mitigation frameworks. Mass expansion also appeared likely to be constrained by the nature of the investor base. The concern was also, to some extent, in tension with the potential benefits of the Proposed Balance Sheet Synthetic STS Framework, cited by the EBA in terms of: funding the real economy (supporting lending to SMEs and large firms, in particular), the relevance of which might be expected to have increased significantly as a result of the Covid-19 crisis; and fostering financial stability (transferring credit risk from banks to markets). The EBA noted the potential for growth in the synthetic sector (overcoming constraints of the Existing Art 270 Regime) and the driver to this growth represented by ongoing reforms to the prudential framework for banks. The EBA articulated its belief in the technical feasibility of a prudentially sound STS synthetic securitisation product. Data cited by the EBA indicated that the historic performance of balance sheet synthetic securitisations had actually been better than that of traditional securitisations for all asset classes (with zero default and loss rates on senior tranches for a significant majority of transactions and asset classes, and very low default and loss rates overall), and that balance sheet synthetic securitisations had performed broadly consistent with the performance of comparable underlying exposures. The EBA noted the desirability of ensuring a prudentially level playing field with STS traditional securitisations and concluded that the Proposed Balance Sheet Synthetic STS designation would unlikely 'cannibalise' STS traditional securitisation, given the different portfolios associated with each of these securitisation types (the EBA noted, in particular, the advantages of synthetic, as opposed to true sale, techniques for portfolios of mixed jurisdiction assets) – it could also have noted the different investor bases for traditional and synthetics deals.

In order to benefit from the differentiated prudential regime, a securitisation is required to comply with eligibility criteria relating to simplicity, transparency and standardisation specified in the Commission Proposals and discussed below. The securitised assets are also required to comply with prudential eligibility criteria identical to those applicable, under Article 243(2) CRR, to non-ABCP traditional securitisations seeking STS prudential treatment. Article 243(2) CRR imposes (broadly) a concentration limit in relation to the securitised exposures (a 2% maximum exposure to any obligor and its connected clients¹⁸). The concentration limit might be anticipated to be more restrictive, in practice, in the context of synthetic than traditional securitisations, given that synthetic securitisations of certain asset classes which are better suited to synthetics (such as corporate loans) are often less granular. Article 243(2) CRR also imposes (broadly) maximum risk weights for the underlying exposures, by asset class, at the point of contribution to the securitisation: 40% for residential real estate, 50% for commercial real estate, 75% for retail exposures (although retail exposures and residential real estate have, until recently, been relatively rare underlying asset classes for synthetic securitisations), and 100% for other exposures, (in each case assessed based on the Standardised Approach to credit risk) as well as a maximum loan to value ratio of 100% for residential real estate and charge seniority requirements for real estate in general¹⁹. These limits will be increasingly relevant once 'Basel IV' (i.e. the Basel III changes finalised in December 2017) is implemented in the EU²⁰.

The differentiated prudential treatment does not extend beyond regulatory capital benefits to include, for example, liquidity benefits such as potential eligibility within the high-quality liquid assets (**HQLA**) framework under the Liquidity Coverage Ratio regime.

¹⁸ Excluding exposures relating to commitments to repurchase/refinance securitised residual leasing values by third-party protection providers eligible under Article 201(1) CRR.

¹⁹ It is a requirement in relation to real estate that assets secured by lower ranking exposures only be included where all loans secured by prior ranking exposures are also included.

²⁰ Assuming implementation in the EU in line with the Basel text. Per the current Basel timetable (following a deferral linked to the Covid-19 crisis), the Basel IV changes are due to be implemented in the EU by 1 January 2023 (though it is not clear whether this timetable will be met).

4. Key takeaways on the proposed eligibility criteria

The Proposed Balance Sheet Synthetic STS Framework takes the STS criteria for traditional non-ABCP securitisations (the **Traditional STS Criteria**) as its starting point, adapting these, and introducing certain additional requirements to identify a set of STS criteria for balance sheet synthetic securitisation. The analysis below identifies: (i) the key differences between the Proposed Balance Sheet Synthetic STS Framework and the Existing Art 270 Regime; and (ii) the key novel aspects of these criteria compared with the Traditional STS Criteria²¹.

4.1 Requirement for an EU-regulated protection buyer and the UK withdrawal from the EU (Brexit)

The Commission Proposals indicate that, for a transaction to qualify under the Proposed Balance Sheet Synthetic STS Framework, the protection buyer must be an originator (a term defined in within the meaning of Article 2(3) of the Securitisation Regulation) in respect of the underlying exposures. The protection buyer must also be authorised or licensed in the Union (although it is no longer required to be EU-established)²², meaning that (subject to any transitional provisions) balance sheet synthetic securitisations by UK protection buyers will not qualify as STS from the perspective of the EU investors once the UK withdraws from the EU, unless the protection buyer is authorised or licensed in the EU²³. However (unlike in a traditional securitisation context), the practical impact of this requirement is likely to be limited, given that most current investors in synthetic securitisations are outside the scope of the STS prudential benefit in any case (and typically not prudentially regulated). The prudential regulation of UK originators is a matter for the PRA/FCA and it remains to be seen whether and how any Balance Sheet Synthetic STS Framework will be implemented in the UK, which will in turn dictate the impact on the cross-border analysis from the perspective of an originator or investor that is prudentially regulated in the UK.

4.2 No restrictions on asset class

Helpfully, unlike the Existing Art 270 Regime, the Proposed Balance Sheet Synthetic STS Framework remains unlimited by asset class (subject to satisfaction of the Article 243(2) CRR risk weight restrictions discussed above).

4.3 Eligible credit protection types, providers and collateral

The Commission Proposals substantively replicate the requirements, proposed in the EBA Report, pertaining to eligible credit protection types, providers and collateral, save in relation to ratings downgrade triggers for cash collateral (see below). The requirements continue to preclude unfunded protection from private sector providers from benefitting from STS treatment, even if the provider is a regulated insurer, and to limit eligible collateral for funded protection to cash and short-term 0% risk-weighted debt securities.

Although the Proposed Balance Sheet Synthetic STS Framework is less restrictive in this respect than the Existing Art 270 Regime, market calls for the EBA to rely on the CRR's existing mechanics for credit risk mitigation (**CRM**) (which permit a wide range of unfunded credit protection providers and a wide range of collateral for funded transactions, adjusting the recognised protection/risk weight accordingly) remain unheeded. The Commission Proposals are, of course, attempting to make the framework

²¹ Note that this briefing does not focus on the issues associated with the Transitional STS Criteria, where such criteria are incorporated in similar/unchanged form into the Proposed Balance Sheet Synthetic STS Framework.

²² No references are included to specific EU legislation under which an originator must be regulated.

²³ And vice versa, for UK investors in balance sheet synthetics by EU originators, subject to any transitional arrangements.

available on a cross-sectoral basis so that, depending on the originator's regulatory status, the CRR CRM adjustment mechanics may (in theory) not apply. However, this is not the only basis for the proposed restrictions on eligible credit protection providers and collateral. The EBA indicated, in the EBA Report, that its stakeholders remain concerned about the residual credit risk associated with the synthetic risk transfer format²⁴. The EBA Report also espoused the view (notwithstanding industry responses to the contrary) that it is appropriate for the Proposed Balance Sheet Synthetic STS Framework to combine investor protection objectives with originator protection objectives, notwithstanding the existence of the significant risk transfer (**SRT**) regime under Article 245 of the CRR (and related guidance) designed to achieve the latter.

Unhelpfully, as in the Existing Art 270 Regime, unfunded credit protection in the Commission Proposals remains required to take the form of a guarantee, or counter-guarantee (i.e. not a credit derivative) that is eligible under Chapter 4, Part Three, Title II of the CRR (i.e. the CRR CRM mechanics applicable on the standardised and foundation internal ratings-based approaches) (**Chapter 4 CRR**) and eligible guarantors/counter-guarantors remain limited to national and supranational entities (central banks, central government, multilateral development banks and international organisations) that are 0% risk weighted. This will exclude, for example, the provision of unfunded credit protection by insurers. (The restriction of the unfunded format to guarantees/counter-guarantees (as opposed to credit derivatives) is not significant, in practice, given that transactions are, in any case, typically structured as guarantees especially where unfunded.)

Unlike the Existing Art 270 Regime, collateralised transactions in the Commission Proposals can take the form of either guarantees or credit derivatives²⁵ (in each case, Chapter 4 CRR eligible), and counterparty

eligibility for collateralised transactions is not limited to institutional investors. Unfortunately, collateral types, though broader than cash on deposit with the protection purchaser (the only option under the Existing Art 270 Regime), remain more restricted than under the CRR CRM eligibility criteria. There is no reference in the Commission Proposals to the permissibility or otherwise of the use of a repo structure whereby the protection buyer essentially provides collateral to the protection provider in respect of its obligation to return cash collateral at the end of the transaction.

Collateral is permitted to take the form of debt securities that are 0% risk weighted under the CRR standardised approach to credit risk with a residual maturity of three months or fewer²⁶ held by an independent custodian.

Alternatively, collateral may take the form of cash held with a third-party credit institution or on deposit with the protection purchaser. The latter is in line with market practice and preferable, from a risk weighting perspective, for the protection purchaser to exposure to a third-party credit institution.

In either case, unless the securitisation is a CLN directly issued by the protection purchaser²⁷, cash collateral must be subject to ratings downgrade triggers providing for its transfer to an appropriately rated third-party bank, or investment in high-quality securities held by a custodian/the protection buyer.

Instead of leaving the trigger credit rating to the parties' discretion (as proposed in the EBA Report), the Commission Proposals impose a minimum CQS 2 rating requirement to the entity holding the cash collateral (including, where applicable, the originator). EU mapping standards are used to map ratings issued by external credit assessment institutions (**ECAIs**) to CQS levels²⁸. CQS 2 maps to an A rating for Fitch, Moody's and S&P and may not be achievable by all protection buyers (though, for protection buyers

²⁴ The residual credit risk of the originator of a synthetic securitisation to the protection provider in respect of protection payments, and the residual credit risk of the protection provider to the originator in respect of fees and (where relevant) collateral.

²⁵ Including credit linked notes.

²⁶ The maturity of which is required to match the securitisation's payment dates facilitating redemption into cash in an amount equal to the outstanding balance of the protected tranche.

²⁷ In line with Article 218 CRR ratings downgrade triggers are not required in these circumstances; however, the purposive difference between directly and indirectly issued CLNs in this respect is not wholly clear.

²⁸ In this case, it is the general CQS mapping standards (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02016R1799-20191224>, see Art 16 and Annex III) that apply and not the mapping standards for securitisation positions, because the requirement here is for an ECAI rating in respect of the collateral holder, not a securitisation position.

with weaker credit ratings, transactions may, in any case, be structured to include a third party account bank or alternative forms of collateral arrangements).

It is not wholly clear that the two permitted collateral types can be combined (i.e. 0% risk-weighted debt securities and cash), but hopefully this is the intention²⁹.

4.4 Balance sheet synthetic securitisation transactions only (exclusion of arbitrage synthetic securitisations)

In line with the EBA Report, the Commission Proposals include a number of measures to define and limit the Proposed Balance Sheet Synthetic STS Framework to balance sheet synthetic securitisations, excluding arbitrage synthetic securitisations (as noted above, per the EBA Report, the latter refers to “*transactions where the protection buyer purchases exposures outside their core lending/ business activity, for the sole purpose of writing credit protection on them (ie securitising them) and arbitraging on the yields resulting from the transaction*”). In line with the EBA Report, the Commission Proposals require that the underlying exposures of a balance sheet synthetic securitisation are originated as part of the “*core business activity*” of the protection buyer; however, this key term is undefined.

The Commission Proposals continue to require underlying exposures to be held on the balance sheet of the protection buyer or a member of its group at or before the closing date. However, they newly define “group” for this purpose to mean (broadly) members of a CRR prudential consolidation group³⁰ or group of insurance or reinsurance undertakings for Solvency II purposes³¹ (securitisations of assets held on the balance sheets of corporate group entities that are not part of the protection buyer’s group for *prudential*

purposes will not be STS). This change, together with the rationale for the equivalent criterion in the EBA Report, suggest that it is sufficient for an exposure to be included in the *regulatory* (as opposed to accounting) balance sheet. However, synthetic securitisation of assets previously subject to non-SRT traditional securitisation (which necessarily remain in the regulatory balance sheet) could encounter issues relating to the prohibition on double-hedging (undefined) – see below – unless interpretation³² and/or structuring can be developed to address this. In line with the EBA Report, the exposures must be identified via a reference register and, again, as in the EBA Report, the protection buyer is required to undertake not to double-hedge its exposure to the credit risk of the underlying exposures³³. Where a protection buyer purchases third-party exposures and securitises them, the Commission Proposals (in line with the EBA Report) require it to apply credit and collection, debt work-out and servicing policies to the purchased exposures that are “*no less stringent*” than those applied to “*comparable exposures*” that are not purchased (to avoid moral hazard)³⁴ and, for all protection buyers, servicing procedures and underwriting criteria are required to be “*at least as stringent*” as the procedures/criteria applied by the originator to “*similar exposures which are not securitised*”.

4.5 Compliance with Article 249 of the CRR (and hence Chapter 4 CRR)

In the Commission Proposals, in line with the EBA Report, the credit protection agreement is required to comply with the CRM requirements for securitisations in Article 249 CRR (which requires compliance with, gold-plates, and clarifies the application of, Chapter 4 CRR, in certain respects, for

²⁹ Given, for example, the need for collateral management in relation to 0% risk-weighted debt securities.

³⁰ A group of legal entities subject to prudential consolidation in accordance with Part One, Title II, Chapter 2 of Regulation (EU) No 2013/575.

³¹ Group as defined in point (c) of Article 212(1) of Directive 2009/138/EC.

³² Such transactions would not be undertaken for reasons of arbitrage but for regulatory balance sheet management and would not appear to offend, purposively, against the criteria.

³³ As indicated above, unlike in earlier synthetic STS proposals it is no longer necessary for the underlying exposures to be held on the originator’s own balance sheet, they can be on the balance sheets of other group

companies, or sold in the ordinary course of business, however an originator’s ability to double-hedge also has a bearing on insurance re-characterisation. Where a retained tranche constitutes the risk retention for a securitisation, the proposed prohibition on double-hedging overlaps with the risk retention requirements.

³⁴ Ensuring that the management of exposures purchased for the purposes of securitising them is consistent with that of similar exposures not securitised is important to avoid the occurrence of moral hazard behaviours by the protection buyer that could result in an overall lesser credit quality of the securitisation transaction, ultimately affecting both retained securitisation positions and securitisation positions placed with investors.

securitisations) for CRR institutions, or with “*no less stringent*” requirements for non-CRR institutions.

4.6 Early termination events

In line with the EBA Report, the Commission Proposals propose to regulate permissible early termination events in the credit protection in a manner that is stricter than the requirements of Chapter 4 CRR.

The EBA Report (like the EBA’s earlier DP) appeared to envisage regulation of all early termination events, including early termination by investors. There was, for example, discussion of the pros and cons of permitting early termination for protection buyer bankruptcy (which the EBA Report concluded should not be permitted³⁵) and explicit sanction for early termination for failure to pay by the protection *buyer*. Changes to the drafting mean that it is now possible to read the Commission Proposals as regulating only the circumstances in which the protection *purchaser* can terminate the credit protection, with no regulation of *protection provider* early termination rights³⁶, although it is not wholly clear if this is the intention. Termination rights, granted to protection providers, for protection buyer failure to pay premium, or protection buyer breach of other material contract obligations (including representations and warranties)³⁷ must presumably be acceptable, and protection provider termination rights, for change of tax law and illegality/force majeure are market standard³⁸, but is a protection provider termination right for protection buyer bankruptcy still permissible (contrary to the EBA Report rationale)?

Permitted protection *buyer* early termination rights are now expressly limited to:

- protection provider insolvency;

- protection *provider* failure to pay any amounts due under the credit protection agreement;
- protection provider breach of material contract obligation³⁹;
- relevant regulatory events;
- time calls at or following the weighted average life (**WAL**) of portfolio as at closing and which are not structured to avoid allocating losses to credit enhancement positions or other positions held by investors, or otherwise structured to provide credit enhancement; and
- clean-up calls complying with Article 242(1) CRR.

The proposed description of regulatory events permitted to trigger an originator call is revised slightly relative to the EBA Report. The prohibition on regulatory events relating to “*factors affecting the economic efficiency of the transaction that are not enshrined in law or regulation such as credit rating agencies’ methodologies and central banks’ collateral frameworks*” has, helpfully, been deleted. In line with proposals in the EBA SRT DP, SRT calls (i.e. calls for failure to gain/loss of SRT) continue to be explicitly sanctioned. The explicitly permitted text continues to refer to changes in tax or accounting treatment of a transaction, as well as changes in EU or national law and official interpretation thereof as permissible. It also, however, continues to require such changes to lead to a “*material adverse effect on the amount of capital that the protection buyer is required to hold in connection with the securitisation...*” (as opposed to a material impact on the “*distribution of economic benefits derived from the ...securitisation transaction by any of the parties in the transaction*” per the current EBA SRT Guidelines, or impact on “*the allocation of benefits among the [transaction parties]*” per the EBA SRT DP), making it hard to reconcile with a protection buyer right to terminate for change in tax law that impacts the withholding position of the protection buyer or provider without impacting the protection buyer’s capital requirements for the securitisation, or a protection buyer right

³⁵ With no discussion of a requirement for continued servicing.

³⁶ The criterion dealing with early termination refers only to circumstances in which “an originator” may “terminate a transaction prior to its scheduled maturity”. Proposed Article 26c(4) of the Securitisation Regulation refers to enforcement action by investors following “enforcement event[s]” in respect of the protection buyer, but the criteria do not articulate any permitted investor enforcements events (other than – by implication – breach of the protection buyer representations and warranties required by proposed Article 26b); there is, for example, no express permission for investor early termination for failure to pay by the protection buyer (which is

clearly fundamental), or change of tax law. Neither, however, is there any express restriction of investor early termination for other matters.

³⁷ Which would presumably cover any default by a credit support provider of the protection provider

³⁸ And included in standard form ISDA documentation, notwithstanding the requirements of the Article 213(1)(c)(i) and (iii) CRR prohibition on clauses outside the protection buyer’s direct control that permit the protection seller to cancel the protection unilaterally, or prevent it from being obliged to pay.

³⁹ And including any default by a credit support provider of the protection buyer.

to terminate for illegality/force majeure, that does not impact the protection buyer's capital requirements for the securitisation⁴⁰. However, the list of permitted regulatory events is non-exclusive and it is, hopefully, not the EBA's intention to exclude calls by the protection buyer for change of tax law (including where it is the investor rather than the originator whose position is adversely affected), illegality, or force majeure - we would expect not.

The proposed definition of permissible time calls is consistent with the EBA Report and EBA SRT DP proposals (which go beyond the current SRT requirements at EU level), though no reference is made to replenishment periods. It is not clear whether this omission is intentional.

By referring to Article 242(1) CRR (rather than to Article 245(4)(f) CRR in line with the EBA Report) in relation to clean-up calls, the Commission Proposals remove the requirements for the call trigger to be (i) set at or below 10%⁴¹ and (ii) not structured to avoid allocating losses to credit enhancement positions/provide credit enhancement. CRR regulated protection purchasers seeking significant risk transfer, however, remain subject to the requirements of Article 245(4)(f) CRR (which impose these requirements) in addition to the STS requirements.

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The subject matter of the required representations and warranties is unchanged relative to the EBA Report text; however, their detailed drafting has been changed (see proposed Article 26(b)(6) Securitisation Regulation).

4.7 Credit Events

The Commission Proposals include minimum requirements for credit events. In line with the EBA Report, these now draw a distinction between the requirements for credit protection in the form of credit derivatives and credit protection in the form of guarantees. As the EBA Report noted, it may be

preferable, from an accounting perspective, for protection to take the form of a financial guarantee (typically accrual accounted) rather than a derivative (accounted for on a mark to market basis).

For credit derivatives, as in the EBA Report, restructuring (as well as failure to pay and bankruptcy of the underlying obligor) is a required credit event. This is in line with current market practice (not least because the omission of restructuring credit events under the current CRR framework for credit derivatives results in a 40% haircut to the recognised protection). However, we note that the omission of restructuring credit events will cease to result in prudential haircuts (in the presence of a unanimous lender consent requirement and robust insolvency law) once 'Basel IV' (i.e. the Basel III changes finalised in December 2017) is implemented in the EU⁴². The required credit event definitions (which track those in the EBA SRT DP) go beyond the required Chapter 4 CRR definitions for credit derivatives. It remains to be seen whether this gold-plating will also be applied by regulators to the non-securitisation CRM market, or will create divergence from that market.

For credit protection in the form of financial guarantees, the Commission Proposals, in line with the EBA Report, indicate that restructuring is not a required credit event. This is helpful; however, there remains a requirement to include a credit event relating to bankruptcy of the underlying obligor, as well as a credit event relating to failure to pay, whereas the CRR requirements for guarantees would mandate pay-out only on the occurrence of a failure to pay (such pay-outs would be required for as long as payments fall due under the underlying exposure, rather than leading to close-out as in the case of a credit default swap).

Unlike the EBA Report the Commission Proposals do not explicitly envisage additional credit events being included, but neither is this explicitly prohibited.

⁴⁰ At the Public Hearing in relation to the EBA DP on 9 October 2019, the EBA, helpfully, indicated that the fact that certain (market standard) termination events were not discussed in the EBA DP: force majeure; default by credit support provider; illegality and tax events of default should be taken as an indication that the EBA was comfortable with them.

⁴¹ I.e. the point at which 10% or less of the original value of the underlying exposures remains unamortised.

⁴² Assuming that this change is implemented in the EU in line with the Basel text.

4.8 Credit protection payments

In line with the EBA Report the Commission Proposals regulate the calculation of credit protection payments. These are to be calculated based on the actual realised loss suffered by the originator (or lender) in accordance with its standard recovery policies and procedures for the relevant exposure types as recorded in its financial statements at the time the payment is made.

In line with market practice, the Commission Proposals, like the EBA Report provide for interim credit protection payments to be made within six months of a credit event (where the work-out has not yet been completed), followed by a true-up post-work-out. This interim payment period requirement is shorter than the one-year interim payment period proposed in the EBA's synthetic STS report and endorsed in the EBA SRT DP. It would be helpful for the EBA to confirm that payment in accordance with the proposals constitutes 'timely' payment for the purposes of the CRR (and related EBA single rulebook Q&A), and to confirm whether the requirement overrides the Article 215(1)(a) CRR permitted two-year payment period in the context of residential real estate (hopefully not). The interim payment is calculated as the greater of: the impairment recorded in the originator's financial statements; and where applicable (meaning, presumably, where the originator applies the internal ratings based approach) the loss given default (**LGD**) that would be applied by the originator to the underlying exposures⁴³.

In line with the EBA Report, the calculation mechanics for interim and final credit protection payments must be specified in the credit protection agreement, the amounts payable must be clearly set out and limited, and the

circumstances in which payments are required must be clearly set out and subject to verification by the verification agent (see below). The credit protection amount must be broken down to the level of individual underlying exposures (the CRR, which applies on an exposure-by-exposure basis, effectively requires this anyway for CRR institutions).

Where the work-out has not been completed before the scheduled legal maturity of, or early termination of, the credit protection, a final credit protection payment is required based on the estimated realised loss suffered by the originator and recorded in its financial statements at the time it is calculated⁴⁴. In line with the EBA Report, the Commission Proposals require the parties to specify a maximum extension period of up to two years for this purpose in the transaction documentation.

4.9 Credit protection premiums⁴⁵

In line with the EBA Report, the Commission Proposals contain proposals relating to credit protection premiums that are consistent with market practice in general. Premiums must be contingent (i.e. payments must be a function of the size and credit risk of the protected tranche) and must not be guaranteed, paid up-front, or subject to rebate, or other, mechanisms that may avoid or reduce actual allocation of losses to investors, or return part of paid premiums to the originator (there is no cross-reference to Basel or other guidance on high-cost credit protection). The transaction documentation is required to describe how the credit premium and any note coupons are calculated in respect of each payment date over the life of the securitisation.

⁴³ Although calculating interim loss based on LGD is in line with market practice, the proposed mechanics for interim payments based on impairment/LGD are slightly hard to reconcile with the required basis of calculation under the CRR save, potentially, for interim payments made by public sector guarantors/counter-guarantors relying on the exception under Article 215(2) CRR where interim payments based on robust estimates of loss are permitted, and it would be helpful if the EBA could explicitly confirm that its proposals should be taken to be compatible. The CRR eligibility requirements for guarantees require payments (interim or otherwise) to be based on the amounts contractually due from the underlying obligor to the extent defaulted, rather than estimates of loss such as those represented by provisions (the protection buyer must be able to pursue the guarantor for the "monies due under the claim in respect of which the protection is provided", the guarantee must cover "all types of payments the obligor is expected to make in respect of a claim", save that "where certain types of payment are excluded from the guarantee, the [protection purchaser] has adjusted the value of the guarantee to reflect the limited coverage" – see Articles 215(1)(a) and (c) of the CRR). The CRR eligibility requirements for cash settled

credit derivatives require payments to be based on "post credit event valuations of the underlying obligation" – see Article 216(1)(b) of the CRR. It would be helpful if the EBA could explicitly confirm that the proposals should be taken to be compatible.

⁴⁴ Again, though consistent with market practice, this is somewhat hard to reconcile with the Chapter 4 CRR eligibility requirements for guarantees in the sense that (based on the CRR payment calculation requirements indicated above, and the Article 213(1)(c)(iii) CRR prohibition on clauses that prevent the protection seller from being required to pay), the protection buyer should arguably receive the maximum loss that could be suffered based on the contractual terms to the extent covered by the tranche, less recoveries to date. The Commission Proposals indicate that the workout process for credit events that occur prior to termination is required to continue post-termination of the credit protection.

⁴⁵ As per terminology used in the Report, in this briefing references are made to "premiums" rather than "premia".

4.10 Verification agent

In line with the DP, the Report proposes a requirement for an “appropriate and independent” third-party verification agent (independent of the originator and, where applicable, the SSPE) and appointed by the originator before closing, to verify (as a minimum): the occurrence of credit events; that an underlying exposure was included in the securitisation at the time of the credit event; that an underlying exposure met the eligibility criteria at the time of its inclusion in the portfolio; that the underlying exposure complied with the replenishment conditions (where added in replenishment); the accuracy of the final loss amount by reference to the originator’s P&L statement; and the allocation of losses between investors. Although use of verification agents is common in market practice, the requirement represents an additional mandatory expense and administrative hurdle. In practice, where mezzanine risk is sold, verification may be structured to kick in only once junior risk has been eroded to a specified extent. This practice would not appear consistent with the proposals,

The 95% required confidence level, referred to in the EBA Report, for verification, by sampling, of the underlying exposures’ compliance with the eligibility criteria is not referred to in the Commission Proposals.

4.11 Servicer replacement requirement

The EBA Report included a carve-out, from the requirement to provide for replacement of the servicer (as well as the trustee and other ancillary service providers) in the event of default or insolvency, where servicing is undertaken by the protection buyer itself. The Commission Proposals fail to replicate that carve-out. Hopefully this is an oversight and will be addressed in the final legislation, as servicer replacement will generally not be practicable in synthetic transactions (though we have seen deals in which the credit protection survives protection buyer insolvency and which provide for servicer replacement, including by a resolution authority appointee).

4.12 Excess spread

Helpfully, as requested in industry feedback, the Commission Proposals, like the EBA Report, permit the use of synthetic excess spread (**SES**) – a feature

seen increasingly frequently in the market – subject to specified conditions. The changed position on SES was justified, in the EBA Report, partly in terms of ensuring parity with traditional securitisations, and partly on the basis that it is essential for SRT securitisations of certain retail asset classes associated with high yield and losses. The restrictions were intended to ensure that SES is not excessive (excess spread represents credit protection for the investor, too much excess spread might therefore prevent the investor from, realistically, suffering losses and undermine credit risk transfer). SES could also be set at a level that is excessive in relation to the portfolio’s ability to generate excess spread. The Commission Proposals provide that SES must:

- be a fixed, contractually specified percentage, per payment period, of the outstanding portfolio balance (the use of ‘actual’ excess spread, or other calculation mechanics, is not permitted);
- be provided on a ‘use it or lose it’ basis in that payment period (i.e. the SES must be available to cover losses arising in that payment period only, trapped SES is not permitted);
- represent, on an annual basis, no more than one year’s regulatory expected losses on the underlying portfolio (it is presumably for reasons of standardisation that an originator is not permitted to commit actual excess spread up to the permitted amount as a maximum), the Commission Proposals newly clarify that expected losses are calculated in accordance with Article 158 CRR for protection buyers on the internal ratings based approach to credit risk and on a basis that is “clearly determined in the transaction documentation” for other protection buyers; and
- be clearly specified in the transaction documentation.

The EBA Report indicated that the sanction provided for the use of SES in the context of synthetic STS transactions does not prejudice the ability of national competent authorities to scrutinise SES in assessing commensurate risk transfer for SRT transactions.

(At the Public Hearing on the SP, the EBA noted, in passing, that discussions in relation to excess spread are taking place at Basel level.)

4.13 Pro rata amortisation

In line with the EBA Report, the Report indicates that pro rata amortisation to determine the outstanding size of tranches is considered compatible with STS⁴⁶, provided that specified triggers relating to the performance of the underlying exposures are included in the documentation to switch to sequential amortisation in order of seniority. In line with the equivalent Traditional STS Criterion, the triggers must include deterioration in the credit quality of the underlying exposures below a predetermined threshold. Unlike the EBA Report, the Commission Proposals do not refer to hybrid amortisation structures (involving a ‘combination of pro rata and sequential’ amortisation or in which pro rata amortisation applies to certain tranches only) as permitted (though these are not expressly disallowed).

4.14 Triggers for termination of the revolving period

In line with the EBA Report, the Traditional STS Criterion on early amortisation provisions/triggers for termination of the revolving period is included but amended to mandate triggers for termination of the revolving period where the securitisation is a revolving securitisation. No trigger is included relating to the insolvency of the originator or servicer, and the trigger relating to decreases in the value of the underlying exposures is replaced with a trigger relating to losses rising above a predetermined period, leaving the full list of triggers as follows:

- a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold;
- a rise in losses above a predetermined threshold; and
- a failure to generate sufficient new underlying exposures that meet the predetermined eligibility criteria during a specified period.

The drafting has been amended since the EBA Report to remove references to early amortisation (a legacy of the traditional securitisation drafting). From

a CRM and SRT eligibility perspective, the credit protection clearly has to remain available to the extent of the underlying exposures notwithstanding a decline in the creditworthiness of the underlying assets (see, for example, Articles 245(4)(c)(ii) and 213(1)(c) of the CRR).

4.15 Requirements after enforcement/acceleration notice

In line with the EBA Report, the Commission Proposals provide that, following the occurrence of an enforcement event in relation to the protection buyer, the protection seller should be permitted to take enforcement action, terminate the credit protection or both⁴⁷. Where an SSPE is used within a synthetic securitisation, the Commission Proposals, in line with the EBA Report, provide that, following a termination of the credit protection, no cash should be trapped in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE, the payment of protection payments in respect of assets that are still being worked out, or the orderly repayment of investors in accordance with the contractual terms of the securitisation.

4.16 Appropriate mitigation of interest rate and currency risks and maturity transformation

Though less onerous than the original EBA DP proposals, which required the protection *buyer* to bear *no* currency or interest rate risk in relation to the credit protection, the Commission Proposals still require interest and currency rate risks arising from the securitisation, and their possible effects on payments to the protection purchaser and investors, to be “*appropriately mitigated*” as well as disclosed (it was not wholly clear from the EBA Report whether disclosure alone would suffice). Collateral securing the investor’s obligations under the credit protection is also required to be denominated in the same currency as credit protection payments (notwithstanding existing

⁴⁶ By contrast, the DP provides that the allocation of losses must always be sequential from the most junior to the most senior tranche, but this is already the effect – for CRR SRT transactions – of the EBA SRT Guidelines prohibition on “embedded mechanism[s] reducing the amount of credit risk transfer disproportionately over time”.

⁴⁷ There is no longer a separate, explicit, requirement for collateral to be returned to investors in order of seniority.

haircuts for currency mismatch applicable to the recognition of collateral by CRR regulated protection buyers).

As proposed in the EBA Report, where a securitisation involves an SSPE, the SSPE's interest liabilities to investors must, at all times, be less than or equal to its income from the protection buyer and the collateral arrangements.

Reflecting an equivalent provision for STS traditional securitisations, the original EBA DP had proposed to prohibit maturity transformation⁴⁸ (repayment of the SSPE's liabilities to investors not being predominantly reliant on the sale or refinancing of the underlying exposures), however, this prohibition is deleted in the EBA Report and Commission Proposals as less relevant in a synthetic context.

4.17 Eligibility criteria and absence of active portfolio management

In line with the EBA Report, the Traditional STS Criterion on eligibility criteria and absence of active portfolio management is adapted, in line with market practice, to incorporate restrictions on the circumstances in which exposures can be removed from a pool. As under the EBA Report, removals are permitted where the exposures: are repaid or mature otherwise; are subject to amendment, such as refinancing or restructuring, that is not credit driven, and which occurs in the ordinary course of servicing such exposure; or did not meet the eligibility criteria at the time of inclusion. The sale of the exposures in the ordinary course of the protection buyer's business is also permitted provided that this would not constitute implicit support for purposes of Article 250 of the CRR⁴⁹. Again, this provision relates to originator (rather than investor) protection.

4.18 Transparency requirements

In line with the EBA Report, the requirement in the Traditional STS Criteria for compliance with the Securitisation Regulation transparency requirements is replicated in the Proposed Balance Sheet Synthetic STS Framework save

that the originator alone is responsible for compliance. Although this is not a novel aspect of the Proposed Balance Sheet Synthetic STS Framework compared with the Traditional STS Criteria, it is worth pointing out that – given the greater severity of transparency compliance issues for private deals – the significance of this criterion is increased in a synthetic context. In line with the EBA Report, the proposed eligibility criteria include specified additional transparency requirements (i.e. over and above the requirements of Article 7 for synthetic securitisations in scope of the Securitisation Regulation) relating to liability cash flow models, the provision of historical default and loss performance data before pricing, and external verification and disclosure of environmental performance for deals involving residential loans or auto loans or leases.

4.19 Homogeneity

In line with the EBA Report, the proposed homogeneity requirement in the Commission Proposals is akin to that found in the Traditional STS Criteria and also requires the development of separate technical standards with regard to the homogeneity criteria for synthetic securitisations for particular asset types. The Commission Proposals newly indicate that the criteria will take into account asset cash flow characteristics including contractual credit risk and prepayment characteristics. The Commission Proposals envisage development, by the EBA the homogeneity standards within six months of entry into force of the Securitisation Regulation changes. While this is not a novel aspect of the Proposed Balance Sheet Synthetic STS Framework compared with the Traditional STS Criteria, it is worth pointing out that the homogeneity criterion has proved to be a hotly debated topic in the context of the Traditional STS Criteria and that synthetic portfolios are often more mixed than those in a traditional securitisation context (it is an advantage of the synthetic structure, for example, that it is easier to deal with multi-jurisdictional assets under different laws). It therefore remains to be seen how workable the synthetic homogeneity criterion will be.

⁴⁸ The DP indicated that where a securitisation involved an SSPE, the SSPE's interest liabilities to investors on any payment date must be less than or equal to its income from the protection buyer and the collateral arrangements.

⁴⁹ Article 250 CRR regulates transactions by originators (and sponsors) supporting their securitisations post-recognition of SRT.

Appendix 1: Overview table on the Proposed Balance Sheet Synthetic STS criteria, as set out in the Commission Proposals of July 2020 and the EBA Report of May 2020⁵⁰

In this table, the colour-coding indicates the following:⁵¹

GREEN – similar to traditional (non-ABCP) STS securitisation criteria

ORANGE – adaptation of corresponding traditional (non-ABCP) STS securitisation criteria

BLUE – replacement of the traditional (non-ABCP) STS securitisation criteria and new requirements specific to synthetic securitisations

STS synthetic securitisation criterion as set out in the EBA Report	Comparison with criterion for traditional (non-ABCP) STS securitisation from the EBA Report	Rationale for the STS synthetic securitisation criterion as explained in the EBA Report	STS synthetic securitisation criterion as set out in the Securitisation Regulation Proposals of the European Commission
SIMPLICITY CRITERIA			
Criterion 1: Balance sheet synthetic securitisation, credit risk mitigation General requirements for balance sheet securitisation: In order to be considered STS synthetic balance sheet securitisation, the following requirements should be met: <ol style="list-style-type: none"> 1. The securitisation should be a synthetic securitisation, as defined in Article 2(10)⁵² of the Securitisation Regulation. 2. The protection buyer under the credit protection arrangements establishing synthetic securitisation 	Replacement of the criteria in Article 20(1)-(5) with definition of balance-sheet synthetics and requirement to ensure robustness of credit protection contract (credit risk mitigation criteria)	The objective of the criterion is to set out requirements for balance-sheet synthetic transactions, i.e. those transactions in which the regulated institution's primary objective is the transfer of credit risk of exposures that the regulated institution itself holds on its balance sheet. The ultimate object of credit risk transfer should be exposures originated or purchased by an institution within a core lending/business activity of such regulated institutions and held on its balance sheet (or regulatory balance sheet, in the case of prudentially regulated institutions) at the closing date. In order to ensure alignment with the traditional STS framework, the	Article 26b <ol style="list-style-type: none"> 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.

⁵⁰ Please also note Article 26(a) of the Securitisation Regulation Proposals which mandates that EBA, in close cooperation with ESMA and EIOPA, may adopt guidelines and recommendations on the Proposed Balance Sheet [Synthetic] STS criteria; for the full text of Article 26(a), please refer to Appendix 3 below.

⁵¹ The table sets out the relevant extracts from the EBA Report and the Securitisation Regulation Proposals of the European Commission and the colour-coding corresponds to how it was originally presented in the EBA Report.

⁵² Article 2(10) – “**synthetic securitisation**” means a securitisation where the transfer of risk is achieved by the use of credit derivatives or guarantees, and the exposures being securitised remain exposures of the originator.

STS synthetic securitisation criterion as set out in the EBA Report	Comparison with criterion for traditional (non-ABCP) STS securitisation from the EBA Report	Rationale for the STS synthetic securitisation criterion as explained in the EBA Report	STS synthetic securitisation criterion as set out in the Securitisation Regulation Proposals of the European Commission
<p>is an EU-regulated entity subject to authorisation/licensing regime that is established in the Union and is an originator with respect to the underlying exposures, as defined in Article 2(3)⁵³ of the Securitisation Regulation.</p> <p>3. When the protection buyer is an originator with respect to the underlying exposures, as defined in point (b) of Article 2(3) of the Securitisation Regulation, i.e. the exposures underlying the synthetic securitisation have been purchased from a third party before they are securitised, the originator should apply to the purchased exposures credit and collection policies workout policies and servicing policies that are no less stringent than those that the originator applies to similar exposures that have not been purchased.</p> <p>4. The underlying exposures are part of the core lending or any other core</p>		<p>protection buyer needs to be an EU established entity.</p> <p>This criterion should exclude arbitrage securitisations, i.e. transactions in which the protection buyer purchases exposures outside their core lending/business activity, for the sole purpose of writing credit protection on them (i.e. securitising them) and arbitraging on the yields resulting from the transaction. Ensuring that the management of exposures purchased for the purpose of securitising them is consistent with that of similar exposures not securitised is important to avoid the occurrence of moral hazard behaviours by the protection buyer that could result in an overall lesser credit quality of the securitisation transaction, ultimately affecting both retained securitisation positions and securitisation positions placed with investors.</p> <p>This criterion should also exclude arbitrage transactions in which the risk is subject to a double hedge (for example, when more than</p>	<p>3. At the closing date, the underlying exposures shall be held on the balance sheet of the originator or of an entity of the same group of which the originator belongs.</p> <p>For the purposes of this paragraph, a group shall be either of the following:</p> <ul style="list-style-type: none"> (a) a group of legal entities subject to prudential consolidation in accordance with Part One, Title II, Chapter 2 of Regulation (EU) No 2013/575; (b) a group as defined in point (c) of Article 212(1) of Directive 2009/138/EC. <p>4. The originator shall not double hedge the credit risk of the underlying exposures of the transaction.</p> <p>5. The credit protection agreement⁵⁴ shall comply with the credit risk mitigation rules laid down in Article 249 of Regulation (EU) No 2013/575, or where that Article is not applicable, with requirements that are no less stringent than the requirements of that Article.</p>

⁵³ Article 2(3) – “**originator**” means an entity which: (a) itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised; or (b) purchases a third party’s exposures on its own account and then securitises them.

⁵⁴ Note that the Securitisation Regulation Proposals provide for the following new definition of this term: Article 2(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 financial 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 events occurs.

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<p>business activity of the protection buyer.</p> <p>5. The underlying exposures should be held on the balance sheet of the protection buyer (or a member of the same corporate group as the protection buyer), at or before the closing date.</p> <p>6. The protection buyer should undertake in the securitisation documentation not to further hedge its exposure to the credit risk of the underlying exposures beyond the credit protection obtained through the synthetic securitisation in a manner that results in the double hedging of the same credit risk.</p> <p>Credit risk mitigation rules:</p> <p>The credit protection agreement establishing the synthetic securitisation should comply with the credit risk mitigation rules laid down in Article 249 of the amended CRR (including the requirements on SSPE) or with equivalently robust applicable requirements in case the protection buyer is not an institution regulated under the CRR.</p>		<p>one credit default swap is used to hedge the same credit risk).</p> <p>In order to ensure legal certainty in terms of the payment obligations, the protection buyer 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 synthetic securitisation for such a credit risk.</p> <p>In order to ensure the robustness of the credit protection agreement, this agreement should fulfil the credit risk mitigation requirements in accordance with Article 249 of the amended CRR that have to be met by institutions seeking significant risk transfer through a synthetic securitisation.</p>	

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<p>Criterion 2: Representations and warranties</p> <p>The securitisation documentation should contain the representations and warranties provided by the protection buyer that the following requirements, in respect of the underlying exposures, are met, as a condition of enforceability of the credit protection:</p> <ul style="list-style-type: none"> • Title to and accounting of the exposures: If the protection buyer is a credit institution or an insurance company, either the protection buyer or a member of the same corporate group as the protection buyer has full right, good and valid title to the underlying exposures and their associated ancillary rights and accounts for the credit risk of the underlying exposures in the regulatory balance sheet. If the protection buyer is not a credit institution or an insurance company, the protection buyer or a member of the same corporate group as the protection buyer has full right, good and valid title to the underlying 	<p>Adapted criterion (Article 20(6)): extension of required representations and warranties and adaptation of their objective and content to synthetic securitisation</p>	<p>To enhance the legal certainty with respect to the underlying exposures and enforceability with respect to credit protection agreement, the securitisation documentation should contain specific representations and warranties provided by the protection buyer in respect of the characteristics of those underlying exposures and the correctness of the information included in the securitisation documentation. Non-compliance of the underlying exposures with the representations and warranties should lead to non-enforceability of the credit protection, following a credit event.</p>	<p>Article 26b</p> <p>6. The originator shall provide representations and warranties that the following requirements have been met:</p> <ul style="list-style-type: none"> (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 payment⁵⁵; (d) to the best of originator's knowledge, the contract for each underlying exposure

⁵⁵ Note that the Securitisation Regulation Proposals provide for the following new definition of this term: Article 2(27) – “**credit protection payment**” is the amount the investor has committed under the credit protection agreement to pay to the originator in case a credit event defined in credit protection agreement has occurred.

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<p>exposures and their associated ancillary rights.</p> <ul style="list-style-type: none"> • Compliance of the exposures with all eligibility criteria set out in the securitisation documentation: On the date it is included in the securitised portfolio, each underlying exposure complies with all eligibility criteria and any other conditions, other than a credit event, for a protection payment in accordance with the credit protection agreement within the securitisation documentation. • Financing agreements' validity and enforceability: To the best of the protection buyer's knowledge, the contractual agreement for each underlying exposure contains a legal, valid, binding and enforceable obligation of the obligor to pay the sums of money specified in it. • Underwriting standards: The underlying exposures meet the standard underwriting criteria and these are no less stringent than the underwriting criteria that the 			<p>contains an legal, valid, binding and enforceable obligation to the obligor to pay the sums of money specified in that contract;</p> <p>(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;</p> <p>(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;</p> <p>(g) to the best of originator's knowledge, the transaction documentation does not contain any false information on the details of the underlying exposures;</p> <p>(h) at the date of 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.</p>

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<p>originator applies to similar exposures that are not securitised.</p> <ul style="list-style-type: none"> • No obligor default or other material breach: To the best of the protection buyer's knowledge, on the date it is included in the securitised portfolio, none of the obligors with respect to each underlying exposure are in material breach or default of any of their obligations in respect of that underlying exposure. • No untrue information: To the best of the protection buyer's knowledge, there is no untrue information on the particulars of the underlying exposures contained in the securitisation documentation. <p>As at the closing date, in relation to each underlying exposure, no contractual agreement between the obligor and the original lender has been subject to any variation, amendment, modification, waiver or exclusion of time of any kind that in any material way adversely affects the enforceability or collectability of the underlying exposure.</p>			

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<p>Criterion 3: Eligibility criteria, no active portfolio management</p> <p>The underlying exposures should, at all times, be subject to predetermined, clear and well-documented criteria determining their eligibility for protection under the credit protection agreement establishing the synthetic securitisation.</p> <p>After the closing date, the securitisation should not be characterised by an active portfolio management on a discretionary basis. The following should, in principle, not be considered an active portfolio management:</p> <ul style="list-style-type: none"> • substitution of exposures that are in breach of representations and warranties; • if the securitisation includes a replenishment period and the addition of exposures that meet clearly defined replenishment conditions. <p>any case, any exposure added to the securitisation after the closing date should meet eligibility criteria that are no less strict than those applied in the initial selection of underlying exposures at the closing date.</p>	<p>Adapted criterion (Article 20(7)): adaptation of allowed portfolio management techniques, inclusion of additional conditions for the removal of the underlying exposures in securitisation</p>	<p>Eligibility criteria are essential safeguards in synthetic securitisation transactions, as they determine the validity of the credit protection purchased by the protection buyer. Protection buyers and protection sellers should be in a position to identify, in a clear and consistent fashion, under which criteria exposures are selected to be securitised. The selection should not be an opaque process. Legal clarity over the eligibility for credit protection reduces legal risk.</p> <p>To enhance legal certainty, additional criteria have been added to limit the conditions under which an underlying exposure may be removed from the securitisation, once it has entered the securitisation under the clearly defined eligibility criteria.</p> <p>Active portfolio management adds a layer of complexity and increases the likelihood of cherry-picking practices occurring, which may undermine the effectiveness of credit protection and hence increase the risk of the securitisation positions retained by the protection buyer. Active management is deemed to arise whenever the manager of the portfolio sells one or more exposures that were initially included in the securitisation. Replenishment practices and</p>	<p>Article 26b</p> <p>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.</p> <p>For the purpose of this paragraph, the substitution of underlying 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.</p> <p>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.</p> <p>An underlying exposure may be removed from the transaction where that underlying exposure:</p> <ul style="list-style-type: none"> (a) has been 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

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<p>An underlying exposure may be removed from the securitisation if it:</p> <ul style="list-style-type: none"> • has been repaid or otherwise matured; • has been disposed of during the ordinary course of the protection buyer business, provided such a removal would not constitute implicit support for the purposes of Article 250 of the CRR; • is subject to a refinancing, restructuring or similar amendment that is not credit driven and that occurs during the ordinary course of servicing such an exposure (for example, maturity extension); • did not meet the eligibility criteria at the time it was included in the securitisation because of an error in the underlying exposures. 		<p>practices of substitution for non-compliant exposures in the transaction due to previous errors in the selection of exposures should not be considered active management of a transaction's portfolio, provided that they do not result in any form of cherry-picking.</p> <p>Replenishment periods and other structural mechanisms resulting in the inclusion of exposures in the securitisation after the closing date of the transaction may introduce the risk that exposures of lesser quality could be added to the pool of exposures protected under the credit protection agreement. For this reason, it is important to ensure that any exposure added to the securitisation after the closing date meets eligibility criteria that are similar to, and not weaker than, those used to structure the initial pool of the securitisation.</p>	<p>during the ordinary course of servicing of that underlying exposure;</p> <p>(d) did not meet the eligibility criteria at the time it was included in the transaction.</p>

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<p>Criterion 4: Homogeneity, enforceable obligations, full recourse to obligors, period payment streams</p> <p>The underlying exposures should meet the following criteria:</p> <ul style="list-style-type: none"> • The synthetic securitisation should be backed by a pool of underlying exposures that are homogeneous in terms of asset type, subject to conditions clearly defined and specified in the transaction documentation. • The underlying exposures should comprise obligations of the debtors and, when applicable, guarantors to pay the sums of money specified in the terms that are contractually binding and enforceable, with full recourse to debtors and, when applicable, guarantors. • The underlying exposures should have defined periodic payment streams, the instalments of which may differ in their amounts, relating to rental, principal and interest payments or commitment fees, or to 	<p>Similar to criterion on homogeneity, enforceable obligations, full recourse to obligor, periodic payment streams, (Art. 20(8))</p>	<p>See the overarching rationale for consistency with the traditional qualifying framework. Commitment fees have been included, as some synthetic securitisations include unused credit lines or undisbursed loans as underlying exposure.</p> <p>As regards the homogeneity, additional homogeneity criteria should be developed to specify the homogeneity in terms of asset type, as has been similarly done for traditional securitisation in the regulatory technical standards on homogeneity, which should take into account specificities of synthetic securitisation.</p>	<p>Article 26b⁵⁶</p> <p>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 assets shall comprise only one asset type.</p> <p>The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors.</p> <p>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.</p>

⁵⁶ Please also note that **Article 26b(13)** of the Securitisation Regulation Proposals mandates EBA, in close cooperation with ESMA and EIOPA, to develop draft regulatory technical standards further specifying which underlying exposures referred to in Article 26b(8) are deemed to be homogenous, which shall be submitted to EBA within 6 months after the Securitisation Regulation Proposals come into force; for the full text of Article 26b(13), please refer to Appendix 3 below.

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<p>any other right to receive income from assets supporting such payments.</p> <ul style="list-style-type: none"> The underlying exposures may also generate proceeds from the sale of any financed or leased assets. 			
<p>Criterion 5: No transferable securities</p> <p>The underlying exposures should 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.</p>	<p>Similar to criterion on transferable securities (Art. 20(8))</p>	<p>See overarching rationale for consistency with traditional qualifying framework.</p> <p>Excluding transferable securities other than corporate bonds that are not listed on trading venue is particularly important in the case of synthetic transactions, as it ensures that the proposed STS framework targets only ‘balance-sheet’ transactions, as opposed to ‘arbitrage’ transactions that were structured in the past to include different types of securities as underlying exposures.</p>	<p>Article 26b(8) (cont’d)</p> <p>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.</p>
<p>Criterion 6: No resecuritisation</p> <p>The underlying exposures should not include any securitisation position.</p>	<p>Similar to criterion on no resecuritisation (Art. 20(9))</p>	<p>See the overarching rationale for consistency with the traditional qualifying framework.</p> <p>The definition of balance-sheet synthetic securitisations for STS purposes should exclude resecuritisations. In the past, resecuritisations have been structured into highly leveraged structures in which lower credit quality notes could be re-packaged and credit could be enhanced, resulting in transactions in which small changes in the credit performance of the underlying assets severely affected the credit quality of the</p>	<p>Article 26b</p> <p>9. The underlying exposures shall not include any securitisation positions.</p>

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		<p>resecuritisation tranches. The modelling of the credit risk arising in these bonds proved very difficult because of high correlations arising in the resulting structures. Synthetic resecritisations were often structured with arbitrage purposes and did not serve the credit risk transfer as a primary objective. In addition, unlike synthetic securitisations that are not structured for arbitrage purposes and are not using securitisation positions as underlying exposures, synthetic resecritisations performed materially worse than traditional securitisations that were structured largely in line with the STS criteria for traditional securitisation.</p>	
<p>Criterion 7: Underwriting standards and material changes thereto</p> <p>The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards should be fully disclosed to potential investors without undue delay.</p> <p>The underlying exposures are underwritten with full recourse to an obligor that is an individual, an SME or a corporate body and that is not a special-purpose entity.</p>	<p>Adapted criterion on underwriting standards and material changes thereto (Art. 20(10): additional clarification with respect to the types of eligible obligors and with respect to underwriting of the underlying exposures</p>	<p>See the overarching rationale for consistency with the traditional qualifying framework.</p> <p>Some arbitrage synthetic securitisations have been structured in the past with SSPEs as underlying obligors or by involving third parties, such as broker intermediaries, in the credit or underwriting decisions with respect to the underlying exposures. To ensure that only genuine balance-sheet securitisations of underlying exposures that are part of the core/business activity of the originator can be eligible under the STS framework, no SSPEs should be allowed as obligors, and no broker intermediaries and similar parties</p>	<p>Article 26b</p> <p>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.</p>

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No broker intermediary or similar party was involved in the credit or underwriting decisions relating to the underlying exposures.		should be involved in underwriting decisions.	
Criterion 8: Self-certified loans In the case of securitisations in which the underlying exposures are residential loans, the pool of loans should not include any loan that was marketed and underwritten on the premise that the loan applicant was made aware of the fact that the information provided might not be verified by the lender.	Similar to criterion on self-certified loans (Art. 20(10))	See overarching rationale for consistency with the traditional qualifying framework.	Article 26b(10) (cont'd) 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.
Criterion 9: Borrower's creditworthiness The assessment of the borrower's creditworthiness should 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, if applicable, equivalent requirements in third countries, to the extent that such standards would, according to their terms, apply to the individual underlying exposures.	Similar to criterion on borrower's creditworthiness (Art. 20(10))	See overarching rationale for consistency with traditional qualifying framework.	Article 26b(10) (cont'd) 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.

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<p>Criterion 10: Originator's expertise</p> <p>The originator or original lender should have expertise in originating exposures that are of a similar nature to those securitised.</p>	<p>Similar to criterion on originator's expertise (Art. 20(10))</p>	<p>See also the overarching rationale for consistency with the traditional qualifying framework.</p> <p>In light of the criterion that requires that the underlying exposures should refer to a core lending/business activity of the originator/purchaser of the credit protection, this criterion appears less relevant in the case of synthetic securitisations than in the case of traditional securitisations. It has, however, still been kept, as, owing to strategic decisions, institutions may define new core/business activity in respect of which the required expertise has yet to be developed.</p>	<p>Article 26b(10) (cont'd)</p> <p>The originator or original lender shall have expertise in originating exposures of a similar nature to those securitised.</p>
<p>Criterion 11: No defaulted exposures or exposures subject to outstanding disputes</p> <p>At the time of selection, the underlying exposures should not include:</p> <ul style="list-style-type: none"> • exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013; • exposures to a credit-impaired debtor or guarantor that: <ul style="list-style-type: none"> ○ to the best of the originator's or original lender's knowledge, has been declared insolvent or 	<p>Similar to criterion on no defaulted exposures (Art. 20(11))</p>	<p>See overarching rationale for consistency with traditional qualifying framework.</p>	<p>Article 26b</p> <p>11. The underlying exposures shall not include, at the time of the selection of those exposures, 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:</p> <p>(a) has been declared insolvent, 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-</p>

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<p>whose creditors have been granted by a court a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination of the underlying exposure or which has undergone a debt-restructuring process with regard to its non-performing exposures within three years prior to the date of selection of the underlying exposures, unless:</p> <ul style="list-style-type: none"> ▪ 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 selection of the 			<p>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:</p> <ul style="list-style-type: none"> (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; (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

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<p>underlying exposures;</p> <ul style="list-style-type: none"> ▪ the information provided by the originator in accordance with points (a) and (e)(i) of the first subparagraph of Article 7(1) of the Securitisation Regulation 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; ○ was, at the time of origination of the underlying exposure, if applicable, on a public credit registry of persons with adverse credit history or, if there is no such public 			<p>exposures held by the originator which are not securitised.</p>

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<p>credit registry, another credit registry that is available to the originator or the original lender;</p> <ul style="list-style-type: none"> ○ 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 that are not securitised. 			
<p>Criterion 12: At least one payment made</p> <p>The debtors should, at the time of inclusion of the relevant exposures in the securitisation, have made at least one payment. This does not include revolving securitisations, in which exposures are payable in a single instalment or have a maturity of less than one year, including without the limitation of monthly payments on revolving credits. This criterion does not apply to an exposure that represents the refinancing of a pre-existing exposure already included in the securitisation.</p>	<p>Similar to criterion on at least one payment made (Art. 20(12))</p>	<p>See the overarching rationale for consistency with the traditional qualifying framework. STS synthetic securitisation should minimise the extent to which investors are required to analyse and assess fraud and operational risk. At least one payment should therefore be made by each underlying borrower at the time of inclusion of the exposure in the securitisation, since this reduces the likelihood of the exposure being subject to fraud or operational issues; this does not include revolving securitisations, in which the distribution of underlying exposures is subject to constant changes because the securitisation relates to exposures payable in</p>	<p>Article 26b</p> <p>12. The debtors shall, at the time of the inclusion of the exposures in the transaction, have made at least one payment, except where:</p> <ul style="list-style-type: none"> (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 that represents the refinancing of a exposure that is already included in the transaction.

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		<p>single instalment or with an initial legal maturity of less than one year.</p> <p>Examples of exposures to which the requirement of at least one payment being made at the time of inclusion of the exposures in the securitisation does not apply should include personal overdraft facilities, credit card receivables, trade receivables, trade finance obligations and dealer floorplan finance loans.</p>	
STANDARDISATION CRITERIA			
<p>Criterion 13: Risk retention requirements</p> <p>The originator or original lender should satisfy the risk-retention requirement in accordance with Article 6 of the Securitisation Regulation.</p>	Similar to criterion on risk retention requirements (Art. 21(1))	<p>See overarching consistency with the framework for traditional securitisation.</p> <p>Although it is not necessary strictly to include this requirement in the STS criteria, given it is applicable to all securitisations as per Article 6 of the Securitisation Regulation, it is included here for consistency purposes.</p>	<p>Article 26c</p> <p>1. The originator or original lender shall satisfy the risk retention requirements in accordance with Article 6.</p>
<p>Criterion 14: Appropriate mitigation of interest rate and currency risks</p> <p>Currency risk: The transaction documentation should clearly describe how any currency risk arising in synthetic securitisation will affect</p>	Adapted criterion on appropriate mitigation of interest rate and currency risks (Art. 21(2)): to further specify measures for appropriate	Unlike in the case of traditional securitisation, the interest and principal cash flows generated by the underlying exposures in synthetic securitisation are not used to repay investors. Payments towards synthetic securitisation investors are limited to the	<p>Article 26c</p> <p>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</p>

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<p>payments to the protection buyer and the investors.</p> <ul style="list-style-type: none"> If applicable, any collateral securing the credit protection obligation must be denominated in the same currency as that used for the credit protection (i.e. the transaction currency). <p>Interest rate risk: The transaction documentation should clearly describe how any interest rate risk associated with synthetic securitisation will be mitigated and what impact it will have on the payments to the protection buyer and the investor.</p> <p>In the case of a synthetic securitisation involving an SSPE, the amount of the SSPE's liabilities in terms of interest payments to investors at any payment date should be equal to or less than the amount of its income from the protection buyer and any collateral arrangements at such payment date.</p> <p>The underlying exposures should not include derivatives, other than derivatives entered into for currency or interest-rate hedging purposes in connection with the underlying exposures.</p>	<p>mitigation of interest rate and currency risks</p>	<p>credit risk protection premium and, as applicable, the yield from the re-investment of the collateral used in funded transactions and the redemption of such collateral, which will be used to repay noteholders at maturity or at early termination of the contract.</p> <p>However, the originator (protection buyer) of synthetic transactions may (i) face instances of under-protection due to exchange rate fluctuations in transactions involving more than one currency; (ii) be exposed to interest rate mismatches, itself or through the SSPE set up to issue notes to investors, in which it guarantees, to investors, a return on the collateral received as credit risk protection beyond the payment of the due credit protection premium.</p> <p>Currency risk: In synthetic securitisation transactions in which the underlying exposures are denominated in a currency that is different to the currency used for the credit protection (i.e. the transaction currency), there arises the risk that, because of exchange rate fluctuations and depending on the reference exchange rate used to convert loss amounts into protection payment amounts, the outstanding amount of the notes/available collateral/committed guarantee amount after conversion into the currency in which the underlying exposures</p>	<p>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.</p> <p>In case of a securitisation using a SSPE, the amount of liabilities of the SSPE concerning the interest payments to the investors shall at any time be equal to or be less than the amount of the SSPE's income from the originator and any collateral arrangements.</p> <p>Except for the purpose of hedging interest rate or currency risks of the underlying exposures, the portfolio of underlying exposures shall not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.</p>

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<p>Those derivatives should be underwritten and documented in accordance with common standards in international finance.</p>		<p>are denominated may be reduced, resulting in diminished protection in respect of the underlying exposures. Even though the CRR provides for additional capital requirements on the originator for transactions characterised by currency mismatches, it is important that the currency risk to which STS securitisation positions are exposed is appropriately mitigated. This can be done by ensuring that the credit protection is denominated in the same currency as the underlying exposures and, if relevant, collateral, or through other measures, such as using hedges and guarantees that can fix the currency rate for the protection buyer, or by other arrangements such as for example adapting the notional amount of the portfolio to manage exchange rate fluctuations through replenishment.</p> <p>Interest rate risk: Interest rate risk should be appropriately mitigated. Additional criterion 35 provides for eligible credit risk protection arrangements. The exclusion of more complex collateral and re-investment arrangements in synthetic STS securitisations further reduces the extent to which interest rate mismatches may occur in such securitisations.</p> <p>Derivatives should be allowed as underlying exposures of a synthetic STS securitisation</p>	

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		<p>only when those derivatives are used for the single purpose of hedging the currency and interest rate risk arising from the underlying exposures that are not derivatives. For the sake of clarity, it should be highlighted that any derivative contract used to effect the credit risk transfer that gives rise to synthetic securitisation is not to be considered an ‘underlying’ exposure of synthetic securitisation.</p> <p>The appropriate mitigation of interest rate and currency risks should be clearly specified in the transaction documentation.</p>	
<p>Criterion 15: Referenced interest payments</p> <p>Any referenced interest payments in relation to securitisation should be based on either (i) generally used market interest rates or generally used sectoral rates that are reflective of the cost of funds and do not reference complex formulae or derivatives, and/or (ii) income generated by the collateral securing the protection seller’s obligations under the credit protection agreement.</p> <p>Any referenced interest payments in relation to the underlying exposure should be based on either (i) generally</p>	<p>Similar to criterion on referenced interest payments (Art. 21(3))</p>	<p>This criterion is less relevant for synthetics, as the repayment of the securitisation positions is not dependent on the cash flows from the underlying exposures on a pass-through basis, and consequently there is less need for investors to understand the calculation of the interest payments on the underlying exposures. However, this information might still be useful, particularly with regard to public synthetic securitisations making use of an SSPE with various investors, and the requirement should therefore be kept for consistency purposes.</p>	<p>Article 26c</p> <p>3. Any referenced interest rate payments in relation to the transaction shall be based on any of the following:</p> <ul style="list-style-type: none"> (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. <p>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</p>

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used market interest rates, or generally used sectoral rates reflective of the cost of funds, and should not reference complex formulae or derivatives.			cost of funds, and shall not reference complex formulae or derivatives.
<p>Criterion 16: Requirements after enforcement notice</p> <p>Following the occurrence of an enforcement event in respect of the protection buyer, the protection seller should be permitted to take enforcement action and/or terminate the credit protection agreement. In the case of funded credit protection, upon such termination, collateral should be returned to investors in order of their seniority.</p> <p>When an SSPE is used within a synthetic securitisation, following an enforcement or termination of the credit protection agreement, no amount of cash should be trapped in the SSPE beyond that which is necessary to ensure the operational functioning of the SSPE, the payment of protection payments in respect of defaulted underlying exposures that are still being worked out at the time of such a termination or the orderly repayment of investors, in accordance with the contractual terms of the securitisation.</p>	<p>Adapted criterion on requirements after enforcement notice (Art. 21(4)): adapted to reflect that not all synthetic securitisations use SSPE</p>	<p>It is appropriate that arrangements are in place for the protection of protection buyers in case adverse circumstances affect the SSPEs or, where applicable, the collateral (such as insolvency of SSPE or inaccessibility of collateral), which has a consequence of immediately initiating enforcement and applying sequential amortisation to all tranches of the synthetic securitisation.</p> <p>The requirements applicable when enforcement has been delivered have been adapted, compared with the STS requirements applicable to traditional securitisation, to reflect the fact that not all synthetic securitisations include the use of an SSPE and that, even if an SSPE is used in balance-sheet synthetic securitisations, there is no legal transfer of title to the underlying exposures to the SSPE. As a result of the latter, a requirement that does not allow the automatic liquidation of the underlying exposures at market value is not needed for synthetic securitisations.</p>	<p>Article 26c</p> <p>4. Following the occurrence of an enforcement event in respect of the originator, the investor shall be permitted to take enforcement action, terminate the credit protection agreement or do both.</p> <p>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.</p>

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<p>Criterion 17: Allocation of losses and amortisation of tranches</p> <p>Allocation of losses: The allocation of losses to holders of a securitisation position in a synthetic STS securitisation should always proceed in order of seniority of tranches, from the most junior tranche to the most senior tranche in the transaction.</p> <p>Amortisation of size of tranches: Pro rata or hybrid (i.e. comprising a combination of pro rata and sequential, or pro rata applying to only some tranches) amortisation may only be applied to determine the outstanding amount of all tranches if clearly specified triggers relating to the performance of the underlying exposures ensure the switch of the amortisation scheme to sequential amortisation. Such performance-related triggers should at least include deterioration in the credit quality of the underlying exposures below a predetermined threshold.</p> <p>When this is not the case, sequential amortisation should apply to all tranches in order to determine the outstanding amount of the tranches at the each payment date, i.e., as the underlying exposures amortise, such amortisation</p>	<p>Adapted criterion on allocation of losses and amortisation of tranches (Art. 21(5)): adapted with additional requirements for pro rata amortisation and allocation of losses requirements</p>	<p>See the overarching rationale for consistency with the traditional qualifying framework.</p> <p>From a prudential perspective, pro rata amortisation schemes in the presence of back-loaded losses, i.e. losses that crystallise towards the end of the underlying exposures' tenor, may undermine the simplicity and standardisation of the transaction. Other things being equal, in the presence of pro rata amortisation the originator is able to rely only on a level of credit protection that, towards the end of the tenor of the transaction, is materially lower than the one it could rely on when a sequential amortisation scheme is adopted. Therefore, pro rata amortisation should be allowed only under limited circumstances, i.e. if it is subject to specific contractual triggers that require a switch to sequential amortisation.</p> <p>In order to ensure that all parties involved in the synthetic securitisation have at all times a thorough understanding of applicable amortisation schemes under a securitisation, such amortisation schemes should be clearly specified in the transaction documentation.</p>	<p>Article 26c</p> <p>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.</p> <p>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.</p> <p>Transactions that feature non-sequential amortisation shall have triggers for the performance of the underlying exposures changing the amortisation to sequential in order of seniority. Such performance-related triggers shall include the deterioration in the credit quality of the underlying exposures below a pre-determined threshold.</p> <p>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.</p> <p>Where a credit event as referred to in Article 26c 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</p>

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<p>should be applied first to reduce the most senior tranches and, only once these most senior tranches have fully amortised, should they be used to reduce more junior tranches according to the order of seniority, as agreed in the transaction documentation.</p> <p>As tranches amortise, when investors have provided collateral for those tranches, an amount of that collateral equal to the amount of amortisation on such tranches should be returned to investors. In the case of underlying exposures in relation to which a credit event has occurred and the workout process has not been completed, the amortisation provisions should ensure that the remaining amount of credit protection at any payment date is at least equivalent to the notional outstanding amount of these underlying exposures after consideration of the amount of any interim payments that have already been effected on these underlying exposures in relation to the relevant credit events.</p> <p>All amortisation agreements should be clearly documented.</p>			<p>amount of any interim payment made in relation to those underlying exposures.</p>

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<p>Criterion 18: Early amortisation provisions/triggers for termination of the revolving period</p> <p>The transaction documentation should include appropriate triggers for the termination of the revolving period in which the securitisation is a revolving securitisation and a switch to the amortisation of tranches, including at least the following:</p> <ul style="list-style-type: none"> • a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold; • losses that rise above a predetermined threshold or losses over a predefined period that rise above a predetermined threshold; • a failure to generate sufficient new underlying exposures that meet the predetermined credit quality over a specified period of time. 	<p>Adapted criterion on early amortisation provisions/triggers for termination of the revolving period (Art. 21(6)): adapted with requirements for early amortisation only in the case of the use of an SSPE</p>	<p>It is important to include safeguards for investors when the securitisation is a revolving securitisation, as they ensure that, subject to specific triggers, the replenishment period truncates and the tranches start to amortise. This criterion is generally relevant to synthetic securitisation, as the use of replenishment periods is very common in synthetic securitisation. The triggers have been adapted to synthetic securitisation.</p> <p>By contrast, early amortisation is about the earlier repayment of principal and therefore is relevant only to synthetic securitisations that use an SSPE to place notes with investors.</p> <p>This criterion is linked to the requirement for the credit protection payments (which should be contingent upon the outstanding balance of the protected tranche).</p>	<p>Article 26c</p> <p>6. The transaction documentation shall include appropriate early amortisation triggers for a termination of the revolving period, where a securitisation is a revolving securitisation, including at least the following:</p> <ul style="list-style-type: none"> (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 eligibility criteria during a specified period.
<p>Criterion 19: Transaction documentation</p> <p>The transaction documentation should clearly specify:</p> <ul style="list-style-type: none"> • the contractual obligations, duties and responsibilities of, as applicable, 	<p>Adapted criterion on transaction documentation (Art. 21(7)): adapted with additional requirements for servicing standards and procedures</p>	<p>See the overarching rationale for consistency with the traditional qualifying framework. Particularly when the credit risk of the securitised portfolio is transferred to more than one investor (e.g. when CLNs of different seniority are issued by an SSPE), the appointment of an identified person with</p>	<p>Article 26c</p> <p>7. The transaction documentation shall clearly specify:</p> <ul style="list-style-type: none"> (a) the contractual obligations, duties and responsibilities of the servicer, the trustee, other ancillary service providers or the

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<p>the verification agent, the servicer of the underlying exposures, the trustee and other ancillary service providers;</p> <ul style="list-style-type: none"> • upon default, insolvency and other specified events, where applicable, provisions to ensure the replacement of relevant counterparties (other than the protection buyer and the investors) for in cases where the respective services for the benefit of the securitisation are not provided by the originator itself; • the processes and responsibilities necessary to ensure that, when servicing is not provided by the originator itself, the default or insolvency of the current servicer does not result in termination of servicing, such as contractual provisions that enable the replacement of the servicer in such cases; • the servicing procedures that apply to the underlying exposures at the closing date and thereafter and the circumstances under which these procedures may be modified; 		<p>fiduciary responsibilities acting in the best interest of investors is necessary, in order to minimise the impact of potential conflicts in terms of the interpretation of certain provisions of the securitisation documentation and their applicability at payment dates.</p> <p>From the perspective of an investor in synthetic securitisation, it is also important that, irrespective of whether the underlying exposures are serviced by the originator or by another party, at closing date and thereafter, the servicer adheres to high servicing standards, in order to ensure that credit events covered by the credit protection agreement and corresponding losses are determined correctly at each payment date.</p>	<p>third- party verification agent referred to in Article 26e(4), as applicable;</p> <p>(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;</p> <p>(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;</p> <p>(d) the servicing standards that the servicer is obliged to adhere to in servicing the underlying exposures within the entire maturity of securitisation.</p>

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<ul style="list-style-type: none"> the servicing standards that the servicer will have to adhere to in servicing the underlying exposures within the entire maturity of the synthetic securitisation. 			
<p>Criterion 20: Servicer's expertise</p> <p>The servicer should have expertise in servicing exposures that are of a similar nature to those that are securitised and be supported by a management team with extensive industry experience.</p> <p>The servicer should have well-documented and adequate policies, procedures and risk management controls relating to the servicing of exposures.</p> <p>The servicer should apply servicing procedures to the underlying exposures that are at least as stringent as the servicing procedures applied by the originator to similar exposures that are not securitised.</p>	<p>Similar to criterion on servicer's expertise (Art. 21(8))</p>	<p>See the overarching rationale for consistency with the traditional qualifying framework.</p> <p>Effective servicing standards are crucial in any synthetic securitisation, as the validity of the credit protection obtained greatly depends on the timely identification of relevant credit events protected under the credit protection agreement. Losses that are not identified at the time of their occurrence, because of servicing disruptions, may not be eligible for credit protection. Such risk increases the overall riskiness of the originator's retained senior position. This appears to be particularly relevant in those cases in which servicing is not carried out by the originator of the transaction.</p> <p>Consistency and clarity of servicing standards, and sufficient experience of applying such standards, significantly reduce the extent of risks arising in relation to the servicing. In addition, STS synthetic securitisations should not be used to put in place any 'originate to distribute' behaviour</p>	<p>Article 26c</p> <p>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.</p> <p>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.</p>

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		through moral hazard practices arising in the servicing of exposures subject to protection.	
Criterion 21: Reference register The underlying exposures should be identified at all times via a reference register . The reference register should clearly identify, at all times, the reference obligors, the reference obligations from which the underlying exposures arise, and the protected notional amount and the outstanding protected notional amount for each underlying exposure.	Replacement of the criterion (requirements for the transaction documentation to specify payment conditions is covered in separate criteria) (Art 21(9))	To avoid conflicts between the protection buyer and the protection sellers 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 is also indirectly part of the criterion defining the balance-sheet securitisation and excluding arbitrage securitisation from the STS framework.	Article 26c 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.
Criterion 22: Timely resolution of conflicts between investors The transaction documentation should include clear provisions that facilitate the timely resolution of conflicts between different classes of investors. If an SSPE is used within a synthetic securitisation to issue notes placed with investors, voting rights should be clearly defined and allocated to noteholders and the responsibilities of the trustee and other	Similar to criterion on timely resolution of conflicts between investors (Art. 21(10))	See the overarching rationale for consistency with the traditional qualifying framework. This requirement aims to quickly resolve any potential conflicts between investors, as an additional safeguard to the appointment of a verification agent, particularly when the credit risk of the securitised portfolio is transferred to more than one investor (e.g. where CLNs of different seniority are issued by an SSPE), the appointment of a trustee or	Article 26c 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.

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entities with fiduciary duties to investors should be clearly identified.		other entity with fiduciary duties to investors appears necessary.	
TRANSPARENCY CRITERIA			
Criterion 23: Data on historical default and loss performance The originator should, before pricing, make available to potential investors data on static and dynamic historical default and loss performance, such as delinquency and default data, for exposures that are substantially similar to those being securitised, as well as the sources of those data and the basis for claiming similarity. Those data should cover a period of at least five years.	Similar to criterion on data on historical default and loss performance (Art. 22(1))	See the overarching rationale for consistency with the traditional qualifying framework. As the first criterion on simplicity requires that the protection buyer under the credit protection arrangements is an originator with respect to the securitised exposures, and according to the definition of sponsor pursuant to Article 2(5) of the Securitisation Regulation only credit institutions or investment firms other than the originator can qualify as a sponsor, the obligation in terms of making data available has been limited to the originator for synthetic securitisation.	Article 26d 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 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.
Criterion 24: External verification of the sample A sample of the underlying exposures should be subject to external verification, prior to the closing date, by an appropriate and independent party, including verification that the underlying exposures meet the criteria determining eligibility for credit protection under the credit protection agreement.	Similar to criterion on external verification of the sample (Art. 22(2))	In synthetic securitisation, compliance with contractual eligibility criteria determines the validity and therefore the effectiveness of the credit protection. From a transparency perspective, it is crucial to ensure that any potential for disputes over the validity of the credit protection is minimised during the life of the transaction. For this reason, in the case of synthetic securitisation, the audit prior to issuance should specifically cover eligibility conditions and should be carried out with a confidence level of at least 95%.	Article 26d 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.

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<p>Criterion 25: Liability cash flow model</p> <p>The originator should, before the pricing of the securitisation, make available to potential investors a liability cash flow model that precisely represents the relationship between the underlying exposures and the payments flowing between the originator, investors, other third parties and, when applicable, the SSPE, and should, after pricing, make that model available to investors on an ongoing basis and to potential investors upon request.</p>	<p>Similar to criterion on liability cash flow model (Art. 22(3))</p>	<p>To ensure consistency with the traditional framework and enhance transparency, the requirement to make available a liability cash flow model to investors is being maintained for synthetic STS securitisation.</p>	<p>Article 26d</p> <p>3. The originator shall, before the pricing of the securitisation, make available to potential investors a liability cash flow model that 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 the model available to investors on an ongoing basis and to potential investors upon request.</p>
<p>Criterion 26: Environmental performance of assets</p> <p>In the case of a securitisation whose underlying exposures are residential loans or auto loans or leases, the originator should publish the available information related to the environmental performance of the assets financed by these residential loans or auto loans or leases, as part of the information disclosed pursuant to point (a) of the first subparagraph of Article 7(1) of the Securitisation Regulation.</p>	<p>Similar to criterion on environmental performance of assets (Art. 22(4))</p>	<p>See overarching rationale for consistency with traditional qualifying framework.</p>	<p>Article 26d</p> <p>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).</p>

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<p>Criterion 27: Compliance with transparency requirements</p> <p>The originator should be responsible for compliance with Article 7 of the Securitisation Regulation. The information required by point (a) of the first subparagraph of Article 7(1) should be made available to potential investors, upon request, before pricing. The information required by points (b) to (d) of the first subparagraph of Article 7(1) should be made available before pricing at least in draft or initial form. The final documentation should be made available to investors at the latest 15 days after the closing of the transaction.</p>	<p>Similar to criterion on compliance with transparency requirements (Art. 22(5))</p>	<p>See overarching rationale for consistency with traditional qualifying framework.</p>	<p>Article 26d</p> <p>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) and (d) of the first subparagraph of Article 7(1) shall be made available before pricing at least in draft or initial form. The final transaction documentation shall be made available to investors at the latest 15 days after closing of the transaction.</p>
CRITERIA SPECIFIC TO SYNTHETIC SECURITISATION			
<p>Criterion 28: Credit events</p> <p>The credit protection agreement establishing the synthetic securitisation should cover, at least, the following credit events:</p> <ul style="list-style-type: none"> failure to pay the underlying obligor, defined to encompass at a minimum the circumstances defined in Article 178 (1)(b) of the CRR; bankruptcy of the underlying obligor, defined to encompass at a 	<p>n/a</p>	<p>The definitions of credit events provided in the CRR shape the way prudential regulation quantifies the credit risk to be covered by regulatory capital, and these well-established definitions should also be applied as a basis for standardising the minimum credit events to be considered in synthetic STS securitisations. A reference to the CRR definitions also strikes the right balance between the interest of the protection buyer and the interest of investors.</p>	<p>Article 26e</p> <p>1. The credit protection agreement shall cater for the following credit events:</p> <ul style="list-style-type: none"> (a) failure to pay by the underlying obligor, which includes the default referred to in point (b) of Article 178(1) of Regulation (EU) No 575/2013; (b) bankruptcy of the underlying obligor, which includes the elements referred to in points (e) and (f) of Article 178(3) of Regulation (EU) No 575/2013;

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<p>minimum the circumstances defined in Article 178 (3)(e) and (f) of the CRR;</p> <ul style="list-style-type: none"> in the case of credit protection other than financial guarantee, restructuring of the underlying exposure, defined to encompass at a minimum the circumstances defined in Article 178(3) (d) of the CRR. <p>The requirement to include at least these three events should not prevent the parties from agreeing on additional and/or stricter credit events. All credit events that are to apply and their precise definitions should be clearly documented.</p> <p>Forbearance measures, as defined in Annex V, Section 30, paragraphs 163 to 183, of Commission Implementing Regulation (EU) No 2015/227 amending Commission 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, applied to underlying exposures must not preclude the trigger of eligible credit events.</p>		<p>The parties under the credit protection agreement may agree on additional events or stricter definitions of the events mentioned in the criterion (e.g. failure to pay with a grace period of less than 90 days or the introduction of minimum payment thresholds for defaulted claims to qualify as ‘failure to pay’), in line with the general framework provided for in the standard industry master agreements, as long as the credit protection agreement complies with the requirements provided in Article 249 of the amended CRR, and, at a minimum, the events taken into account for prudential purposes for institutions regulated under the CRR are included in the credit protection agreements.</p> <p>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. In this regard, the term ‘concessions’ refers to either a modification of the previous terms and conditions of a contract that the debtor is considered unable to comply with because of its financial difficulties (‘troubled debt’), resulting in insufficient debt service ability, and that would not have been granted had</p>	<p>(c) for a credit protection agreement other than by a financial guarantee, restructuring of the underlying exposure, which includes the elements referred to in point (d) of Article 178(3) of Regulation (EU) No 575/2013.</p> <p>All credit events shall be documented.</p> <p>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 trigger of eligible credit events.</p>

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		<p>the debtor not been experiencing financial difficulties, or a total or partial refinancing of a troubled debt contract that would not have been granted had the debtor not been experiencing financial difficulties. A concession may entail a loss for the lender, which should be considered within the credit protection agreement.</p> <p>Restructuring has been excluded as a credit event in the case of financial guarantees, in order to avoid them being treated as a derivative in accordance with the relevant accounting standards. The underlying reference portfolio is often held in the banking book and is therefore subject to accrual accounting, while derivatives are subject to mark-to-market. Financial guarantees, however, are typically accrual accounted; nevertheless, if a financial guarantee also references restructuring, then it may have to be treated as a derivative in accordance with the relevant accounting standards. Therefore, buying protection for portfolios held on the banking book in the form of a financial guarantee rather than a derivative avoids mark-to-market volatility.</p>	
<p>Criterion 29: Credit protection payments</p> <p>The credit protection payment following the occurrence of a credit event should</p>	n/a	<p>From the originator's perspective, in order to ensure that credit protection eventually covers the losses incurred by the originator, it is important that loss settlements do not</p>	<p>Article 26e</p> <p>2. The credit protection payment following the occurrence of a credit event shall be calculated based on the actual realised loss suffered by the</p>

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<p>be calculated based on the actual realised loss suffered by the originator or the relevant lender, as worked out in accordance with its standard recovery policies and procedures for the relevant exposure types⁵⁷ and recorded in its financial statements at the time the payment is made.</p> <p>The final credit protection payment should be payable within a specified period following the end of the workout process for the relevant underlying exposure if the end of the workout process occurs before the scheduled legal maturity or early termination of the credit protection agreement.</p> <p>Transactions should provide that an interim credit protection payment is to be made, at the latest, six months after the credit event has occurred in cases in which the workout of the losses for the relevant underlying exposure has not been finalised by that time.</p> <p>The interim credit protection payment should be, at least, the higher of the impairment considered by the originator in its financial statements, in accordance with the applicable accounting</p>		<p>fall short of the loss amounts, as worked out by the originator. In addition, aligning credit protection payments with the loss amounts worked out by the originator ensures that the protection buyer's and the protection seller's interests in the transaction are more aligned, leading to better incentives on both sides of the transaction.</p> <p>As the full workout of losses can be a lengthy process, depending on the type of asset class/collateral under consideration as well as the characteristics of national judicial and insolvency regimes, it is important from the originator's perspective to ensure a minimum degree of timeliness in credit protection payments in all circumstances. For this reason, and also to ensure that the originator does not keep paying for credit protection on the protected notional amount of a given underlying exposure when a credit event has occurred in relation to that exposure, an interim payment should be made, at the latest, six months after such a credit event has occurred. By means of a final adjustment payment, the payment to cover losses under the credit protection agreement in relation to a particular underlying exposure should then be adjusted to the loss amounts that have been fully</p>	<p>originator or the 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.</p> <p>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:</p> <ul style="list-style-type: none"> (a) 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; (b) where applicable, the Loss Given Default as determined in accordance

⁵⁷ The term 'exposure type' is used here, to avoid confusion with the term 'type of exposure', as defined for IRB purposes according to Art. 142(1)(2) of the CRR.

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<p>framework, at the time the interim payment is made or, if applicable, the LGD determined in accordance with Part Three, Title II, Chapter 3, of the CRR, which, according to the CRR, has to be applied to the corresponding underlying exposures in order to determine the IRB capital requirements on the originator for such underlying exposures. If an interim credit protection payment is made, a final credit protection payment should be made in order to adjust the interim settlement of losses to the actual realised loss, in accordance with the first paragraph of this criterion.</p> <p>If the protected amount is less than the outstanding notional amount of the corresponding underlying exposure, the credit protection payment should be in the same proportion to the protected amount, as the protection buyer's realised loss bears the outstanding notional amount of the underlying exposure, subject only to the rule on interim payments.</p> <p>The method by which interim and final credit protection payments are calculated should be clearly specified in the credit protection agreement.</p>		<p>worked out, in order to ensure the coverage of actual losses through the credit protection.</p> <p>If an originator uses the IRB approach for the purposes of determining its capital requirements for an underlying exposure, the interim payment should reflect, at least, the originator's LGD assigned to the underlying exposure (regulatory LGD or own estimate). If the institution decides to recognise, in its financial statements, a higher figure than that used by the LGD for capital requirements purposes, it is important that the interim payment reflects such a decision.</p> <p>In order to facilitate the loss allocation during the occurrence of credit events, the credit protection coverage should be broken down to the level of individual underlying exposures, irrespective of whether the credit protection amount is specified with reference to the individual underlying exposures or the obligors in respect of those exposures.</p>	<p>with Part Three, Title II, Chapter 3, of Regulation (EU) No 575/2013.</p> <p>Where an interim credit protection payment is made, the final credit protection payment referred to in the first subparagraph shall be made in order to adjust the interim settlement of losses to the actual realised loss.</p> <p>The method for the calculation of interim and final credit protection payments shall be specified in the credit protection agreement.</p> <p>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.</p> <p>The right of the originator to receive the credit protection payment shall be enforceable. The amounts payable by investors under the securitisation 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.</p>

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<p>The rights of the protection buyer to receive protection payments under the synthetic securitisation should be enforceable.</p> <p>The amounts payable by investors under the securitisation are clearly defined, capable of calculation in all circumstances and limited in amount.</p> <p>The circumstances in which investors are required to make payments under the credit protection agreement should be clearly and objectively defined, or subject to a determination by the verification agent, and limited in number.</p> <p>The credit protection amount should be broken down to the level of individual underlying exposures.</p>			<p>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.</p>
<p>Criterion 30: Credit protection payments following the close out/final settlement at the final legal maturity of the credit protection agreement</p> <p>With regard to underlying exposures for which a credit event has occurred and the workout process has not been completed upon the scheduled legal maturity or early termination of the credit protection agreement, the credit protection</p>	n/a	<p>As the full workout of losses can be a lengthy process, depending on the type of asset class/collateral under consideration as well as the characteristics of national judicial and insolvency regimes, it is important from the originator's perspective to ensure a minimum degree of timeliness in credit protection payments. This not only increases certainty in the effectiveness of the credit protection arrangement from the originator's</p>	<p>Article 26e</p> <p>3. The credit protection agreement shall specify the maximum extension period that shall apply for the debt workout process for 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</p>

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<p>agreement should clearly specify the maximum extension period that should apply to the workout process for those exposures. Such an extension period should not be longer than two years.</p> <p>A final credit protection payment within this extension period should be made on the basis of the final estimated loss expected to be suffered by the originator and recorded by the originator in its financial statements at that time.</p> <p>Following any termination of the credit protection by investors, the workout process should continue, in respect of any outstanding credit events that occurred prior to the termination, in the same way as that described in the first paragraph above.</p>		<p>perspective but also increases legal certainty in terms of the final date of payments under the credit protection agreement from an investor's perspective, contributing to a well-functioning market.</p>	<p>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 as recorded by the originator in its financial statements at that time.</p> <p>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.</p>
<p>Criterion 31: Credit protection premiums</p> <p>The credit protection premiums paid under the credit protection agreement establishing the synthetic securitisation should be structured as contingent premiums: no guaranteed premiums, upfront premium payments, rebate mechanisms or other mechanisms that</p>	n/a	<p>For the sake of simplicity of the transaction and effectiveness of the risk transfer, the credit protection premiums should be contingent, i.e. the actual amount of premium paid should be a function of the size and the credit risk of the protected tranche. Contingent premiums may be structured as a fixed percentage of the residual outstanding balance of the protected</p>	<p>Article 26e(3) (cont'd)</p> <p>The credit protection premiums⁵⁸ to be paid under the credit protection agreement shall be structured as contingent on the performance of the underlying exposures 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</p>

⁵⁸ Note that the Securitisation Regulation Proposals provide for the following new definition of this term: Article 2(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.

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<p>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 should be stipulated in the credit protection agreement.</p> <p>The transaction documentation should clearly describe how the protection fee and any note coupons are calculated in respect of each payment date over the life of the securitisation.</p> <p>The rights of the protection seller to receive credit protection premiums under synthetic securitisation should be enforceable.</p>		<p>tranche at each payment date, hence reflecting tranche amortisation and tranche write-downs due to incurred losses.</p> <p>Non-contingent premiums should not be allowed in synthetic STS securitisations, i.e. when the actual amount of premium paid is not a function of the outstanding size and credit risk of the protected tranche. Non-contingent premiums may take the form of guaranteed premiums.</p> <p>The timing of the premium payments may also vary across transactions. In some transactions, protection premiums are paid up front, in contrast to the most widespread market practice, according to which protection premiums are paid in accordance with a regular schedule. Transactions may also be structured to include protection premium rebate mechanisms, through which, if at the maturity of the protection period the aggregate premium paid by the protection buyer exceeds losses suffered on the reference portfolio, the excess would be returned to the originator. In order to ensure that synthetic STS securitisations are simple and that the risk assessment of these securitisations is not overly complex, these premium structures should not be allowed.</p>	<p>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.</p> <p>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 life of the securitisation.</p> <p>The rights of the investors to receive credit protection premiums shall be enforceable.</p>

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<p>Criterion 32: Verification agent</p> <p>A third-party verification agent should be appointed by the originator at the outset of the transaction, in order to verify, at a minimum, for each of the underlying exposures in relation to which credit event notice was given:</p> <ul style="list-style-type: none"> • that the credit event in the credit event notice occurred in accordance with the terms of the credit protection agreement; • that the underlying exposure was included in the securitised portfolio at the time of the occurrence of the relevant credit event; • that the underlying exposure met the eligibility criteria at the time of its inclusion in the reference portfolio; • that, if an underlying exposure has been added as result of a replenishment, such a replenishment complied with the replenishment conditions; • that the final loss amount is in line with the losses registered in the profit and loss statement by the originator; • that, at the time when the final protection payment is made, the 	n/a	<p>The appointment of a 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. This contributes to decreasing the overall riskiness of both retained securitisation positions and securitisation positions placed with investors and is instrumental to a well-functioning transaction.</p>	<p>Article 26e</p> <p>4. The originator shall appoint a third-party verification agent before the closing date of the transaction. The third party verification agent shall verify all of the following for each of the underlying exposures for which a credit event notice is given:</p> <ul style="list-style-type: none"> (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

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<p>allocation of losses to investors in relation to the underlying exposures has been conducted correctly.</p> <p>The verification agent should be independent of the originator and investor, and the SSPE when it is used within a synthetic securitisation, and should have been appointed, and its appointment accepted, on or before the closing date.</p> <p>Such verification by the verification agent may be performed on a sample basis, rather than for each individual underlying exposure for which a protection payment is sought, but in all cases, any investor must have the right that the eligibility of a particular underlying exposures is subject to verification including in case if it is not satisfied with the sample verification.</p> <p>The originator should undertake to provide to the verification agent, in the securitisation documentation, all the information necessary to verify the requirements set out in the first paragraph above.</p>			<p>the underlying exposures have correctly been allocated to the investors.</p> <p>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.</p> <p>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.</p> <p>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.</p>

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<p>Criterion 33: Early termination events</p> <p>Other than as a result of insolvency of the protection provider, a failure to pay (in respect of any premium or other amounts payable by the originator to investors under the synthetic securitisation) or a breach of a material contractual obligation by the protection provider, the originator should be permitted to terminate a transaction prior to its scheduled maturity only when any of the following occurs:</p> <ul style="list-style-type: none"> • Relevant regulatory events, which should: <ul style="list-style-type: none"> ○ include relevant changes in any law and/or regulation (or official interpretation of that law and/or regulation by competent authorities) or the tax or accounting treatment of a transaction that have a material adverse effect on the amount of capital that the protection buyer is required to hold in connection with the securitisation or the underlying exposures, in each case compared with that anticipated at the time 	n/a	<p>Synthetic STS securitisations should not feature complex call clauses for the originator. Although the merit of time calls is acknowledged from the originator's perspective, particularly to ensure that the economic sustainability of a transaction is accounted for, originators should not use synthetic securitisation transactions with very short-dated time calls with the aim of temporarily changing the representation of their capital position on an ad hoc basis.</p> <p>The originator's bankruptcy as an additional clause of early termination in synthetic transactions is reported as widespread market practice of the synthetic securitisation market. It should be seen from two perspectives:</p> <ul style="list-style-type: none"> • Investor (protection provider) perspective: The originator's bankruptcy exposes the investor to the following risks: (i) subordination vis-à-vis other creditors of the insolvent originator and (ii) deterioration of the originator's servicing standards/incentives during the bankruptcy phase. The early termination clause allows investors to mitigate these risks as the originator's bankruptcy occurs and thus maintain an incentive 	<p>Article 26e</p> <p>5. The originator may not terminate a transaction prior to its scheduled maturity for any other reason than any of the following events:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) relevant changes in Union or national law, relevant changes by competent authorities to officially published interpretations of such laws, or relevant changes in the taxation or accounting treatment of the transaction that have a material adverse effect on the amount of capital that the originator is required to hold in connection with the securitisation or its underlying exposures, 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

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<p>of entering into the transaction, which was reasonable unforeseeable at that time.</p> <ul style="list-style-type: none"> ○ include a determination by a competent authority that the protection buyer (or any affiliate of the protection buyer) is not or is no longer permitted to recognise significant risk transfer in respect of the securitisation, in accordance with Article 245 of the CRR; ○ exclude other factors affecting the economic efficiency of the transaction that are not enshrined in law or regulation, such as credit rating agencies' methodologies and a central bank's collateral framework. <ul style="list-style-type: none"> • A time call is exercised, at a point in time when the time period measured from the securitisation's closing date is equal to or higher than the weighted average life of the initial reference portfolio at closing. The 		<p>for the protection provider to participate in this market.</p> <ul style="list-style-type: none"> • Originator (protection buyer) perspective: With respect to the originator's bankruptcy, in the case of termination of the credit protection agreement because of the originator's bankruptcy, the originator's insolvency estate may not rely on credit protection on the securitised portfolio and is faced with reduced regulatory capital resources against the portfolio under consideration as a result of the previous achievement of SRT and consequent capital relief since origination. In this respect, the recovery prospects of the originator's other insolvency creditors are at stake, as the credit protection contract is terminated upon the event of bankruptcy. The originator's bankruptcy should therefore not be permitted as an early termination event. <p>Taking into consideration the above, the bankruptcy of the originator should not be allowed as an early termination event for the STS synthetic securitisation.</p> <p>It is, however, also to be noted that, with the introduction of the BRRD, as an alternative to liquidation, originators may be subject to resolution measures. The BRRD foresees</p>	<p>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;</p> <ul style="list-style-type: none"> (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. <p>The transaction documentation shall specify whether any of the call rights referred to in points (d) and (e) are included in the transaction concerned in.</p> <p>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.</p>

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<p>time call should not be structured to avoid allocating losses to credit enhancement positions or other positions held by investors and should not be otherwise structured to provide credit enhancement.</p> <ul style="list-style-type: none"> A call as per Article 245(4)(f) of the amended CRR is exercised (clean-up call). <p>If any of these call rights are included in a transaction, they should be clearly specified in the documentation.</p> <p>Any other originator calls should not be allowed under the terms of the synthetic transaction.</p>		<p>that, as originators enter resolution, structured finance transactions and other specific classes of arrangements are subject to specific provisions safeguarding the transactions' counterparties, in the context of partial property transfers and other resolution measures. In these cases, contractual clauses such as termination upon originator's bankruptcy may be dis-applied and the rights and interests of the counterparties in the transaction would be dealt with by BRRD-specific measures and tools. (It should be noted that a number of (small) firms are likely to be excluded from such BRRD provisions.)</p>	
<p>Criterion 34: Synthetic excess spread</p> <p>The originator (protection buyer) can commit to the SES, which is available as credit enhancement for the investors under the following conditions:</p> <ul style="list-style-type: none"> The amount of the SES that the originator commits to using as credit enhancement at each payment period is predetermined in the contract and expressed as a fixed 	n/a	<p>The SES is widely present in synthetic securitisation transactions, it is a helpful mechanism for both investors and originators, and it is also available in traditional STS securitisation transactions.</p> <p>Furthermore, the SES is essential for some specific retail asset classes (e.g. SME and consumer lending) that benefit from the higher yield for investors and for which the underlying exposures generate higher losses and excess spread to cover for those losses.</p> <p>Not allowing the inclusion of SES among</p>	<p>Article 26e</p> <p>6. The originator may commit synthetic excess spread⁵⁹, which shall be available as credit enhancement for the investors, where all of the following conditions are met:</p> <p>(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</p>

⁵⁹ Note that the Securitisation Regulation Proposals provide for the following new definition of this term: Article 2(28) – “**synthetic excess spread**” means the amount committed in the transaction documentation by the originator to cover losses of the referenced portfolio that might occur during the life time of the transaction.

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<p>percentage of the total outstanding portfolio balance (fixed SES).</p> <ul style="list-style-type: none"> • The SES may be used to cover credit losses that materialise during each payment period. The SES that is not used for that purpose during the payment period is returned to the originator (use-it-or-lose-it mechanism). • The total committed amount every year may never be higher than the one-year regulatory expected loss on the underlying portfolio (in order to ensure that originators do not commit amounts of excess spread that are excessive/can hardly be generated by the portfolio). <p>If any SES is included in a transaction, these conditions should be clearly specified in the transaction documentation.</p>		<p>the STS criteria would substantially limit the use of STS balance-sheet synthetics for many asset classes.</p> <p>However, if the amount of SES subordinated to the investor (protection seller) position is too high, it is possible that under no realistic scenario will the investor (protection seller) in the securitisation positions be eroded by losses, resulting in no effective risk transfer.</p> <p>This could be the result of an inappropriate specification of SES amounts within transactions that use actual excess spread, or could occur in transactions that contractually commit a predetermined amount of excess spread that is not proportionate to the level of risk that characterises the portfolio, e.g. as measured by the portfolio's expected and unexpected loss amount, or cannot be generated by the portfolio (e.g. in the case of yield-impaired portfolios).</p> <p>The use of SES in balance-sheet synthetics can pose material concerns in relation to SRT; given this, it is important to specify strict criteria, to mitigate supervisory concerns and further standardise this structural feature, and to ensure full disclosure on the use of excess spread.</p> <p>For the avoidance of doubt, the SES criterion for balance-sheet synthetics does not impede or prevent any consideration of</p>	<p>portfolio balance at the start of the relevant payment period (fixed synthetic excess spread);</p> <ul style="list-style-type: none"> (b) the synthetic excess spread which is not used to cover credit losses that materialise during the 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.

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		competent authorities when assessing if SRT and commensurate risk transfer has been achieved by an originator. The final EBA report on SRT, which is expected to be published before January 2021, will provide considerations on SES for the purpose of SRT and commensurate risk transfer.	
<p>Criterion 35: Eligible credit protection agreement, counterparties and collateral</p> <p>Only the following credit protection arrangements establishing the synthetic securitisation should be allowed:</p> <p>A. a guarantee meeting the requirements set out in Chapter 4 of Part Three, Title II, of the CRR, by which the credit risk is transferred to any of the entities listed under Article 214 (2)(a)-(d) of the CRR, provided that the exposures to the protection provider qualify for a 0% risk weight under Chapter 2 of Part Three, Title II, of the CRR;</p> <p>B. a guarantee meeting the requirements set out in Chapter 4 of Part Three, Title II, of the CRR, which benefits from a</p>	n/a	<p>Unlike in the case of traditional (true sale) securitisation, the actual extent of credit risk transfer in synthetic securitisation transactions also depends on:</p> <ul style="list-style-type: none"> the risk of default of the protection provider, in the case of unfunded credit risk mitigation arrangements; the risk that the protection buyer may not have access to the collateral in a timely fashion and/or without incurring losses on the value of that collateral, in the case of funded protection. <p>In the case of unfunded credit risk protection arrangements, this is ensured by restricting the scope of eligible protection providers to those entities that are eligible providers in accordance with the CRR and that the CRR recognises as counterparties to be risk weighted at 0% in accordance with the standardised approach for credit risk.</p> <p>If the counterparty is not recognised by the CRR as being eligible for a 0% risk weight,</p>	<p>Article 26e</p> <p>7. The credit protection agreements shall meet one of the following conditions:</p> <p>(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;</p> <p>(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;</p> <p>(c) other credit protection not referred to in points (a) and (b) of this paragraph in the form of guarantees, credit derivatives or</p>

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<p>counter-guarantee of any of the entities referred to in point (A);</p> <p>C. other credit protection in the form of guarantees, credit derivatives or credit link notes not referred to under the previous two points, that is meeting the requirements set out in Sub-Section 2 of Section 3, Chapter 4, of Part Three, Title II, of the CRR, as amended by Article 249 of the CRR, provided that the obligations of the protection seller are subject to the following collateral requirements.</p> <p>When the collateral is provided in accordance with point (C), both the originator and the protection seller need to have recourse to high-quality collateral, in either of the following forms:</p> <ul style="list-style-type: none"> Collateral in the form of 0% risk-weighted debt securities that have a short remaining maturity of maximum three months, matching the payment dates, which are redeemed into cash in an amount equal to the outstanding balance of 		<p>the resulting counterparty credit risk can be mitigated by requiring the counterparty to fund the credit protection by providing high-quality collateral (which in the case of synthetic securitisation may include the issuance of credit linked notes when making use of an SSPE). In order to mitigate the counterparty credit risk for both the originator and the protection seller, such high-quality collateral in the form of 0% risk-weighted debt securities should be held with a third party (such as EU government securities or securities of supranational entities held in a trust or a similar entity), and, when it 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.</p> <p>In addition, a legal opinion should be provided to the originator to confirm that the credit protection is enforceable in all relevant jurisdictions. This requirement already exists under the CRR (Article 245(4)(g)), and to ensure regulatory alignment it should be applicable to all eligible originators under the STS synthetic framework.</p>	<p>credit linked notes that meet the requirements set out 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 9 and 10 of this Article.</p> <p>8. The other credit protection referred to in point (c) of paragraph 7 shall meet the following requirements:</p> <ul style="list-style-type: none"> (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. <p>The transaction documentation shall specify whether investors remain exposed to the credit risk of the originator.</p>

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<p>the protected tranche and which are held by a custodian independent of the protection buyer and the protection seller.</p> <ul style="list-style-type: none"> Collateral in the form of cash held with a third-party credit institution or in the form of cash on deposit with the protection buyer, subject to a minimum credit quality standing requirement, meaning that, if the third-party credit institution or the protection buyer ceases to satisfy that minimum credit quality standing, it is required either to transfer the collateral to a third-party bank that does have the minimum credit quality standing or to invest the cash collateral in high-quality securities held by a custodian or the protection buyer. The requirements set out in this paragraph would be deemed to be satisfied in the case of the investments of the collateral coming from credit linked notes issued by the originator, in accordance with Article 218 of the CRR. <p>In addition, the following requirements should apply to the collateral:</p>			<p>The originator shall obtain an opinion from a qualified legal counsel confirming the enforceability of the credit protection in all relevant jurisdictions.</p> <p>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:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) those debt securities have a remaining maximum maturity of 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

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<ul style="list-style-type: none"> • The right of the protection buyer to use the collateral to meet protection payment obligations of the protection seller should be enforceable. Security arrangements should be provided to ensure this right of the protection buyer. • The right of the investors, when the synthetic securitisation is unwound or as the tranches amortise, to return any collateral that has not been used to meet protection payments should be enforceable. • If collateral is invested in securities, the securitisation documentation should set out the eligibility criteria and custody arrangement for such securities. <p>If the investors remain exposed to the credit risk of the originator, this must be clearly disclosed in the securitisation documentation.</p> <p>The originator should obtain an opinion from a qualified legal counsel confirming the enforceability of the credit protection in all relevant jurisdictions.</p>			<p>as referred to in Article 136 of Regulation (EU) No 575/2013.</p> <p>For the purposes of point (b), where the third-party credit institution or the originator no longer satisfy 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 this 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.</p>

Appendix 2 – Redline of the Proposed Balance Sheet Synthetic STS criteria showing differences between the Commission Proposals and the EBA Report

SIMPLICITY CRITERIA

Article 26b Requirements relating to simplicity

~~Criterion 1: Balance sheet synthetic securitisation; credit risk mitigation~~

~~General requirements for balance sheet securitisation:~~

~~In order to be considered STS synthetic balance sheet securitisation, the following requirements should be met:~~

~~1. The securitisation should be a synthetic securitisation, as defined in Article 2(10) of the Securitisation Regulation. 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 protection buyer under the credit protection arrangements establishing synthetic securitisation is an EU-regulated entity subject to authorisation/licensing regime that is established in the Union and is an originator with respect to the underlying exposures, as defined in Article 2(3) of the Securitisation Regulation.~~

~~3. When the protection buyer is an originator with respect to the underlying exposures, as defined in point (b) of Article 2(3) of the Securitisation Regulation, i.e. the exposures underlying the synthetic securitisation have been purchased from a third party before they are securitised, the originator should apply to the purchased exposures credit and collection policies, workout policies and servicing policies that are no less stringent than those that the originator applies to similar exposures that have not been purchased.~~

~~4. The underlying exposures shall be originated as part of the ~~core lending or any other~~ core business activity of the protection buyer originator.~~

~~5. The underlying exposures should be held on the balance sheet of the protection buyer (or a member of the same corporate group as the protection buyer), at or before the closing date.~~

~~6. The protection buyer should undertake in the securitisation documentation not to further hedge its exposure to the credit risk of the underlying exposures beyond the credit protection obtained through the synthetic securitisation in a manner that results in the double hedging of the same credit risk.~~

~~Credit risk mitigation rules:~~

~~3. At the closing date, the underlying exposures shall be held on the balance sheet of the originator or of an entity of the same group of 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 2013/575;~~

~~(b) a group as defined in point (c) of Article 2(1) of Directive 2009/138/EC.~~

~~4. The originator shall not double hedge the credit risk of the underlying exposures of the transaction.~~

~~5. The credit protection agreement ~~establishing the synthetic securitisation should~~ shall comply with the credit risk mitigation rules laid down in Article 249 of ~~the amended CRR (including Regulation (EU) No 2013/575, or where that Article is not applicable, with requirements that are no less stringent than~~ the requirements ~~on SSPE) or with equivalently robust applicable requirements in case the protection buyer is not an institution regulated under the CRR~~ of that Article.~~

~~Criterion 2: Representations and warranties~~

~~6. The securitisation documentation should contain the~~originator shall provide representations and warranties ~~provided by the protection buyer that the following requirements, in respect of the underlying exposures, are met, as a condition of enforceability of the credit protection~~ have been met:

~~• Title to and accounting of the exposures: If the protection buyer is a credit institution or an insurance company, either the protection buyer or a member of the same corporate group as the protection buyer has full right, good~~(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 ~~and accounts for~~;

~~(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 in the regulatory on their balance sheet. If the protection buyer is not a credit institution or an insurance company, the protection buyer or a member of the same corporate group as the protection buyer has full right, good and valid title to the underlying exposures and their associated ancillary rights~~;

~~• Compliance of the exposures with all eligibility criteria set out in the securitisation documentation: On the date it is included in the securitised portfolio, each underlying exposure complies with all eligibility criteria and any other conditions, other than a credit event, for a protection payment in accordance with the credit protection agreement within the securitisation documentation~~;

~~(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~~;

~~• Financing agreements' validity and enforceability: To (d) to the best of the protection buyer's originator's knowledge, the contractual agreement contract for each underlying exposure contains an legal, valid, binding and enforceable obligation of to the obligor to pay the sums of money specified in it that contract~~;

~~• Underwriting standards: The (e) the underlying exposures meet the standard comply with~~ underwriting criteria ~~and these that~~ are no less stringent than the standard underwriting criteria that the originator applies to similar exposures that are not securitised;

~~• No obligor default or other material breach: To (f) to the best of the protection buyer's originator's knowledge, on the date it is included in the securitised portfolio, none of the obligors with respect to each underlying exposure 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~~;

~~• No untrue information: To (g) to the best of the protection buyer's originator's knowledge, there is no untrue the transaction documentation does not contain any false~~ information on the particulars details of the underlying exposures ~~contained in the securitisation documentation~~;

~~(h) at the date of 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~~;

~~As at the closing date, in relation to each underlying exposure, no contractual agreement between the obligor and the original lender has been subject to any variation, amendment, modification, waiver or exclusion of time of any kind that in any material way adversely affects the enforceability or collectability of the underlying exposure~~;

Criterion 3: Eligibility criteria, no active portfolio management

~~7. The underlying exposures should, at all times, be subject to~~shall meet predetermined, clear and ~~well documented criteria determining their eligibility for protection under the credit protection agreement establishing the synthetic securitisation documented eligibility criteria that do not allow for active portfolio management of those exposures on a discretionary basis~~;

~~After the closing date, the securitisation should not be characterised by an active portfolio management on a discretionary basis. The following should, in principle, not be considered an active portfolio management:~~

~~For the purpose of this paragraph, the~~ substitution of underlying exposures that are in breach of representations ~~and/or~~ warranties;

~~or, where~~ ~~if~~ the securitisation includes a replenishment period ~~and~~ the addition of exposures that meet ~~clearly~~the defined replenishment conditions, shall not be considered active portfolio management.

~~any case, any~~ Any exposure added ~~to the securitisation~~ after the closing date ~~should~~of the transaction shall meet eligibility criteria that are no less ~~strict than~~stringent than those applied in the initial selection of the underlying exposures ~~at the closing date~~.

An underlying exposure may be removed from the ~~securitisation if it~~transaction where that underlying exposure:

~~(a)~~ has been repaid or ~~otherwise~~-matured otherwise;

~~(b)~~ has been disposed of during the ordinary course of the ~~protection buyer~~-business of the originator, provided ~~that~~ such ~~a removal would~~disposal does not constitute implicit support ~~for the purposes of as referred to in~~ Article 250 of the CRR Regulation (EU) No 575/2013;

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

~~(d)~~ did not meet the eligibility criteria at the time it was included in the ~~securitisation because of an error in the underlying exposures~~transaction.

~~Criterion 4: Homogeneity, enforceable obligations, full recourse to obligors, period payment streams~~

~~The underlying exposures should meet the following criteria:~~

~~8.~~ The ~~synthetic~~-securitisation ~~should~~shall be backed by a pool of underlying exposures that are homogeneous in terms of ~~asset type, subject to conditions clearly defined and specified in the transaction documentation~~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 assets shall comprise only one asset type.

~~The underlying exposures should comprise~~shall contain obligations ~~of the debtors and, when applicable, guarantors to pay the sums of money specified in the terms~~ that are contractually binding and enforceable, with full recourse to debtors and, ~~when~~where applicable, guarantors.

~~The underlying exposures should~~shall have defined periodic payment streams, the instalments of which may differ in their amounts, relating to rental, principal ~~and/or~~ interest payments ~~or commitment fees~~, 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.~~

~~Criterion 5: No transferable securities~~

The underlying exposures ~~should~~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.

~~Criterion 6: No re-securitisation~~

~~2.~~ The underlying exposures ~~should~~shall not include any securitisation ~~position~~positions.

~~Criterion 7: Underwriting standards and material changes thereto~~

~~10.~~ The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards ~~should~~shall be fully disclosed to potential investors without undue delay.

The underlying exposures ~~are~~shall be underwritten with full recourse to an obligor that is ~~an individual, an SME or a corporate body and that is not a special purpose entity not an SSPE~~. No ~~broker intermediary or similar party was~~third parties shall be involved in the credit or underwriting decisions ~~relating to~~concerning the underlying exposures.

Criterion 8: Self-certified loans

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

Criterion 9: Borrower's creditworthiness

The assessment of the borrower's creditworthiness ~~should~~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, if where applicable, equivalent requirements in third countries, to the extent that such standards would, according to their terms, apply to the individual underlying exposures.~~

Criterion 10: Originator's expertise

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

Criterion 11: No defaulted exposures or exposures subject to outstanding disputes

~~At the time of selection, the underlying exposures should not include:~~

~~*11. The underlying exposures shall not include, at the time of the selection of those exposures, 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 that who~~ to the best of the originator's or original lender's knowledge;

~~(a) has been declared insolvent or whose creditors have been granted by, had a court grant his creditors a final non-appealable 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 of the underlying exposure or which, or has undergone a debt-restructuring process with regard to its his non-performing exposures within three years prior to the date of the selection of the underlying exposures, unless except where:~~

~~(i)~~ (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)~~ (ii) the information provided by the originator in accordance with ~~points point~~ (a) and point (e)(i) of the first subparagraph of Article 7(1) ~~of the Securitisation Regulation~~ 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)~~ (b) was, at the time of origination of the underlying exposure, ~~if where~~ applicable, on a public credit registry of persons with adverse credit history or, ~~if where~~ there is no such public credit registry, another credit registry that is available to the originator or the original lender;

~~(c)~~ (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 ~~that which~~ are not securitised.

Criterion 12: At least one payment made

12. The debtors ~~should~~shall, at the time of the inclusion of the ~~relevant~~ exposures in the ~~securitisation transaction~~, have made at least one payment. ~~This does not include, except where:~~

~~(a) the securitisation is a revolving securitisation, in which securitisation, backed by exposures are payable in a single instalment or have having a maturity of less than one year, including without the limitation of monthly payments on revolving credits. This criterion does not apply to an;~~

~~(b) the exposure that represents the refinancing of a pre-existing exposure that is already included in the securitisation transaction.~~

STANDARDISATION CRITERIA

Criterion 13: Risk retention requirements

Article 26c Requirements relating to standardisation

1. The originator or original lender ~~should~~ shall satisfy the ~~risk retention requirement~~ risk retention requirements in accordance with Article 6 ~~of the Securitisation Regulation.~~

Criterion 14: ~~Appropriate mitigation of~~ 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 ~~Currency risk. The transaction documentation should clearly describe how any currency risk arising in synthetic securitisation will affect payments to the protection buyer and the investors.~~

~~• If applicable, any~~ any measures taken to that effect shall be disclosed. Any collateral securing the obligations of the investor under the credit protection obligation must ~~agreement shall~~ be denominated in the same currency ~~as that used for in which the credit protection (i.e. the transaction currency) payment is denominated.~~

~~Interest rate risk: The transaction documentation should clearly describe how any interest rate risk associated with synthetic securitisation will be mitigated and what impact it will have on the payments to the protection buyer and the investor.~~

In the case of a ~~synthetic~~ securitisation involving an using a SSPE, the amount of ~~the SSPE's liabilities in terms of of the SSPE concerning the~~ interest payments to the investors shall at any payment date should time be equal to or be less than the amount of ~~its the SSPE's income from the protection buyer originator and any collateral arrangements at such payment date.~~

~~The~~ Except for the purpose of hedging interest rate or currency risks of the underlying exposures should, the portfolio of underlying exposures shall not include derivatives, ~~other than derivatives entered into for currency or interest rate hedging purposes in connection with the underlying exposures.~~

Those derivatives should ~~shall~~ be underwritten and documented ~~in accordance with~~ according to common standards in international finance.

Criterion 15: Referenced interest payments

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

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

~~(b)~~ (b) income generated by the collateral securing the ~~protection seller's~~ obligations of the investor under the ~~credit~~ credit protection agreement.

Any referenced interest payments ~~in relation to due under~~ the underlying ~~exposure should~~ exposures shall be based on ~~either~~ (a) generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, and ~~should~~ shall not reference complex formulae or derivatives.

Criterion 16: Requirements after enforcement notice

4. Following the occurrence of an enforcement event in respect of the ~~protection buyer, the protection seller should~~ originator, the investor shall be permitted to take enforcement action ~~and/or,~~ terminate the credit protection agreement ~~In the case of~~

~~funded credit protection, upon such termination, collateral should be returned to investors in order of their seniority: or do both.~~

~~When an SSPE is used within a synthetic securitisation, following~~ 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 ~~should~~ shall be trapped in the SSPE beyond ~~that which~~ what is necessary to ensure the operational functioning of ~~the~~ that SSPE, the payment of the protection payments ~~in respect of~~ for defaulted underlying exposures that are still being worked out at the time of ~~such a~~ 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.

Criterion 17: Allocation of losses and amortisation of tranches

~~Allocation of losses: The allocation of losses to holders of a securitisation position in a synthetic STS securitisation should always proceed in order of seniority of tranches, from the most junior tranche to the most senior tranche in the transaction.~~

~~Amortisation of size of tranches: Pro-rata or hybrid (i.e. comprising a combination of pro-rata and sequential, or pro-rata applying to only some tranches) Sequential amortisation may only~~ shall be applied to all tranches to determine the outstanding amount of all the tranches ~~if clearly specified at each payment date, starting from the most senior tranche.~~

Transactions that feature non-sequential amortisation shall have triggers ~~relating to~~ for the performance of the underlying exposures ~~ensure the switch of~~ changing the amortisation ~~scheme to~~ sequential amortisation in order of seniority. Such performance-related triggers ~~should at least~~ shall include the deterioration in the credit quality of the underlying exposures below a ~~predetermined~~ pre-determined threshold.

~~When this is not the case, sequential amortisation should apply to all tranches in order to determine the outstanding amount of the tranches at the each payment date, i.e., as the underlying exposures amortise, such amortisation should be applied first to reduce the most senior tranches and, only once these most senior tranches have fully amortised, should they be used to reduce more junior tranches according to the order of seniority, as agreed in the transaction documentation.~~

As tranches amortise, ~~when investors have provided collateral for those tranches, an amount of that~~ the collateral equal to the amount of the amortisation ~~on such of those~~ tranches shall be returned to ~~investors. In the case of underlying exposures in relation to which 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 ~~amortisation provisions should ensure that the remaining~~ amount of credit protection remaining at any payment date ~~is~~ shall be at least equivalent to the ~~notional~~ notional outstanding amount of ~~these~~ those underlying exposures ~~after consideration of, minus~~ the amount of any interim ~~payments that have already been effected on these underlying exposures~~ payment made in relation to ~~the relevant credit event~~ those underlying exposures.

~~All amortisation agreements should be clearly documented.~~

Criterion 18: Early amortisation provisions/triggers for termination of the revolving period

6. The transaction documentation shall include appropriate early amortisation triggers for ~~the~~ a termination of the revolving period ~~in which the, where a~~ securitisation is a revolving securitisation ~~and a switch to the amortisation of tranches, 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 ~~that rise above a predetermined threshold or losses over a predefined period that rise~~ above a predetermined threshold;
- (c) a failure to generate sufficient new underlying exposures that meet the predetermined ~~credit quality over~~ eligibility criteria during a specified period ~~of time~~.

Criterion 19: Transaction documentation

7. The transaction documentation ~~should~~shall clearly specify:

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

~~* upon default, insolvency and other specified events, where applicable, provisions to ensure the replacement of relevant counterparties (other than the protection buyer and the investors) for in cases where the respective services for the benefit of the securitisation are not provided by the originator itself;~~

~~*(b) the processes and responsibilities necessary to ensure that, when servicing is not provided by the originator itself, the default or insolvency of the current servicer does not result in termination of servicing, such as contractual provisions that enable ensure the replacement of the servicer in such cases, 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 these those procedures may be modified;~~

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

Criterion 20: Servicer's expertise

8. The servicer ~~should~~shall have expertise in servicing exposures ~~that are~~ of a similar nature to those ~~that are~~ securitised and ~~be supported by a management team with extensive industry experience.~~

~~shall.~~ ~~The servicer should~~ have well-documented and adequate policies, procedures and ~~risk management~~risk management controls relating to the servicing of exposures.

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

Criterion 21: Reference register

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

Criterion 22: Timely resolution of conflicts between investors

10. The transaction documentation ~~should~~shall include clear provisions that facilitate the timely resolution of conflicts between different classes of investors. ~~If an SSPE is used within a synthetic securitisation to issue notes placed with investors. In case of a securitisation using a SSPE,~~ voting rights ~~should~~shall be clearly defined and allocated to ~~notcholders~~bondholders and the responsibilities of the trustee and other entities with fiduciary duties to investors ~~should~~shall be clearly identified.

TRANSPARENCY CRITERIA

Criterion 23: Data on historical default and loss performance

Article 26d Requirements relating to transparency

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

Criterion 24: External verification of the sample

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

Criterion 25: Liability cash flow model

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

Criterion 26: Environmental performance of assets

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

Criterion 27: Compliance with transparency requirements

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

CRITERIA SPECIFIC TO SYNTHETIC SECURITISATION

Criterion 28: Credit events

Article 26e Requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread

1. The credit protection agreement ~~establishing the synthetic securitisation should cover, at least~~ shall cater for the following credit events:

~~*(a) failure to pay by the underlying obligor, defined to encompass at a minimum the circumstances defined in which includes the default referred to in point (b) of Article 178(1)(b) of the CRR of Regulation (EU) No 575/2013;~~

~~*(b) bankruptcy of the underlying obligor, defined to encompass at a minimum the circumstances defined in Article 178 (3) which includes the elements referred to in points (e) and (f) of the CRR Article 178(3) of Regulation (EU) No 575/2013;~~

~~*in the case of (c) for a credit protection agreement other than by a financial guarantee, restructuring of the underlying exposure, defined to encompass at a minimum the circumstances defined in which includes the elements referred to in point (d) of Article 178(3) (d) of the CRR of Regulation (EU) No 575/2013.~~

~~The requirement to include at least these three events should not prevent the parties from agreeing on additional and/or stricter credit events. All credit events that are to apply and their precise definitions should be clearly~~ shall be documented.

Forbearance measures, as ~~defined~~ referred to in Annex V, Section 30, paragraphs 163 to 183, ~~of~~ to Commission Implementing Regulation (EU) No 2015/227 ~~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, applied to~~ that are applied to the underlying exposures ~~must~~ shall not preclude the trigger of eligible credit events.

Criterion 29: Credit protection payments

2. The credit protection payment following the occurrence of a credit event ~~should~~shall be calculated based on the actual realised loss suffered by the originator or the ~~relevant~~ lender, as worked out in accordance with ~~its~~ their standard recovery

policies and procedures for the relevant exposure types and recorded in ~~its~~their financial statements at the time the payment is made.

The final credit protection payment ~~should~~shall be payable within a specified period of time following the end of the debt workout process for the relevant underlying exposure ~~if~~where the end of the debt workout process occurs before the scheduled legal maturity or early termination of the credit protection agreement.

~~Transactions should provide that an~~An interim credit protection payment ~~is to~~shall be made, at the latest, six months after ~~the~~a credit event ~~as referred to in paragraph 1~~ has occurred in cases ~~in which~~where the debt workout of the losses for the relevant underlying exposure has not been ~~finalised by that time~~.

completed by the end of that six months period. The interim credit protection payment ~~should~~shall be, at least, the higher of the following:

(a) the impairment ~~considered~~recorded by the originator in its financial statements, in accordance with the applicable accounting framework, at the time the interim payment is made ~~or, if,~~

(b) where applicable, the LGDLoss Given Default as determined in accordance with Part Three, Title II, Chapter 3, of ~~the~~CRR, which, according to the CRR, has to be applied to the corresponding underlying exposures in order to determine the IRB capital requirements on the originator for such underlying exposures. ~~If~~Regulation (EU) No 575/2013.

Where an interim credit protection payment is made, ~~the~~the final credit protection payment ~~should~~referred to in the first subparagraph shall be made in order to adjust the interim settlement of losses to the actual realised loss, ~~in accordance with the first paragraph of this criterion.~~

~~If the protected amount is less than the outstanding notional amount of the corresponding underlying exposure, the credit protection payment should be in the same proportion to the protected amount, as the protection buyer's realised loss bears the outstanding notional amount of the underlying exposure, subject only to the rule on interim payments.~~

The method ~~by which~~for the calculation of interim and final credit protection payments ~~are calculated should be clearly~~shall be specified in the credit protection agreement.

~~The rights of the protection buyer to receive protection payments under the synthetic securitisation should be enforceable.~~

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 securitisation ~~are clearly defined, capable of calculation shall be clearly set out in the credit protection agreement and limited. It shall be possible to calculate those amounts in all circumstances and limited in amount.~~

The credit protection agreement shall clearly set out the circumstances ~~in~~under which investors ~~are~~shall be required to make payments ~~under the credit protection agreement should be clearly and objectively defined, or subject to a determination by the~~The third-party verification agent, ~~and limited in number~~ referred to in paragraph 4 shall assess whether such circumstances have occurred.

The amount of the credit protection ~~amount should be broken down to~~payment shall be calculated at the level of the individual underlying ~~exposures~~exposure for which a credit event has occurred.

~~Criterion 30: Credit protection payments following the close out/final settlement at the final legal maturity of the credit protection agreement~~

~~With regard to 3.~~ The credit protection agreement shall specify the maximum extension period that shall apply for the debt workout process for underlying exposures ~~for~~in relation to which a credit event as referred to in paragraph 1 has occurred and, but where the debt workout process has not been completed upon the scheduled legal maturity or early termination of the credit protection agreement, ~~the credit protection agreement should clearly specify the maximum extension period that should apply to the workout process for those exposures.~~ Such an extension period ~~should~~shall not be longer than two years.

~~The A credit protection agreement shall provide that by the end of that extension period a~~ final credit protection payment ~~within this extension period should~~ shall be made on the basis of the originator's final estimated loss ~~expected to be suffered by the originator and estimate as~~ recorded by the originator in its financial statements at that time.

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

Criterion 31: Credit protection premiums

The credit protection premiums to be paid under the credit protection agreement ~~establishing the synthetic securitisation should~~ shall be structured as contingent ~~premiums; no~~ on the performance of the underlying exposures 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 ~~should be stipulated in the credit protection agreement~~.

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

The rights of the ~~protection seller~~ investors to receive credit protection premiums ~~under synthetic securitisation should~~ 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 all of the following for each of the underlying exposures for which a credit event notice is given:

Criterion 32: Verification agent

~~A third party verification agent should be appointed by the originator at the outset of the transaction, in order to verify, at a minimum, for each of the underlying exposures in relation to which credit event notice was given:~~

~~*(a)~~ (a) that the credit event referred to in the credit event notice ~~occurred in accordance with~~ is a credit event as specified in the terms of the credit protection agreement;

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

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

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

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

~~*(f)~~ (f) that, at the time ~~when the final~~ credit protection payment is made, the ~~allocation of losses to investors in relation to the underlying exposures has been conducted~~ have correctly been allocated to the investors.

The third-party verification agent ~~should~~ shall be independent ~~off from~~ the originator and ~~investor, and the SSPE when it is used within a synthetic securitisation, and should have been appointed, and its appointment accepted, on or before~~ investors, and, where applicable, from the SSPE and shall have accepted the appointment as third-party verification agent by the closing date.

~~Such~~ The third-party verification ~~by agent may perform~~ the verification ~~agent may be performed~~ on a sample basis, ~~rather than for instead of on the basis of~~ each individual underlying exposure for which ~~a credit~~ credit protection payment is sought, ~~but in all cases, any investor must have the right that~~ Investors may however request the verification of the eligibility of any particular underlying exposures is subject to verification including in case if it is underlying exposure where they are not satisfied with the ~~sample~~ sample-basis verification.

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

Criterion 33: Early termination events

~~Other than as a result of insolvency of the protection provider, a failure to pay (in respect of any premium or other amounts payable by the originator to investors under the synthetic securitisation) or a breach of a material contractual obligation by the protection provider, the originator should be permitted to terminate a transaction prior to its scheduled maturity only when any of the following occurs:~~

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;

~~• Relevant~~ (c) relevant regulatory events, ~~which should~~ including:

~~• include (i) relevant changes in any law and/or regulation (or official interpretation of that law and/or regulation) Union or national law, relevant changes by competent authorities) or the tax to officially published interpretations of such laws, or relevant changes in the taxation or accounting treatment of the transaction that have a material adverse effect on the amount of capital that the protection buyer/originator is required to hold in connection with the securitisation or the its underlying exposures, in each case compared with that anticipated at the time of entering into the transaction, which was reasonable unforeseeable and which could not reasonably be expected at that time;~~

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

~~• exclude other factors affecting the economic efficiency of the transaction that are not enshrined in law or regulation, such as credit rating agencies' methodologies and a central bank's collateral framework;~~

~~• A time~~ (d) exercise of an option to call ~~is exercised the transaction~~ at a given point in time (time call), when the time period measured from the ~~securitisation's~~ closing date is equal to or ~~higher~~ greater than the weighted average life of the initial reference portfolio at closing. ~~The~~

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

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

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

~~• A call as per Article 245(4)(f) of the amended CRR is exercised (clean-up call).~~

~~If any of these call rights are included in a transaction, they should be clearly specified in the documentation.~~

~~Any other originator calls should not be allowed under the terms of the synthetic transaction.~~

Criterion 34: Synthetic excess spread

6. The originator (protection buyer) can ~~may~~ commit to the SES synthetic excess spread, which ~~is~~ shall be available as credit enhancement for the investors ~~under~~, where all of the following conditions are met:

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

~~▲ The SES may be (b) the synthetic excess spread which is not~~ used to cover credit losses that materialise during ~~each payment period. The SES that is not used for that purpose during the~~ payment period ~~is~~shall be returned to the originator ~~(use it or lose it mechanism)~~;

~~▲ The (c) for originators using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013, the~~ total committed amount ~~every year may never~~shall not be higher than the one-year regulatory expected loss amounts on the underlying portfolio ~~(in order to ensure that originators do not commit amounts of excess spread that are excessive/can hardly be generated by the 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;

~~If any SES is included in a transaction, these conditions should be clearly specified in (e) the~~ transaction documentation specifies the conditions laid down in this paragraph.

Criterion 35: Eligible credit protection agreement, counterparties and collateral

~~Only the following 7. The~~ credit protection ~~arrangements establishing the synthetic securitisation should be allowed~~agreements shall meet one of the following conditions:

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

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

~~C (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 ~~not referred to under the previous two points, that is meeting that meet~~ the requirements set out ~~in Sub-Section 2 of Section 3, Chapter 4, of Part Three, Title II, of the CRR, as amended by Article 249 of the CRR~~Regulation (EU) No 575/2013, provided that the obligations of the ~~protection seller are subject to the following~~investor are secured by collateral meeting the requirements laid down in paragraphs 9 and 10 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.

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

▲ Collateral (a) collateral in the form of 0% risk-weighted debt securities ~~that have a short remaining maturity of maximum three months, matching the payment dates, which are redeemed into cash in an amount equal to the outstanding balance of the protected tranche and which are held by a custodian independent of the protection buyer and the protection seller 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 debt securities have a remaining maximum maturity of 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;

▲ Collateral (b) collateral in the form of cash held with a third-party credit institution or in the form of cash on deposit with the ~~protection buyer~~ originator, subject to a minimum credit quality ~~standing requirements~~ step 2 as referred to in Article 136 of Regulation (EU) No 575/2013.

~~; meaning that, if~~ For the purposes of point (b), where the third-party credit institution or the protection buyer ceases to satisfy that minimum credit quality standing, it is required either to transfer the collateral to a third-party bank that does have originator no longer satisfy the minimum credit quality standing or to invest the cash collateral in high-quality securities held by a custodian or the protection buyer 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 this ~~paragraph would~~ point (b) shall be deemed ~~to be~~ satisfied in the case of ~~the investments of the collateral coming from~~ credit linked notes issued by the originator, in accordance with Article 218 of ~~the CRR~~ Regulation (EU) No 575/2013.

In addition, the following requirements should apply to the collateral:

▲ ~~The right of the protection buyer to use the collateral to meet protection payment obligations of the protection seller should be enforceable. Security arrangements should be provided to ensure this right of the protection buyer.~~

▲ ~~The right of the investors, when the synthetic securitisation is unwound or as the tranches amortise, to return any collateral that has not been used to meet protection payments should be enforceable.~~

▲ ~~If collateral is invested in securities, the securitisation documentation should set out the eligibility criteria and custody arrangement for such securities.~~

~~If the investors remain exposed to the credit risk of the originator, this must be clearly disclosed in the securitisation documentation.~~

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

Appendix 3 – Other amendments relating to the Proposed Balance Sheet Synthetic STS Framework to note from the Securitisation Regulation Proposals and the CRR Proposals

I. AMENDMENTS TO THE SECURITISATION REGULATION

(1) Amendment to Article 18(1), point (a)

Article 18

Use of the designation ‘simple, transparent and standardised securitisation’¹

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

- (a) the securitisation meets all the requirements of Section 1, ~~or~~ Section 2 or Section 2a of this Chapter, and ESMA has been notified pursuant to Article 27(1); and
- (b) the securitisation is included in the list referred to in Article 27(5).

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

(2) Amendment to Article 19

Article 19

Simple, transparent and standardised traditional securitisation

1. Securitisations, except for ABCP programmes and ABCP transactions and on-balance sheet securitisations, that meet the requirements set out in Articles 20, 21 and 22 shall be considered STS.
2. By 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised interpretation and application of the requirements set out in Articles 20, 21 and 22.

(3) Amendment to insert new Section 2a and Article 26a

SECTION 2a

Requirements for simple, transparent and standardised on-balance sheet securitisations

Article 26a

Simple, transparent and standardised on-balance-sheet securitisation

1. STS on-balance-sheet securitisations are synthetic securitisations that meet the requirements set out in Articles 26b to 26e.
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.

(4) Amendment to insert new Article 26b(13) in the simplicity requirements

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.

(5) Amendments to Article 27

Article 27

STS notification requirements

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

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

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

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

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

[...]

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

5. ESMA shall maintain on its official website a list of all securitisations which the originators and sponsors have notified to it as meeting the requirements of Articles 19 to 22 or Articles 23 to 26 or Articles 26b to 26e. ESMA shall add each securitisation so notified to that list immediately and shall update the list where the securitisations are no longer considered to be STS following a decision of competent authorities or a notification by the originator or sponsor. Where the competent authority has imposed administrative sanctions in accordance with Article 32, it shall notify ESMA thereof immediately. ESMA shall immediately indicate on the list that a competent authority has imposed administrative sanctions in relation to the securitisation concerned.

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

ESMA shall submit those draft regulatory technical standards to the Commission by [6 months after the date of entry into force of this amending Regulation] ~~18 July 2018~~.

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

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

ESMA shall submit those draft implementing technical standards to the Commission by [6 months after the date of entry into force of this amending Regulation] ~~18 July 2018~~.

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

(11) Amendment to Article 28(1)

*Article 28***Third party verifying STS compliance**

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

(12) Amendment to Article 30(2)

*Article 30***Powers of the competent authorities**

1. Each Member State shall ensure that the competent authority designated in accordance with Article 29(1) to (5) has the supervisory, investigatory and sanctioning powers necessary to fulfil its duties under this Regulation.
2. The competent authority shall regularly review the arrangements, processes and mechanisms that originators, sponsors, ~~SSPEs~~ and original lenders have implemented in order to comply with this Regulation.

The review referred to in the first subparagraph shall include:

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

(14) Amendment to Article 32(1)

*Article 32***Administrative sanctions and remedial measures**

1. Without prejudice to the right for Member States to provide for and impose criminal sanctions pursuant to Article 34, Member States shall lay down rules establishing appropriate administrative sanctions, in the case of negligence or intentional infringement, and remedial measures, applicable at least to situations where:
 - (e) a securitisation is designated as STS and an originator, sponsor or SSPE of that securitisation has failed to meet the requirements provided for in Articles 19 to 22 or Articles 23 to 26 or Articles 26b to 26e;

(15) Amendment to insert new Article 43a

*Article 43a***Transitional provision for on-balance sheet synthetic securitisations**

1. In respect of on-balance-sheet 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) and, originators shall, for the purposes of the obligation set out in point (a) Article 27(1), make the necessary information available to ESMA in writing.

(16) Amendment to delete Article 45⁶⁰

⁶⁰ Article 45 provided for the EBA to deliver a report by 2 July 2019 on the feasibility of an STS framework for synthetic securitisations and for the European Commission to deliver its report to the European Parliament/Council by 2 January 2020 on the basis of the EBA report, together with legislative proposals, if appropriate.

II. AMENDMENTS TO ARTICLE 270 OF THE CRR

Article 270

Senior positions in STS on-balance sheet securitisation ~~SME securitisations~~

An originator institution may calculate the risk-weighted exposure amounts of an STS on-balance sheet securitisation as referred to in Article 26a(1) of Regulation 2017/2402⁴~~in respect of a securitisation position~~ in accordance with Articles 260, 262 or 264 of this Regulation, as applicable, where both of the following conditions are met:

- (a) the securitisation meets the requirements set out in Article 243(2) for STS securitisation set out in Chapter 4 of Regulation (EU) 2017/2402 A&O as applicable, other than Article 20(1) to (6) of that Regulation;
- (b) the position qualifies as the senior securitisation position;
- ~~(c) the securitisation is backed by a pool of exposures to undertakings, provided that at least 70 % of those in terms of portfolio balance qualify as SMEs within the meaning of Article 501 at the time of issuance of the securitisation or in the case of revolving securitisations at the time an exposure is added to the securitisation;~~
- ~~(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;~~
- ~~(e) the third party to which the credit risk is transferred is one or more of the following:~~
 - ~~(i) the central government or the central bank of a Member State, a multilateral development bank, an inter-national organisation or a promotional entity, provided that the exposures to the guarantor or counter-guarantor qualify for a 0 % risk weight under Chapter 2;~~
 - ~~(ii) an institutional investor as defined in point (12) of Article 2 of Regulation (EU) 2017/2402 provided that the guarantee or counter-guarantee is fully collateralised by cash on deposit with the originator institution.~~

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