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The new EU STS framework for on-balance sheet (synthetic) securitisations

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1. Summary and Next Steps

Finalisation of the new EU STS framework for on-balance sheet (synthetic) securitisations is positive news for the industry. However, the simultaneous implementation of a capital charge for synthetic excess spread (new for non-UK originators) will have adverse implications for the economics of deals involving synthetic excess spread, potentially overshadowing the prudential benefit associated with the framework. Excess spread is important to the transaction economics of certain higher risk/higher return asset classes such as SME loans (so very relevant to transactions involving the EIB/EIF) and consumer loans. This may limit the potential of the new STS regime (never mind the non-STS regime) to stimulate the desired expansion of the synthetic securitisation market. Such expansion has been identified by the European authorities as a potential means to facilitate funding to the real economy, by freeing up prudential balance sheets, and to reduce linkages between sovereign and bank risk weights resulting from (amongst other things) sovereign-asset guarantees[1]. These real-world objectives existed before the Covid-19 crisis (with drivers including Basel III implementation, the anticipated economic impacts of Brexit, and the climate crisis), but are significantly more pressing in light of the crisis.

BACKGROUND

On 16 December 2020, the Council of the European Union published final compromise proposals for a package of measures dubbed the "Capital Markets Recovery Package" (linked here[2]). The proposals are aimed at supporting recovery from the economic shock caused by the COVID-19 pandemic through targeted amendments to existing financial legislation. 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**[3]) and Capital Requirements Regulation (the **CRR**[4]) (the **Securitisation Regulation Amendments**,[5] the **CRR Amendments**[6] and, collectively, the **Legislative Amendments**).

The Legislative Amendments are based closely on proposals published by the European Commission at the end of July 2020 (the **Commission Proposals** linked here[7]), which were, in turn, based closely on the European Banking Authority (**EBA**)'s final report of 6 May 2020 (the **EBA Report**)[8] (which the EBA was mandated to prepare under Article 45 of the Securitisation Regulation). For our discussion of the Commission Proposals, please refer to our earlier briefing "A step closer to an EU STS framework for balance sheet synthetic securitisations – European Commission legislative proposals published" (linked here[9]). 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[10]).

[1] See the EBA Report (defined below and the final report of the High-Level Forum on the Capital Markets Union of 10 June 2020 (linked here).
[2] https://www.consilium.europa.eu/en/press/press-releases/2020/12/16/capital-markets-recovery-package-council-confirms-targeted-amendments-to-eu-capital-market-rules/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Capital+Markets+Recovery+Package%3a+Council+confirms+targeted+amendments+to+EU+capital+market+rules
[3] Regulation (EU) 2017/2402: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32017R2402.
[4] Regulation (EU) No 575/2013, as amended.
[5] See the text of the Securitisation Regulation Proposals at: https://ec.europa.eu/finance/docs/law/200724-securitisation-review-proposal_en.pdf.
[6] See the text of the CRR Proposals at: https://ec.europa.eu/finance/docs/law/200724-crr-review-proposal_en.pdf.
[7] https://ec.europa.eu/info/publications/200722-proposal-capital-markets-recovery_en
[8] See https://eba.europa.eu/eba-proposes-framework-sts-synthetic-securitisation.
[9] https://www.allenovery.com/en-gb/global/news-and-insights/publications/a-step-closer-to-an-eu-sts-framework-for-balance-sheet-synthetic-securitisations-european-commission-legislative-proposals-published
[10] https://www.allenovery.com/en-gb/global/news-and-insights/publications/towards-an-eu-sts-framework-for-balance-sheet-synthetic-securitisations-eba-final-report-published

The Legislative Amendments create a cross-sectoral STS framework for balance sheet synthetic securitisations, excluding arbitrage synthetic securitisations (the **Final On-Balance Sheet STS Framework**), including, via amendments to Article 270 of the CRR, the differentiated prudential treatment for such transactions envisaged in the Commission Proposals. However, they also, introduce a capital charge for synthetic excess spread (the **New Capital Charge for Synthetic Excess Spread**) which is not specific to STS synthetic securitisations (it also applies to non-STS synthetic securitisations), but has adverse implications for the transaction economics of all synthetic securitisations involving excess spread and is therefore discussed below.

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

The Final On-Balance Sheet STS Framework 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 related technical standards.

KEY DIFFERENCES BETWEEN THE ORIGINAL COMMISSION PROPOSALS AND THE FINAL LEGISLATIVE AMENDMENTS

The Final On-Balance Sheet STS Framework corresponds closely to the Commission Proposals.

The most significant difference, overall, for synthetic securitisations between the Legislative Amendments and the Commission Proposals (though not part of the Final On-Balance Sheet STS Framework) is the introduction of the **New Capital Charge for Synthetic Excess Spread** for all synthetics where excess spread is a feature, whether or not STS – see below. New prudential reporting obligations are also introduced in relation to the exposure value of synthetic securitisations originated (both STS and non-STS) and their breakdown by asset class.

The Final On-Balance Sheet STS Framework's most significant **changes to the STS eligibility criteria** relative to the Commission Proposals are as follows:

- **Changes to the collateral requirements and, in particular, the required cash collateral downgrade triggers:**

  The key change to the collateral requirements is a slight softening of the controversial proposed CQS2 (broadly A grade) ratings downgrade trigger to hold cash collateral. Other changes of detail are made.

  The Final On-Balance Sheet STS Framework requires that, either:

  i. the *protection purchaser and the protection provider* both benefit from collateral in the form of:

     - eligible debt securities (i.e. short-term[11], 0% risk weighted, debt securities[12], held by an independent custodian that can be redeemed into a cash amount equal to the outstanding balance of the protected tranche); or

[11] Under the CRR standardised approach to credit risk
[12] Ie having a maximum residual maturity of three months, or the next scheduled payment date, whichever is sooner.

- cash held with a *third-party credit institution* rated credit quality step (**CQS**) 3 or better,

  (the **base case collateral position**), or

ii. the collateral takes the form of cash held with the *protection purchaser, or an affiliate of the protection purchaser*, and that entity is either:

- rated CQS2 or better; or
- the national competent authority (**NCA**) – in consultation with EBA – has agreed to reduce the requirement to CQS3 or better in light of "*market difficulties, objective impediments related to the credit quality step assigned to the [Member State…] or significant potential concentration problems in the [Member State]*".

The proposed CQS2 (broadly A grade) ratings downgrade trigger to hold cash collateral in the Commission Proposals is therefore maintained in relation to the protection purchaser. However, it can be reduced to CQS3 (broadly BBB grade) on a jurisdiction-by-jurisdiction basis at the instigation of the NCA in consultation with the EBA in jurisdictions where particularly problematic. This is a helpful derogation, but it is jurisdiction-specific, and clearly not a solution for all originators lacking the required ratings. A third-party credit institution can now also hold the cash collateral subject to a CQS3 ratings downgrade requirement (rather than the CQS2 ratings downgrade requirement in the Commission Proposals). This is a helpful amendment, extending the range of eligible account banks, however, use of a third-party account bank to hold cash collateral is prudentially disadvantageous for the protection purchaser relative to holding the cash directly (entailing an exposure to the account bank), reducing the attractiveness of this option. The Final On-Balance Sheet STS Framework thus remains restrictive in relation to cash collateral. It does not, for example, accommodate existing market structures that facilitate the provision of cash collateral direct to protection purchasers while mitigating investor credit risk through repos (i.e. repos under which the protection buyer essentially provides collateral to the protection seller in respect of its obligation to return the cash collateral) where the relevant CQS requirements to hold cash are not met.

The eligibility requirements for debt securities are broadly unchanged relative to the Commission Proposals, and we would expect the requirement, in the base case collateral position, for the collateral to benefit both the protection purchaser and protection seller to be satisfied by security arrangements giving effect to the transaction payment waterfall in the ordinary course.

As in the Commission Proposals, directly issued CLNs continue - for no obvious purposive reason[13], but helpfully - to be deemed to satisfy the collateral requirements. Directly issued CLNs therefore facilitate a protection purchaser obtaining cash without a CQS2 rating - or jurisdictional derogation and CQS3 rating - which could potentially increase the attractiveness of this issuance format.

- **Pro rata amortisation – changes to the required triggers to switch to sequential amortisation:** Despite concerns during the trilogue process that pro rata amortisation might be prohibited, it remains permitted in the Final On-Balance Sheet STS Framework. Use of pro rata amortisation continues to require inclusion, in the transaction documentation, of triggers relating to the performance of the underlying exposures to switch to sequential amortisation. The triggers in the Final On-Balance Sheet STS Framework are to be developed further in regulatory technical standards, but are - in the level one text - more extensive and prescriptive than both (i) the triggers envisaged in the Commission Proposals and (ii) the triggers that currently apply to STS traditional securitisations. The triggers are similar, but not identical, to proposed triggers contained in the EBA's 23 November 2020 Report on Significant Risk Transfer (linked here[14], the **EBA SRT Report**). If implemented, the triggers in the EBA SRT Report will apply to

[13] The CRR is explicit about the cash collateral treatment of directly issued CLN proceeds, but it is also explicit about the treatment of other collateral types which the Final On-Balance Sheet STS Framework never the less gold-plates.
[14] https://eba.europa.eu/sites/default/documents/files/document_library/News%20and%20Press/Press%20Room/Press%20Releases/2020/EBA%20calls%20on%20the%20EU%20Commission%20to%20harmonise%20practices%20and%20processes%20for%20significant%20risk%20transfer%20assessments%20in%20securitisation%20/936969/EBA%20Report%20on%20SRT.pdf

both traditional and synthetic SRT securitisations and the EBA will have a separate mandate to produce related regulatory technical standards. It will be important for the European authorities to ensure that the SRT and STS requirements are not incompatible in this respect.

- **Regulation of investor termination rights and overlap with proposed SRT requirements termination:** Unlike the Commission Proposals, the Final On-Balance Sheet STS Framework regulates all early termination events, including early termination by investors, raising a number of questions of detail (see below). Permitted *investor* termination rights are now expressly limited to: originator failure to pay premium, and any other material breach of contractual obligations by the originator. The Final On-Balance Sheet STS Framework's provisions relating to termination events overlap with the EBA SRT Report's recommendations relating to permitted early termination events in synthetic SRT securitisations, and permitted call options in traditional and synthetic SRT securitisations. They are not wholly consistent with the EBA SRT Report's recommendations (without appearing to be intentionally stricter), which is unhelpful, given that most if not all transactions seeking to qualify under the Final On-Balance Sheet STS Framework will also seek SRT status so will be restricted by the SRT requirements.

- **Servicer replacement mechanics not now required where the protection buyer is the servicer:** Unlike in the Commission Proposals, the Final On-Balance Sheet STS Framework contains a carve-out to the requirement for contractual provisions effecting servicer replacement (for default/insolvency) where the servicer is the protection buyer itself. This is helpful, as 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).

- **Credit events fully aligned with CRR:** Helpfully, the European authorities have responded to industry concerns, based on the Commission Proposals, about potential divergence, between the requirements applicable to synthetic securitisations and the requirements applicable to non-securitisation unfunded credit risk mitigation under the CRR (i.e. potential inconsistency and/or gold-plating in relation to synthetic securitisations). The Final On-Balance Sheet STS Framework simply requires compliance with the applicable requirements of the CRR for guarantees (where the credit protection takes the form of a guarantee) or credit derivatives (where the credit protection takes the form of a credit derivative) in terms of the credit events required and their definition. This is a welcome development.

- **Omission, from the name used to refer to the regime/transactions benefiting from regime, of the word "synthetic":** In the Legislative Amendments, transactions benefiting from the Final On-Balance Sheet STS Framework are referred to as "simple, transparent and standardised on-balance sheet securitisations", rather than as "simple, transparent and standardised on-balance sheet *synthetic* securitisations". It is clear that this change is intentional and not a drafting error. The modern industry has, for some time, vocally rejected the term "synthetic" for its unjustified connotations. The change can be seen as a response to that lobbying. It is cosmetic, rather than substantive, in that only transactions falling within the defined term 'synthetic securitisation' in Article 2(10) of the Securitisation Regulation can satisfy the proposed eligibility criteria, and it is otherwise apparent that only synthetic securitisations are targeted[15].

The provisions of the Final On-Balance Sheet STS Framework relating to **grandfathering** and **timing for development of regulatory technical standards** (RTS) **and implementing technical standards** (ITS) are also important to note.

- **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 was replaced, without any provision for grandfathering. However, responding to market concerns in this respect, the Final On-Balance Sheet STS Framework introduces grandfathering for

[15] See e.g. 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.

deals currently qualifying under Article 270 CRR. The grandfathering is permanent, not time-limited. It enables originators in transactions qualifying under Art 270 immediately before the entry into force of the quick fix regulation to calculate their capital requirements in accordance with the preferential STS modifications to the SEC-IRBA, SEC-SA and SEC-ERBA, as applicable.

- **Grandfathering for deals closing before entry into force of the Legislative Amendments:** As in the Commission Proposals, the Legislative Amendments attempt to facilitate compliance with the Final On-Balance Sheet STS Framework for deals closing before entry into force of the Final On-Balance Sheet STS Framework. Unlike the Commission Proposals, however, which required all requirements to be met at the time of *notification* of a transaction as STS (rather than at closing), the Legislative Amendments specify in detail which requirements must be met at closing and which requirements must be met at notification of a transaction. While many of the detailed eligibility requirements are still required to be met at notification (for example, only, requirements relating to disclosure, verification, and the triggers to end pro rata amortisation and replenishment periods), a large number of more fundamental/structural matters are required to be met at closing (such as eligibility requirements relating to asset homogeneity, collateral, synthetic excess spread and credit protection premium payments). A number of features therefore need to have been in place at closing in order to qualify and careful assessment will be required to establish whether this was the case.
- **Development of RTS on pro rata amortisation triggers by 30 June 2021:** The EBA is required to develop regulatory technical standards on the pro rata amortisation triggers and their calibration by 30 June 2021.
- **Homogeneity RTS to be developed within six months of entry into force of changes to the Securitisation Regulation:** Like the Commission Proposals, the Legislative Amendments envisage development, by the EBA (in cooperation with ESMA and EIOPA) of RTS relating to the required homogeneity of the securitised assets 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 the 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 Final On-Balance Sheet STS Framework envisages development by the EBA (in cooperation with ESMA and EIOPA) of 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.
- **RTS in relation to synthetic excess spread exposure value (for purpose of the New Capital Charge for Synthetic Excess Spread) to be developed within six months of entry into force of the CRR Amendments:** The EBA is mandated to produce RTS on the calculation of the SES exposure value within six months of entry into force of the CRR Amendments.
- **EBA Mandate to report on collateralisation practices within 24 months of entry into force of the Final On-Balance Sheet STS Framework:** The EBA is given a mandate to monitor collateralisation practices under the Final On-Balance Sheet STS Framework and to report on this within 24 months of entry into force of the Final On-Balance Sheet STS Framework. The Commission is required to respond to the report (with a legislative proposal if applicable) within 30 months of entry into force of the Final On-Balance Sheet STS Framework.

NEXT STEPS

Adoption and entry into force of the Legislative Amendments: In terms of the next steps, the Legislative Amendments are expected to be formally adopted (without further discussion) in February 2021 and following the publication of the final texts in OJ will enter into force on the 20th day following their publication in the Official Journal.

Designation of NCAs: Member States are required to notify the Commission and ESMA of the national competent authorities designated to supervise the Final On-Balance Sheet STS Framework paragraph within 6 months of entry into force of the Final On-Balance Sheet STS Framework. Pending such designation the NCA for supervision of traditional STS securitisations is responsible.

Review of eligibility criteria in existing Securitisation Regulation Review: Under Article 46 of the Securitisation Regulation, the Securitisation Regulation is already required to be subject to a comprehensive review by January 2022. The European Commission, when preparing its report to the European Parliament and the Council in this respect, will have an opportunity to assess the functioning of the Proposed Balance Sheet Synthetic STS Framework and, if appropriate, put forward other legislative proposals. Interestingly for all (STS and non-STS) synthetic securitisations, the Legislative Amendments tweak the scope of the general Securitisation Regulation review envisaging the possibility of the standardisation and disclosure requirements being re-visited in light of "*evolving market practices*" including in relation to "*bespoke private securitisations where no prospectus has to be drawn up*". This appears to contemplate the possible generation of separate disclosure templates for private deals, the lack of which is a source of considerable difficulty for the market.

New scheduled review of CRR preferential prudential treatment: Under the Legislative Amendments, the EBA is newly mandated to report on the CRR changes relating to on-balance-sheet STS securitisations within 24 months of the effective date of the Legislative Amendments, and the Commission to respond, with a legislative proposal if appropriate, within 30 months of the effective date of the Legislative Amendments. The specific matters on which the EBA is required to report are: the market volume and market share of STS on balance sheet securitisations by asset class, the observed allocation of losses to tranches, the impact on leverage, and the impact on issuance of capital instruments.

Electronic versions of this briefing and the earlier briefings on the Commission Proposals, the EBA Report and a related EBA discussion paper of September 2019 (the **EBA DP**)[16] (as well as our briefing entitled "Navigating the EU Securitisation Regulation", which provides a general overview of the Securitisation Regulation regime) are 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.allenovery.com/Online-Services/Pages/default.aspx for more information. Alternatively, please speak to your Allen & Overy contact or email capitalmarkets@allenovery.com.

[16] 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.

Synthetic securitisations 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 ('on-balance sheet') transactions are distinguished from '*arbitrage*' transactions in which 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 Commission Proposals, the Final On-Balance Sheet STS Framework excludes arbitrage synthetic securitisations from the potential new STS framework for synthetic deals.

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 Final On-Balance Sheet STS Framework amends the Article 270 CRR regime to create a 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 New Capital Charge for Synthetic Excess Spread

New Capital Charge for Synthetic Excess Spread introduced: Under the Legislative Amendments, an originator is required to treat contractually committed synthetic excess spread (**SES**)[17] as a securitisation position for risk weighting purposes. This has adverse implications for the economics of deals involving synthetic excess spread and is a controversial development. The new capital charge did not appear in the Commission Proposals, but was added during the trilogue process. The EBA had indicated to market participants, informally, in July 2020, that a change along these lines was envisaged in connection with changes to the significant risk transfer regime, however, it was not expected on this timescale. Excess spread is important, in particular, to transaction economics for certain higher risk/higher return asset classes such as SME and consumer loans.

Unrealised excess spread in securitisations does not currently attract a capital charge under the credit risk framework at EU level (whether or not guaranteed and whether in traditional or synthetic securitisations). The UK PRA, by contrast, already applies a capital charge to excess spread in synthetic securitisations (regarding SES as akin to a guarantee provided to the securitisation structure).

The SES definition: The definition of SES for purposes of the new capital charge is broad and prescriptive, covering all lifetime excess spread without e.g. provision for discounting (the PRA, more helpfully, instructs UK firms to estimate the credit enhancement provided). The EBA is mandated to produce RTS on the calculation of the SES exposure value within 6 months of entry into force of the CRR Amendments, however, it will be constrained in this respect by the provisions of the primary legislation.

Compensatory adjustment to the attachment and detachment points of the originator's other retained securitisation positions: The Legislative Amendments permit the originator (but not other investors) to add the SES exposure value to the outstanding balance of the underlying exposures in calculating the attachment and detachment points of its other retained tranches under the SEC-IRBA and SEC-SA. This potentially provides some (limited) mitigation for the new capital charge under the SEC-IRBA and SEC-SA approaches.

The mitigation is not, however, available for originators applying the SEC-ERBA, or (ostensibly) for originators applying the full deduction approach (in which all retained securitisation positions are deducted or 1,250% risk weighted as an alternative to seeking significant risk transfer). Some market participants have expressed a hope that the capital charge for SES itself can be interpreted as inapplicable where the full deduction approach applies, but there appears (at first glance) to be limited textual basis for this.

Time-limited transition period: The CRR Amendments provide a 12-month transition period before the new capital charge applies, but not permanent grandfathering. The transition period will only help transactions maturing in the next 12 months, not new or existing deals with longer maturities.

[17] To the extent not already subject to a capital requirement

Commission mandate to review the SES capital charge: The EBA have indicated, informally, that the prudential treatment of STS is being considered at Basel level and, in the CRR Amendments, the Commission is mandated to review the new prudential treatment of SES in light of developments at international level as part of its report on the functioning of the Securitisation Regulation.

4. Key takeaways on the differentiated regulatory treatment

As indicated above, in line with the Commission Proposals, the Legislative Amendments provide for the creation of a cross-sectoral STS framework for balance sheet synthetic securitisations (excluding arbitrage synthetic securitisations) (the **Final On-Balance Sheet STS Framework**). The Legislative Amendments adopt the associated differentiated prudential regime that was proposed in the Commission Proposals.

The differentiated prudential regime is limited to **senior securitisation positions**[18] **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 footnote[19]). 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.

Importantly, the differentiated prudential treatment does not extend beyond regulatory capital benefits to include liquidity benefits such as potential eligibility within the high-quality liquid assets (**HQLA**) framework under the Liquidity Coverage Ratio regime. By contrast, senior tranches in traditional STS securitisations can achieve level 2B HQLA status.

As noted in the EBA Report, the differentiated prudential regime 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).

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 Legislative Amendments 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 clients[20]). 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

[18] 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".
[19] 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) on the SEC-SA; and regulatory risk weights would be reduced on the ERBA.
[20] Excluding exposures relating to commitments to repurchase/refinance securitised residual leasing values by third-party protection providers eligible under Article 201(1) CRR.

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 general[21]. These limits will be increasingly relevant once 'Basel IV' (i.e. the Basel III changes finalised in December 2017) is implemented in the EU[22].

Under the Legislative Amendments, institutions' own funds reporting is newly required to include the exposure value of the synthetic securitisations they originate and the breakdown of underlying assets in such securitisations by class.

[21] 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.
[22] 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).

5. Key takeaways on the proposed eligibility criteria

The Final On-Balance Sheet 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 Final On-Balance Sheet STS Framework and the Existing Art 270 Regime; and (ii) the key novel aspects of these criteria compared with the Traditional STS Criteria[23].

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

The Legislative Amendments indicate that, for a transaction to qualify under the Final On-Balance Sheet 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 not required to be EU-established)[24], meaning that balance sheet synthetic securitisations by UK protection buyers will not qualify as STS from the perspective of the EU investors. 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 the Final On-Balance Sheet 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.

5.2 No restrictions on asset class

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

5.3 Eligible credit protection types, providers and collateral

The Final On-Balance Sheet STS Framework substantively replicates the requirements, proposed in the Commission Proposals, pertaining to eligible credit protection types, providers and collateral, save in relation to ratings downgrade triggers for cash collateral.

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 Final On-Balance Sheet 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 Final On-Balance Sheet STS Framework is, of course, attempting to make the framework available on a cross-sectoral basis so that, depending on the originator's regulatory status,

[23] 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.
[24] No references are included to specific EU legislation under which an originator must be regulated.

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. It is clear from the trilogue process that the European authorities (in particular, the European Parliament), remain concerned about the residual credit risk associated with the synthetic risk transfer format[25]. Notwithstanding industry responses to the contrary, the Final On-Balance Sheet STS Framework continues 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, the Final On-Balance Sheet STS Framework continues to require unfunded credit protection to take the form of a guarantee, or counter-guarantee[26] 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 to limit eligible guarantors/counter-guarantors to national and supranational entities (central banks, central government, multilateral development banks and international organisations) that are 0% risk weighted. This rules out, for example, the provision of unfunded credit protection by insurers.

Unlike the Existing Art 270 Regime, collateralised transactions in the Final On-Balance Sheet STS Framework can take the form of either guarantees or credit derivatives[27] (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 Article 270 Regime), remain more restricted than under the CRR CRM eligibility criteria.

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 maximum residual maturity of three months, or the next scheduled payment date, whichever is sooner[28], that are held by an independent custodian and that can be redeemed into a cash amount equal to the outstanding balance of the protected tranche.

Alternatively, collateral may take the form of cash.

The Commission Proposals permitted cash collateral to be held with a third-party credit institution or placed on deposit with the protection purchaser. However (except in the case of CLNs directly issued by the protection purchaser[29]) they required cash collateral to be subject to ratings downgrade triggers where the entity holding the cash collateral - including, where applicable, the originator - ceased to meet a minimum CQS 2 rating requirement. Following a ratings downgrade trigger the cash collateral was required to be transferred to an appropriately rated third-party bank, or invested in high-quality securities held by a custodian/the protection buyer.

EU mapping standards are used to map ratings issued by external credit assessment institutions (**ECAI**s) to CQS levels[30]. 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 with weaker credit ratings, transactions may, in any case, be structured to include a third-party account bank or alternative forms of collateral arrangements). The ratings downgrade trigger requirements in the Commission Proposals were therefore controversial.

[25] 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.

[26] 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.

[27] Including credit linked notes.

[28] 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.

[29] In line with Article 218 CRR ratings downgrade triggers were not required in these circumstances; however, the purposive difference between directly and indirectly issued CLNs in this respect was not wholly clear.

[30] 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.

The Final On-Balance Sheet STS Framework diverges from the Commission Proposals in relation to the ratings downgrade triggers for cash collateral. It requires that, either:

i. the protection purchaser *and the protection provider* both benefit from collateral in the form of:
   - eligible debt securities (see above) or
   - cash held with a third party credit institution rated CQS3 or better

   (the **base case collateral position**), or

ii. the collateral takes the form of cash held with the protection purchaser, or an affiliate of the protection purchaser, and that entity is either:
   - rated CQS2 or better, or
   - the NCA – in consultation with EBA – has agreed to reduce the requirement to CQS3 or better in light of "market difficulties, objective impediments related to the credit quality step assigned to the [Member State…] or significant potential concentration problems in the [Member State]".

The controversial proposed CQS2 (broadly A grade) ratings downgrade trigger for the protection purchaser to hold cash collateral in the Commission Proposals is therefore maintained. However, it can be reduced to CQS3 (broadly BBB grade) on a jurisdiction-by-jurisdiction basis at the instigation of the NCA in consultation with the EBA in jurisdictions where particularly problematic. This is a helpful derogation, but it is jurisdiction-specific, and clearly not a solution for all originators lacking the required ratings. A third party credit institution can now also hold the cash collateral subject to a CQS3 ratings downgrade requirement (rather than the CQS2 ratings downgrade requirement in the Commission Proposals). This is a helpful amendment, extending the range of eligible account banks, however, use of a third party account bank to hold cash collateral is prudentially disadvantageous for the protection purchaser relative to holding the cash directly (entailing an exposure to the account bank) [31], and is also more expensive, reducing the attractiveness of this option. The Final On-Balance Sheet STS Framework thus remains restrictive in relation to cash collateral. It does not, for example, accommodate existing market structures that facilitate the provision of cash collateral direct to protection purchasers while mitigating investor credit risk through repos (ie repos under which the protection buyer essentially provides collateral to the protection seller in respect of its obligation to return the cash collateral) where the relevant CQS requirements to hold cash are not met.

[31] From a prudential/CRM perspective: it is hard to reconcile cash collateral deposited with a third party credit institution with the CRR CRM requirement for cash collateral to be "on deposit with" the protection purchaser (see Art 197(1)(a) CRR) unless it is conceived of as (in theory) having been deposited with the protection purchaser and then deposited by the protection purchaser with the third party credit institution (i.e. the account is the protection purchaser's name, though subject to the transaction security arrangements
The only other form in which cash is recognised within the funded CRM framework is cash deposited with a third party credit institution and openly pledged in favour of the institution. However this form of funded CRM does not appear to be available in the case of indirectly issued synthetic securitisations as the eligibility requirements for SSPEs as protection providers require the SSPE to own "assets that qualify as eligible financial collateral" and for the "requirements for the recognition of financial collateral to be met" (Article 249(4)(a) and (c) CRR). The term financial collateral is not defined in the CRR, but appears to refer to the assets identified in Arts 197-198 CRR (which do not include cash deposited with a third party credit institution and pledged in favour of the institution). This interpretation is consistent with references to financial collateral in the EBA CRM Report (see e.g. para 28 of the report https://eba.europa.eu/sites/default/documents/files/documents/10180/2087449/2644c0e5-6007-4652-8839-993b40bed22e/EBA%20Report%20on%20CRM%20framework.pdf?retry=1), which clearly distinguishes "financial collateral" from "other funded credit protection" including "cash on deposit with a third party institution and pledged to the lending institution" (see para 26 figure 1 of the EBA CRM Report). In any case, cash deposited with a third party credit institution and openly pledged in favour of the institution has the same prudential effect as a guarantee (ie risk weight or PD/LGD substitution of the guarantor/guarantee for the underlying assets) it does not generate the 0% risk weight/haircut associated with same currency cash.
Any (rare) protection provider subject to the CRR would probably not able to recognise the cash held by the third party credit institution as cash on deposit with it in respect of its exposure to the protection purchaser for return of the cash (the cash was deposited with the protection purchaser and then deposited by the protection purchaser with the third party credit institution), so would not be able to recognise the cash as collateral in respect of its exposure to the protection purchaser for return of the cash unless it is able to satisfy the pledge requirements in Article 212 CRR, in which case the cash pledge would be treated as a guarantee by the third party credit institution (effectively giving rise to an exposure of the protection provider to the third party credit institution). Alternatively, the protection purchaser could provide collateral in the form of eligible debt securities to the protection provider to meet the reciprocal collateralisation proposal, generating an additional exposure to the protection provider for return of the collateral (unless the protection purchaser retains a property interest in the securities).

The eligibility requirements for debt securities are broadly unchanged relative to the Commission Proposals, and we would expect the requirement, in the base case collateral position, for the collateral to benefit both the protection purchaser and protection seller to be satisfied by security arrangements giving effect to the transaction payment waterfall in the ordinary course.

As in the Commission Proposals, directly issued CLNs continue - for no obvious purposive reason[32], but helpfully - to be deemed to satisfy the collateral requirements. Directly issued CLNs therefore facilitate a protection purchaser obtaining cash without a CQS2 rating - or jurisdictional derogation and CQS3 rating - which could potentially increase the attractiveness of this issuance format. It is to be hoped that - notwithstanding the reference in Article 218 CRR to the "credit default swap embedded in the [CLN]" - this treatment is compatible with all directly issued CLNs and not merely with those that take the form of an embedded credit derivative (as opposed to an embedded guarantee).

Where the protection purchaser holds cash collateral directly (ie otherwise than in accordance with the base case collateral position), the Final On-Balance Sheet STS Framework indicates that the protection provider's due diligence under Article 5 of the Securitisation Regulation must include an assessment of any relevant credit risk exposure.

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 intention[33].

The EBA is given a mandate to monitor collateralisation practices under the Final On-Balance Sheet STS Framework and report on this within 24 months of entry into force of the Final On-Balance Sheet STS Framework. The Commission is required to respond to the report (with a legislative proposal if applicable) within 30 months of entry into force of the Final On-Balance Sheet STS Framework.

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

In line with the Commission Proposals, the Legislative Amendments include a number of measures to define and limit the Final On-Balance Sheet STS Framework to balance sheet synthetic securitisations, excluding arbitrage synthetic securitisations (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 Commission Proposals, the Legislative Amendments 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 Legislative Amendments 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 and define "group" for this purpose to mean (broadly) members of a CRR prudential consolidation group[34] or group of insurance or reinsurance undertakings for Solvency II purposes[35] (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). Together with the rationale for the equivalent criterion in the EBA Report, this suggests 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

[32] Article 218 CRR explicitly permits the proceeds of directly issued CLNs to be issued as cash collateral where the "credit default swap embedded in the [CLN]" qualifies as eligible unfunded credit protection. However the CRR explicitly permits the recognition (subject to minimum risk weights or haircuts) of many other forms of collateral that are not permitted in the Final On-Balance Sheet STS Framework. It is to be hoped that, notwithstanding the reference in Article 218 CRR to the "credit default swap embedded in the [CLN]" that this treatment is understood to be compatible with all directly issued CLNs and not merely with those that take the form of credit derivatives (as opposed to guarantees).

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

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

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

(undefined) – see below – unless interpretation[36] and/or structuring can be developed to address this. In line with the Commission Proposals, the exposures must be identified via a reference register and, again, as in the Commission Proposals, the protection buyer is required to undertake not to double-hedge its exposure to the credit risk of the underlying exposures[37]. Where a protection buyer purchases third-party exposures and securitises them, the Legislative Amendments (in line with the Commission Proposals) 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)[38] 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*".

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

In the Legislative Amendments, in line with the Commission Proposals, 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 securitisations) for CRR institutions, or with "*no less stringent*" requirements for non-CRR institutions.

The Legislative Amendments helpfully amend the Article 249 CRR additional eligibility requirements for entities writing unfunded CRM on securitisation positions to align these with Basel. Until now, the EU eligibility requirements have been more stringent than required by Basel, imposing a credit rating requirement on all categories of guarantor (including, for example, EU sovereigns/supra-nationals and EU banks). This has proved problematic, in particular, in relation to sovereign guarantee schemes for non-performing loan securitisations and Allen & Overy made representations to the ECB in this respect in Q1 2020 which we are pleased to see paid off. In line with Basel, the CRR amendments continue to require (broadly) unregulated private entities writing unfunded CRM on securitisation positions to be rated CQS2 or better at inception of the transaction and CQS3 or better thereafter.

5.6 Early termination events

In line with the Commission Proposals, the Legislative Amendments 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 Final On-Balance Sheet STS Framework's provisions in this respect overlap with the EBA SRT Report's recommendations in relation to permitted early termination events in synthetic SRT securitisations, and permitted call options in traditional and synthetic SRT securitisations. However, they are not wholly consistent with the recommendations in the EBA SRT Report, which is unhelpful given that most if not all transactions seeking to qualify under the Final On-Balance Sheet STS Framework will also seek SRT status so will be restricted by the SRT requirements.

Unlike the Commission Proposals, which only appeared to regulate buyer early termination events (but akin to earlier proposals in the EBA Report), the Final On-Balance Sheet STS Framework regulates all early termination events, including early termination by investors.

Permitted *investor* termination rights are now expressly limited to:

- failure to pay credit protection premium; and
- any other material breach of contractual obligations by the originator.

[36] 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.

[37] 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.

[38] 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.

The detailed text of the EBA SRT Report proposals around termination for originator insolvency (which is permitted where coupled with servicing and back up servicing failure), and as to what constitutes/does not constitute a material breach of contractual obligations by the originator, differs slightly from the Final On-Balance Sheet STS Framework, and originators will need to review the requirements in parallel to ensure compliance with both. As in the EBA SRT Report, the restricted scope of investor early termination rights in the Final On-Balance Sheet STS Framework also casts doubt on some widespread "boilerplate" termination events, such as tax events absent a breached originator gross up requirement, that do not involve breach of contract by the originator (reliance on the originator's regulatory call in these circumstances is sub-optimal as – for implicit support reasons – the originator is not able to exercise the regulatory call unless this is in its own interests). Originators and their advisers will need to reach views on such events (e.g. as to whether it is possible to think of there being an implicit obligation to gross up that has been breached).

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 obligation[39];
- 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 protection provider ceasing to be an eligible protection provider under the CRR.

The proposed description of regulatory events permitted to trigger an originator call is revised slightly relative to the Commission Proposals. 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. However, it now, more helpfully, requires such changes to lead to a "*material adverse effect on the economic efficiency of [the] transaction*…" (as opposed to a material impact on the "*amount of capital that the protection buyer is required to hold in connection with the securitisation*" per the Commission Proposals), making it easier 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 to terminate for illegality/force majeure, that does not impact the protection buyer's capital requirements for the securitisation[40]. In line with the Commission Proposals, SRT calls (i.e. calls for failure to gain/loss of SRT) continue to be explicitly sanctioned, including SRT calls for loss of SRT once granted. However, under the EBA SRT Report recommendations, permitted SRT calls are limited to failure to achieve SRT in the initial assessment (ie in order to call for subsequent loss of SRT/any other post-closing capital problem, an originator will need to rely on the general regulatory call (which requires change of law/regulation/official interpretation) and (as indicated above) most if not all transactions seeking to qualify under the Final On-Balance Sheet STS Framework will also seek SRT status so will be restricted by the SRT requirements.

The Final On-Balance Sheet STS Framework also indicates that a protection provider ceasing to be an eligible protection provider under the CRR is, in itself, a permitted regulatory event. This provision is however, not mirrored in the EBA SRT Report recommendations (in which context, given the new

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

[40] Termination for illegality and/or force majeure is not explicitly permitted, but 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 should not necessarily be taken as an indication that the EBA was uncomfortable with them, this might be expected to be the case of for example force majeure and illegality.

limitations on originator termination rights, the originator will need to ensure that continuing CRR eligibility is documented as a contractual obligation of the protection provider in order to secure its right to terminate where that eligibility is lost).

Despite some concerns on this front in the trilogue process, time calls remain permitted. The definition of permissible time calls is consistent with the Commission Proposals and EBA SRT Report recommendations (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. The Final On-Balance Sheet STS Framework imposes a new requirement on originators exercising time calls to notify their competent authority of the fact, justifying the exercise of the time call and demonstrating, plausibly, that that the reason for exercise of the call is not a deterioration in the quality of the underlying assets. There is no explicit requirement for advance notice, so it appears that the notice can be provided at the time of exercise of the call.

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 Final On-Balance Sheet STS Framework removes 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.

The required representations and warranties are substantively unchanged relative to the Commission Proposals.

5.7 Credit Events

The Final On-Balance Sheet STS Framework includes minimum requirements for credit events. Helpfully, the European authorities have responded to industry concerns, based on the Commission Proposals and earlier drafts, about potential divergence, between the requirements applicable to synthetic securitisations and the requirements applicable to non-securitisation unfunded credit risk mitigation under the CRR (i.e. potential inconsistency and/or gold-plating in relation to synthetic securitisations). The Final On-Balance Sheet STS Framework simply requires compliance with the applicable requirements of the CRR for guarantees (Article 215(1)(a) CRR) for credit protection in the form of guarantees, and compliance with the applicable requirements of the CRR for credit derivatives (Article 216(1)(a) CRR) for credit protection in the form of credit derivatives, both in terms of the credit events required and their definition (the Commission Proposals had envisaged the incorporation of aspects of the Article 178 CRR default definition). This is a welcome development.

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). The CRR requirements for guarantees mandate coverage for "non-payment" only (though other "qualifying defaults" can be agreed between the parties) and therefore do not require inclusion of restructuring credit events. In practice, many transactions that are analysed as guarantees from an accounting and prudential perspective include restructuring and bankruptcy credit events. For credit protection in the form credit derivatives, restructuring (as well as failure to pay and bankruptcy of the underlying obligor) is a required credit event under the CRR, unless the protection purchaser instead accepts 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 EU[42].

The Final On-Balance Sheet STS Framework does not explicitly envisage additional credit events being included, but neither is this explicitly prohibited.

[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.

5.8 Credit protection payments

In line with the Commission Proposals, the Final On-Balance Sheet STS Framework regulates 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 Final On-Balance Sheet STS Framework, like the Commission Proposals provides 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. On the face of it, it appears that this requirement – unhelpfully - overrides the Article 215(1)(a) CRR permitted two-year payment period in the context of residential real estate in an STS context. The interim payment is calculated as the greater of: the expected loss amount equivalent to the impairment that would be recorded in the originator's financial statements if the credit protection agreement did not exist; and where applicable (meaning, presumably, where the originator applies the internal ratings based approach) the expected loss amount that would be applied by the originator to the underlying exposures[43].

In line with the Commission Proposals, 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 that would have been suffered by the originator and recorded in its financial statements at the time it is calculated if the credit protection agreement did not exist[44]. In line with the Commission Proposals, the Final On-Balance Sheet STS Framework requires the parties to specify a maximum extension period of up to two years for this purpose in the transaction documentation.

5.9 Credit protection premiums[45]

In line with the Commission Proposals, the Final On-Balance Sheet STS Framework contains 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 outstanding nominal amount of the performing securitised exposures at the time of payment) 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). Diverging from the Commission Proposals, however, the Final On-Balance Sheet STS Framework permits upfront premium payments (provided state aid rules are complied with)

[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. 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.

[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 Legislative Amendments 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 Legislative Proposals, in this briefing references are made to "premiums" rather than "premia".

where the guarantee scheme is specifically provided for in the national law of a Member State and benefits from a counter-guarantee from a specified national or supranational public bodies[46].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 maturity of the securitisation. The Final On-Balance Sheet STS Framework's requirements in relation to credit protection premiums are similar to requirements recommended in the EBA SRT Report for SRT traditional and synthetic securitisations (the latter also include quantitative tests to identify problematic high cost credit protection).

5.10 Verification agent

In line with the Commission Proposals, the Legislative Amendments impose 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 and senior 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.

5.11 Servicer replacement requirement no longer applies to protection purchaser servicer

The Final On-Balance Sheet STS Framework includes 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. This is helpful, as servicer replacement will generally not be practicable in synthetics 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).

5.12 Excess spread

Helpfully, as requested in industry feedback, the Final On-Balance Sheet STS Framework, like the Commission Proposals, permits 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 Final On-Balance Sheet STS Framework provides 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)(for this

[46] The entities listed in points Article 214(2) (a) to (d) CRR

purpose, 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 permission provided for the use of SES in the context of synthetic STS transactions does not prejudice the ability of NCAs to scrutinise SES in assessing commensurate risk transfer for SRT transactions. In this context, is worth noting that under the EBA SRT Report's recommendations, if implemented, excess spread will be reflected in new "commensurateness" tests in ways that make the tests harder to pass and SRT harder to achieve. The EBA SRT Report requires synthetic excess spread to be fixed, but is otherwise less prescriptive than the Final On-Balance Sheet STS Framework. There is no requirement for use-it-or-lose-it excess spread (as opposed to excess spread trapping), though use-it-or-lose-it excess spread will generally result in more favourable treatment under the EBA SRT Report's proposed new commensurateness tests, and no cap on excess spread quantum in synthetic securitisations, though the more excess spread that is included, the harder the commensurateness tests will become to pass. However, as indicated above, most if not all transactions seeking qualification under the Final On-Balance Sheet STS Framework will also seek SRT.

(At the Public Hearing on the STS DP, the EBA noted, in passing, that discussions in relation to excess spread are taking place at Basel level, so that developments are possible in this space at a globall level.)

5.13 Pro rata amortisation

Despite concerns on this front during the trilogue process, but in line with the Commission Proposals, the Final On-Balance Sheet STS Framework indicates that pro rata amortisation (or other non-sequential priority of payments) to determine the outstanding size of tranches is considered compatible with STS, provided that specified triggers relating to the performance of the underlying exposures are included in the documentation to switch to sequential payments in order of seniority.

The required triggers have, however, changed since the Commission Proposals, becoming more onerous. The minimum triggers are now:

(i) either:

- an increase in the cumulative amount of defaulted exposures,

or

- an increase in the cumulative losses

in each case above a specified percentage of the outstanding amount of the underlying portfolio;

plus

(ii) one additional backward-looking trigger; and

(iii) one forward-looking trigger.

The EBA is required to develop regulatory technical standards on these triggers and their calibration by 30 June 2021 and the Commission is empowered to adopt those standards.

The proposed triggers differ from the equivalent Traditional STS Criterion, where the only mandatory trigger is deterioration in the credit quality of the underlying exposures below a predetermined threshold. The triggers are similar, but not identical, to proposed triggers to switch from pro rata to sequential amortisation that would apply to SRT traditional and synthetic securitisations under recommendations contained in the EBA SRT Report (in which context the EBA has a separate mandate to produce regulatory technical standards). It will be important for the European authorities to ensure that the SRT and STS requirements are not incompatible. The triggers are more extensive and prescriptive than those envisaged in the Commission Proposals and those that apply to STS traditional securitisations.

5.14 Triggers for termination of the revolving period

In line with the Commission Proposals, 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. The full list of triggers is 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 credit quality during a specified period.

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).

5.15 Requirements after enforcement/acceleration notice

In line with the Commission Proposals, the Legislative Amendments 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. Where an SSPE is used within a synthetic securitisation, the Legislative Amendments, in line with the Commission Proposals, 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.

5.16 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 Legislative Amendments, like 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. 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 haircuts for currency mismatch applicable to the recognition of collateral by CRR regulated protection buyers).

As in the Commission Proposals, 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 transformation[47] (repayment of the SSPE's liabilities to investors not being predominantly reliant on the sale or refinancing of the underlying exposures), however, this prohibition was deleted in the EBA Report as less relevant in a synthetic context and remains absent in the Legislative Amendments as in the Commission Proposals.

5.17 Eligibility criteria and absence of active portfolio management

In line with the Commission Proposals, 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 in the Commission

[47] 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.

Proposals, removals are permitted where the exposures: are fully 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 CRR[48]. Again, this provision relates to originator (rather than investor) protection.

5.18 Transparency requirements

In line with the Commission Proposals, 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.

Interestingly, the amendments to the scope of the general Securitisation Regulation review under Article 46 of the Securitisation Regulation envisage the possibility of standardisation and disclosure requirements being re-visited in light of "*evolving market practices*" including in relation to "*bespoke private securitisations where no prospectus has to be drawn up*". This appears to contemplate the possible generation of separate disclosure templates for private deals, the lack of which is a source of considerable difficulty for the market.

In line with the Commission Proposals, 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.

5.19 Homogeneity

In line with the Commission Proposals, the proposed homogeneity requirement in the Legislative Amendments 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. In line with the Commission Proposals the Legislative Amendments indicate that the criteria will take into account asset cash flow characteristics including contractual credit risk and prepayment characteristics. In line with the Commission Proposals, the Legislative Amendments envisage development, by the EBA, of homogeneity standards within six months of entry into force of the Securitisation Regulation Amendments. While this is not a novel aspect of the Final On-Balance Sheet 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.

5.20 Designation of NCAs for supervision of the Final On-Balance Sheet STS Framework

Member States are required to notify the Commission and ESMA of the national competent authorities designated to supervise the Final On-Balance Sheet STS Framework paragraph within 6 months of entry into force of the Final On-Balance Sheet STS Framework. Pending such designation the NCA for supervision of traditional STS securitisations is responsible.

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

Appendix 1: Overview table on the eligibility criteria, as set out in the Securitisation Regulation Amendments in the final compromise proposals of December 2020 and the EBA Report of May 2020[49]

In this table, the colour-coding indicates the following:[50]

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 final compromise proposals
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: 1. The securitisation should be a **synthetic securitisation**, as defined in Article 2(10)[51] of the Securitisation Regulation. 2. The protection buyer under the credit protection arrangements	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	**Article 26b** 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.

[49] Please also note Article 26(a) of the Securitisation Regulation Amendments which mandates that EBA, in close cooperation with ESMA and EIOPA, may adopt guidelines and recommendations on the eligibility criteria; for the full text of Article 26(a), please refer to Appendix 3 below.
[50] The table sets out the relevant extracts from the EBA Report and the Securitisation Regulation Amendments and the colour-coding corresponds to how it was originally presented in the EBA Report.
[51] 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 final compromise proposals
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)[52] 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.		with the traditional STS framework, the protection buyer needs to be an EU established entity. 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. This criterion should also exclude arbitrage transactions in which the risk is subject to a double hedge (for example, when more than	2. The underlying exposures shall be originated as part of the core business activity of the originator. 3. At the closing of the transaction, the underlying exposures shall be held on the balance sheet of the originator or of an entity of the same group to which the originator belongs. For the purposes of this paragraph, a group shall be either of the following: (a) a group of legal entities subject to prudential consolidation in accordance with Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013; (b) a group as defined in point (c) of Article 212(1) of Directive 2009/138/EC. 4. The originator shall not further hedge its exposure to the credit risk of the underlying exposures of the securitisation beyond the protection obtained through the credit protection agreement. 5. The **credit protection agreement**[53] shall comply with the credit risk mitigation rules laid down in Article 249 of Regulation (EU) No 575/2013, or where that Article is not applicable, with

[52] 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.

[53] Note that the Securitisation Regulation Amendments 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 guarantees, whereby the originator commits to pay a credit protection premium to the investor and the investor commits to pay a credit protection payment to the originator in case one of the contractually defined credit events occurs.

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 final compromise proposals
4. The underlying exposures are part of the **core lending or any other core business activity of the protection buyer**. 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:** 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		one credit default swap is used to hedge the same credit risk). 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. 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.	requirements that are no less stringent that the requirements of that Article.

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 final compromise proposals
is not an institution regulated under the CRR.			
Criterion 2: Representations and warranties 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: • **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	Adapted criterion (Article 20(6)): extension of required representations and warranties and adaptation of their objective and content to synthetic securitisation	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.	**Article 26b** 6. The originator shall provide representations and warranties that the following requirements have been met: (a) the originator or an entity of the group to which the originator belongs has full legal and valid title to the underlying exposures and their associated ancillary rights; (b) where the originator is a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, or an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC, the originator or an entity which is included in the scope of supervision on a consolidated basis keeps the credit risk of the underlying exposures on their balance sheet; (c) each underlying exposure complies, at the date it is included in the securitised portfolio, with the eligibility criteria and with all conditions, other than the occurrence of a credit event as referred to in Article 26e, for a **credit protection**

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 final compromise proposals
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. • **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			**payment**[54] in accordance with the credit protection agreement within the securitisation documentation; (d) to the best of originator's knowledge, the contract for each underlying exposure contains a legal, valid, binding and enforceable obligation to the obligor to pay the sums of money specified in that contract; (e) the underlying exposures comply with underwriting criteria that are no less stringent than the standard underwriting criteria that the originator applies to similar exposures that are not securitised; (f) to the best of originator's knowledge, none of the obligors are in material breach or default of any of their obligations in respect of an underlying exposure on the date on which that underlying exposure is included in the securitised portfolio; (g) to the best of originator's knowledge, the transaction documentation does not contain any false information on the details of the underlying exposures; (h) at the closing of the transaction or when the underlying exposure is included in the

[54] Note that the Securitisation Regulation Amendments 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.

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 final compromise proposals
standard underwriting criteria and these are no less stringent than the underwriting criteria that the originator applies to similar exposures that are not securitised. • **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. 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			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.

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 final compromise proposals
affects the enforceability or collectability of the underlying exposure.			
Criterion 3: Eligibility criteria, no active portfolio management 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. 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: • 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. any case, any exposure added to the securitisation after the closing date should meet eligibility criteria that are **no**	Adapted criterion (Article 20(7)): adaptation of allowed portfolio management techniques, inclusion of additional conditions for the removal of the underlying exposures in securitisation	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. 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. 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	**Article 26b** 7. The underlying exposures shall meet predetermined, clear and documented eligibility criteria that do not allow for active portfolio management of those exposures on a discretionary basis. For the purpose of this paragraph, the substitution of exposures that are in breach of representations or warranties or, where the securitisation includes a replenishment period, the addition of exposures that meet the defined replenishment conditions, shall not be considered active portfolio management. Any exposure added after the closing date of the transaction shall meet eligibility criteria that are no less stringent than those applied in the initial selection of the underlying exposures. An underlying exposure may be removed from the transaction where that underlying exposure: (a) has been fully repaid or matured otherwise; (b) has been disposed of during the ordinary course of the business of the originator, provided that such disposal does not constitute implicit support as referred to in

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less strict than those applied in the initial selection of underlying exposures at the closing date. An underlying exposure may be **removed** from the securitisation if it: • 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.		the portfolio sells one or more exposures that were initially included in the securitisation. Replenishment practices and 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. 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.	Article 250 of Regulation (EU) No 575/2013; (c) is subject to an amendment that is not credit driven, such as refinancing or restructuring of debt, and which occurs during the ordinary course of servicing of that underlying exposure; (d) did not meet the eligibility criteria at the time it was included in the transaction.

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Criterion 4: Homogeneity, enforceable obligations, full recourse to obligors, period payment streams The underlying exposures should meet the following criteria: • 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	Similar to criterion on homogeneity, enforceable obligations, full recourse to obligor, periodic payment streams, (Art. 20(8))	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. 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.	**Article 26b**[55] 8. The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of assets type, taking into account the specific characteristics relating to the cash flows of the asset type including their contractual credit-risk and prepayment characteristics. A pool of underlying exposures shall comprise only one asset type. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors. The underlying exposures shall have defined periodic payment streams, the instalments of which may differ in their amounts, relating to rental, principal or interest payments, or to any other right to receive income from assets supporting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets.

[55] Please also note that **Article 26b(13)** of the Securitisation Regulation Amendments 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 Amendments come into force; for the full text of Article 26b(13), please refer to Appendix 3 below.

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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 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.	Similar to criterion on transferable securities (Art. 20(8))	See overarching rationale for consistency with traditional qualifying framework. 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.	**Article 26b(8) (cont'd)** 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.
Criterion 6: No resecuritisation The underlying exposures should not include any securitisation position.	Similar to criterion on no resecuritisation (Art. 20(9))	See the overarching rationale for consistency with the traditional qualifying framework. 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	**Article 26b** 9. The underlying exposures shall not include any securitisation positions.

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		severely affected the credit quality of the 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 resecuritisations 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 resecuritisations performed materially worse than traditional securitisations that were structured largely in line with the STS criteria for traditional securitisation.	
Criterion 7: Underwriting standards and material changes thereto 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. 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.	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	See the overarching rationale for consistency with the traditional qualifying framework. 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	**Article 26b** 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.

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No broker intermediary or similar party was involved in the credit or underwriting decisions relating to the underlying exposures.		broker intermediaries and similar parties 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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Criterion 10: Originator's expertise The originator or original lender should have expertise in originating exposures that are of a similar nature to those securitised.	Similar to criterion on originator's expertise (Art. 20(10))	See also the overarching rationale for consistency with the traditional qualifying framework. 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.	**Article 26b(10) (cont'd)** The originator or original lender shall have expertise in originating exposures 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: • 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: ○ to the best of the originator's or original lender's knowledge, has	Similar to criterion on no defaulted exposures (Art. 20(11))	See overarching rationale for consistency with traditional qualifying framework.	**Article 26b** 11. The underlying exposures shall not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013, or exposures to a credit-impaired debtor or guarantor who to the best of the originator's or original lender's knowledge: (a) has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of the origination or has undergone a debt-restructuring process with regard to his

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been declared insolvent or 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: ▪ 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			non-performing exposures within three years prior to the date of the selection of the underlying exposures, except where: (i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of the selection of the underlying exposures; (ii) the information provided by the originator in accordance with point (a) and point (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring and their performance since the date of the restructuring; (b) was at the time of origination of the underlying exposure, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or the original lender; or (c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable

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underlying exposures; ▪ 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			exposures held by the originator which are not securitised.

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or, if there is no such public credit registry, another credit registry that is available to the originator or the original lender; ○ 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.			
Criterion 12: At least one payment made 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.	Similar to criterion on at least one payment made (Art. 20(12))	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	**Article 26b** 12. The debtors shall, at the time of the inclusion of the underlying exposures, have made at least one payment, except where: (a) the securitisation is a revolving securitisation, backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits; (b) the exposure represents the refinancing of an exposure that is already included in the transaction.

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		single instalment or with an initial legal maturity of less than one year. 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.	
STANDARDISATION CRITERIA			
Criterion 13: Risk retention requirements The originator or original lender should satisfy the risk-retention requirement in accordance with Article 6 of the Securitisation Regulation.	Similar to criterion on risk retention requirements (Art. 21(1))	See overarching consistency with the framework for traditional securitisation. 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.	**Article 26c** 1. The originator or original lender shall satisfy the risk retention requirements in accordance with Article 6.
Criterion 14: Appropriate mitigation of interest rate and currency risks **Currency risk**: The transaction documentation should clearly describe how any currency risk arising in	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	**Article 26c** 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.

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synthetic securitisation will affect payments to the protection buyer and the investors. • 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). **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 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. The underlying exposures should not include derivatives, other than derivatives entered into for currency or interest-rate hedging purposes in	mitigation of interest rate and currency risks	securitisation investors are limited to the 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. 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. 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	Those risks shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Any collateral securing the obligations of the investor under the credit protection agreement shall be denominated in the same currency in which the credit protection payment is denominated. In case of a securitisation using a SSPE, the amount of liabilities of the SSPE concerning the interest payments to the investors shall at each payment date be equal to or be less than the amount of the SSPE's income from the originator and any collateral arrangements. Except for the purpose of hedging interest rate or currency risks of the underlying exposures, the pool of underlying exposures shall not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

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connection with the underlying exposures. Those derivatives should be underwritten and documented in accordance with common standards in international finance.		guarantee amount after conversion into the currency in which the underlying exposures 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. 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	

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		which interest rate mismatches may occur in such securitisations. Derivatives should be allowed as underlying exposures of a synthetic STS securitisation 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. The appropriate mitigation of interest rate and currency risks should be clearly specified in the transaction documentation.	
Criterion 15: Referenced interest payments 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	Similar to criterion on referenced interest payments (Art. 21(3))	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	**Article 26c** 3. Any referenced interest rate payments in relation to the transaction shall be based on any of the following: (a) generally used market interest rates, or generally used sectoral rates that are reflective of the costs of funds, and shall not reference complex formulae or derivatives;

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obligations under the credit protection agreement. Any referenced interest payments in relation to the underlying exposure should be based on either (i) generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, and should not reference complex formulae or derivatives.		should therefore be kept for consistency purposes.	(b) income generated by the collateral securing the obligations of the investor under the protection agreement. Any referenced interest payments due under the underlying exposures shall be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, and shall not reference complex formulae or derivatives.
Criterion 16: Requirements after enforcement notice 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. 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	Adapted criterion on requirements after enforcement notice (Art. 21(4)): adapted to reflect that not all synthetic securitisations use SSPE	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. 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	**Article 26c** 4. Following the occurrence of an enforcement event in respect of the originator, the investor shall be permitted to take enforcement action. In case of a securitisation using a SSPE, where an enforcement or termination notice of the credit protection agreement is delivered, no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of that SSPE, the payment of the protection payments for defaulted underlying exposures that are still being worked out at the time of the termination, or the orderly repayment of investors in accordance with the contractual terms of the securitisation.

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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.		latter, a requirement that does not allow the automatic liquidation of the underlying exposures at market value is not needed for synthetic securitisations.	
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) 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.	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	See the overarching rationale for consistency with the traditional qualifying framework. 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. 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.	**Article 26c** 5. Losses shall be allocated to the holders of a securitisation position in the order of seniority of the tranches, starting with the most junior tranche. Sequential amortisation shall be applied to all tranches to determine the outstanding amount of the tranches at each payment date, starting from the most senior tranche. Transactions which feature non-sequential priority of payments shall include triggers related to the performance of the underlying exposures resulting in the priority of payments reverting the amortisation to sequential payments in order of seniority. Such performance-related triggers shall include as a minimum: (a) either the increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses greater than a given percentage of the outstanding amount of the underlying exposures below a pre-determined threshold. portfolio; (b) one additional backward-looking trigger; and

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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 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			(c) one forward-looking trigger. The EBA shall develop draft regulatory technical standards on the specification and where relevant calibration of the performance-related triggers. The EBA shall submit those draft regulatory technical standards to the Commission by 30 June 2021. Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. As tranches amortise, an amount of the collateral equal to the amount of the amortisation of those tranches shall be returned to the investors, provided the investors have collateralised those tranches. Where a credit event as referred to in Article 26e has occurred in relation to underlying exposures and the debt workout process for those exposures has not been completed, the amount of credit protection remaining at any payment date shall be at least equivalent to the outstanding notional amount of those underlying exposures, minus the amount of any interim payment made in relation to those underlying exposures.

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effected on these underlying exposures in relation to the relevant credit events. All amortisation agreements should be clearly documented.			
Criterion 18: Early amortisation provisions/triggers for termination of the revolving period 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: • 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.	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	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. 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. This criterion is linked to the requirement for the credit protection payments (which should be contingent upon the outstanding balance of the protected tranche).	**Article 26c** 6. The transaction documentation shall include appropriate early amortisation provisions or triggers for termination of the revolving period, where a securitisation is a revolving securitisation, including at least the following: (a) a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold; (b) a rise in losses above a predetermined threshold; (c) a failure to generate sufficient new underlying exposures that meet the predetermined credit quality during a specified period.
Criterion 19: Transaction documentation	Adapted criterion on transaction documentation	See the overarching rationale for consistency with the traditional qualifying framework.	**Article 26c**

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The transaction documentation should clearly specify: • 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; • 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;	(Art. 21(7)): adapted with additional requirements for servicing standards and procedures	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 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. 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.	7. The transaction documentation shall clearly specify: (a) the contractual obligations, duties and responsibilities of the servicer, the trustee and other ancillary service providers, as applicable, and the third-party verification agent referred to in Article 26e(4); (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, where those service providers differ from the originator, in a manner that does not result in the termination of the provision of those services; (c) the servicing procedures that apply to the underlying exposures at the closing date and thereafter and the circumstances under which those procedures may be modified; (d) the servicing standards that the servicer is obliged to adhere to in servicing the underlying exposures within the entire maturity of securitisation.

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• 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; • the servicing standards that the servicer will have to adhere to in servicing the underlying exposures within the entire maturity of the synthetic securitisation.			
Criterion 20: Servicer's expertise 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. The servicer should have well-documented and adequate policies, procedures and risk management controls relating to the servicing of exposures. 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.	Similar to criterion on servicer's expertise (Art. 21(8))	See the overarching rationale for consistency with the traditional qualifying framework. 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.	**Article 26c** 8. The servicer shall have expertise in servicing exposures of a similar nature to those securitised and shall have well-documented and adequate policies, procedures and risk-management controls relating to the servicing of exposures. The servicer shall apply servicing procedures to the underlying exposures that are at least as stringent as the ones applied by the originator to similar exposures that are not securitised.

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		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 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	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	**Article 26c** 10. The transaction documentation shall include clear provisions that facilitate the timely resolution of conflicts between different classes of investors.

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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 entities with fiduciary duties to investors should be clearly identified.		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 other entity with fiduciary duties to investors appears necessary.	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.
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 being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Those data shall cover a period of at least five years.
Criterion 24: External verification of the sample A sample of the underlying exposures should be subject to external verification,	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	**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

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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.		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%.	independent party, including verification that the underlying exposures are eligible for credit protection under the credit protection agreement.
Criterion 25: Liability cash flow model 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.	Similar to criterion on liability cash flow model (Art. 22(3))	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.	**Article 26d** 3. The originator shall, before the pricing of the securitisation, make available to potential investors a liability cash flow model which precisely represents the contractual relationship between the underlying exposures and the payments flowing between the originator, investors, other third parties and, where applicable, the SSPE, and shall, after pricing, make that model available to investors on an ongoing basis and to potential investors upon request.
Criterion 26: Environmental performance of assets In the case of a securitisation whose underlying exposures are residential loans or auto loans or leases, the originator should publish the available	Similar to criterion on environmental performance of assets (Art. 22(4))	See overarching rationale for consistency with traditional qualifying framework.	**Article 26d** 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

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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.			residential loans, auto loans or leases, as part of the information disclosed pursuant to point (a) of the first subparagraph of Article 7(1). By derogation from the first subparagraph, originators may, from 1 June 2021 onwards, decide to publish the available information related to the principal adverse impacts on sustainability factors of the assets financed by the underlying exposures.[56]
Criterion 27: Compliance with transparency requirements 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	Similar to criterion on compliance with transparency requirements (Art. 22(5))	See overarching rationale for consistency with traditional qualifying framework.	**Article 26d** 5. The originator shall be responsible for compliance with Article 7. The information required by point (a) of the first subparagraph of Article 7(1) shall be made available to potential investors before pricing upon request. The information required by points (b) to (d) of the first subparagraph of Article 7(1) shall be made available before pricing at least in draft or initial form. The final documentation shall be made available to investors at the latest 15 days after closing of the transaction.

[56] Please also note that **Article 26d(5a)** of the Securitisation Regulation Amendments mandates the ESAs, through the Joint Committee, to develop draft regulatory technical standards, within 3 months after the Securitisation Regulation Amendments come into force, in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 on the content, methodologies and presentation of information referred to in the second subparagraph of Article 26d(4) in respect of the sustainability indicators in relation to adverse impacts on the climate and other environmental, social and governance-related adverse impacts. Article 26d(5a) also states that, where relevant, the draft regulatory technical standards should mirror or draw upon the regulatory technical standards developed in accordance with the mandate given to the ESAs in Regulation (EU) 2019/2088. For the full text of Article 26d(5a), please refer to Appendix 3 below.

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to investors at the latest 15 days after the closing of the transaction.			
CRITERIA SPECIFIC TO SYNTHETIC SECURITISATION			
Criterion 28: Credit events The credit protection agreement establishing the synthetic securitisation should cover, **at least, the following credit events**: • 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 minimum the circumstances defined in Article 178 (3)(e) and (f) of the CRR; • 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. 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	n/a	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. 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	**Article 26e** 1. The credit protection agreement shall at least cover the following credit events: (a) where the transfer of risk is achieved by the use of guarantees, the credit events referred to in point (a) of Article 215(1) of Regulation (EU) No 575/2013; (b) where the transfer of risk is achieved by the use of credit derivatives, the credit events referred to in point (a) of Article 216(1) of Regulation (EU) No 575/2013. All credit events shall be documented. Forbearance measures, as referred to in Annex V, Section 30, paragraphs 163 to 183, to Commission Implementing Regulation (EU) 2015/227* that are applied to the underlying exposures shall not preclude the triggering of eligible credit events.

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definitions should be **clearly documented**. **Forbearance measures**, as defined in Annex V, Section 30, paragraphs 163 to 183, of 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 underlying exposures must not preclude the trigger of eligible credit events.		CRR are included in the credit protection agreements. 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 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. 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	

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		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.	
Criterion 29: Credit protection payments The credit protection payment following the occurrence of a credit event should 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 types[57] and recorded in its financial statements at the time the payment is made. The final credit protection payment should be payable within a specified period following the end of the workout	n/a	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 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. 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	**Article 26e** 2. The credit protection payment following the occurrence of a credit event shall be calculated based on the actual realised loss suffered by the originator or the original lender, as worked out in accordance with their standard recovery policies and procedures for the relevant exposure types and recorded in their financial statements at the time the payment is made. The final credit protection payment shall be payable within a specified period of time following the end of the debt workout process for the relevant underlying exposure where the end of the debt workout process occurs before the scheduled legal

[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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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. 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. 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 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		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 worked out, in order to ensure the coverage of actual losses through the credit protection. 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	maturity or early termination of the credit protection agreement. An interim credit protection payment shall be made at the latest six months after a credit event as referred to in paragraph 1 has occurred in cases where the debt workout of the losses for the relevant underlying exposure has not been completed by the end of that six months period. The interim credit protection payment shall be at least the higher of the following: (a) the expected loss amount that is equivalent to the impairment recorded by the originator in its financial statements in accordance with the applicable accounting framework at the time the interim payment is made under the assumption that the credit protection agreement does not exist and does not cover any losses; (b) where applicable, the expected loss amount as determined in accordance with Part Three, Title II, Chapter 3, of Regulation (EU) No 575/2013. Where an interim credit protection payment is made, the final credit protection payment referred to in the first subparagraph shall be made in order to adjust the interim settlement of losses to the actual realised loss.

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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 underling exposure, subject only to the rule on interim payments. The method by which interim and final credit protection payments are calculated should be clearly specified in the credit protection agreement. The rights of the protection buyer to receive protection payments under the synthetic securitisation should be enforceable. The amounts payable by investors under the securitisation are clearly defined, capable of calculation in all circumstances and limited in amount. The circumstances in which investors are required to make payments under the credit protection agreement should be clearly and objectively defined, or		requirements purposes, it is important that the interim payment reflects such a decision. 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.	The method for the calculation of interim and final credit protection payments shall be specified in the credit protection agreement. The credit protection payment shall be proportional to the share of the outstanding notional amount of the corresponding underlying exposure that is covered by the credit protection agreement. The right of the originator to receive the credit protection payment shall be enforceable. The amounts payable by investors under the credit protection agreement shall be clearly set out in the credit protection agreement and limited. It shall be possible to calculate those amounts in all circumstances. The credit protection agreement shall clearly set out the circumstances under which investors shall be required to make payments. The third-party verification agent referred to in paragraph 4 shall assess whether such circumstances have occurred. The amount of the credit protection payment shall be calculated at the level of the individual underlying exposure for which a credit event has occurred.

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subject to a determination by the verification agent, and limited in number. The credit protection amount should be broken down to the level of individual underlying exposures.			
Criterion 30: Credit protection payments following the close out/final settlement at the final legal maturity of the credit protection agreement 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 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. 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.	n/a	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 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.	**Article 26e** 3. The credit protection agreement shall specify the maximum extension period that shall apply for the debt workout process for the underlying exposures in relation to which a credit event as referred to in paragraph 1 has occurred, but where the debt workout process has not been completed upon the scheduled legal maturity or early termination of the credit protection agreement. Such an extension period shall not be longer than two years. The credit protection agreement shall provide that by the end of that extension period a final credit protection payment shall be made on the basis of the originator's final loss estimate that would have to be recorded by the originator in its financial statements at that time under the assumption that the credit protection agreement does not exist and does not cover any losses. In case of a termination of the credit protection agreement, the debt workout process shall continue in respect of any outstanding credit

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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.			events that occurred prior to that termination in the same way as that described in the first subparagraph.
Criterion 31: Credit protection premiums 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 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 describe how the protection fee and any note coupons are calculated in	n/a	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 tranche at each payment date, hence reflecting tranche amortisation and tranche write-downs due to incurred losses. 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.	**Article 26e(3) (cont'd)** The **credit protection premiums**[58] to be paid under the credit protection agreement shall be structured as contingent on the outstanding nominal amount of the performing securitised exposures at the time of the payment and reflect the risk of the protected tranche. For those purposes, the credit protection agreement shall not stipulate guaranteed premiums, upfront premium payments, rebate mechanisms or other mechanisms that may avoid or reduce the actual allocation of losses to the investors or return part of the paid premiums to the originator after the maturity of the transaction. By way of derogation from the previous subparagraph, upfront premium payments shall be allowed, provided state aid rules are complied with, where the guarantee scheme is specifically provided for in the national law of a Member State and benefits from a counter-guarantee of

[58] Note that the Securitisation Regulation Amendments 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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respect of each payment date over the life of the securitisation. The rights of the protection seller to receive credit protection premiums under synthetic securitisation should be enforceable.		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.	any of the entities listed in points (a) to (d) of Article 214(2) of Regulation (EU) No 575/2013. The transaction documentation shall describe how the credit protection premium and any note coupons, if any, are calculated in respect of each payment date over the maturity of the securitisation. The rights of the investors to receive credit protection premiums shall be enforceable.
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: • that the credit event in the credit event notice occurred in accordance	n/a	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	**Article 26e** 4. The originator shall appoint a third-party verification agent before the closing date of the transaction. The third party verification agent shall verify, at a minimum all of the following for each of the underlying exposures for which a credit event notice is given: (a) that the credit event referred to in the credit event notice is a credit event as

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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 allocation of losses to investors in relation to the underlying exposures has been conducted correctly. 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		instrumental to a well-functioning transaction.	specified in the terms of the credit protection agreement; (b) that the underlying exposure was included in the reference portfolio at the time of the occurrence of the credit event concerned; (c) that the underlying exposure met the eligibility criteria at the time of its inclusion in the reference portfolio; (d) where an underlying exposure has been added to the securitisation as a result of a replenishment, that such a replenishment complied with the replenishment conditions; (e) that the final loss amount is consistent with the losses recorded by the originator in its profit and loss statement; (f) that, at the time the final credit protection payment is made, the losses in relation to the underlying exposures have correctly been allocated to the investors. The third-party verification agent shall be independent from the originator and investors, and, where applicable, from the SSPE and shall have accepted the appointment as third-party verification agent by the closing date. The third-party verification agent may perform the verification on a sample basis instead of on the basis of each individual underlying exposure

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appointment accepted, on or before the closing date. 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 underling exposures is subject to verification including in case if it is not satisfied with the sample verification. 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.			for which credit protection payment is sought. Investors may however request the verification of the eligibility of any particular underlying exposure where they are not satisfied with the sample-basis verification. The originator shall include a commitment in the transaction documentation to provide the third-party verification agent with all the information necessary to verify the requirements set out in the first subparagraph.
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	n/a	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	**Article 26e** 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

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provider, the originator should be permitted to terminate a transaction prior to its scheduled maturity only when any of the following occurs: • Relevant regulatory events, which should: ○ 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 of entering into the transaction, which was reasonable unforeseeable at that time. ○ include a determination by a competent authority that the protection buyer (or any		temporarily changing the representation of their capital position on an ad hoc basis. 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: • 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 for the protection provider to participate in this market. • 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	obligation laid down in the transaction documents; (c) relevant regulatory events, including: (i) relevant changes in Union or national law, relevant changes by competent authorities to officially published interpretations of such laws, where applicable, or relevant changes in the taxation or accounting treatment of the transaction that have a material adverse effect on the economic efficiency of a transaction, in each case compared with that anticipated at the time of entering into the transaction and which could not reasonably be expected at that time; (ii) a determination by a competent authority that the originator or any affiliate of the originator is not or is no longer permitted to recognise significant risk transfer in accordance with Article 245(3) of Regulation (EU) No 575/2013 in respect of the securitisation; (d) the 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

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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. • 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 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.		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. Taking into consideration the above, the bankruptcy of the originator should not be allowed as an early termination event for the STS synthetic securitisation. 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 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	initial reference portfolio at the closing date; (e) the exercise of a clean-up call option as defined in point (1) of Article 242 of Regulation (EU) No 575/2013; (f) in the case of unfunded credit protection the investor does no longer qualify as an eligible protection provider in accordance with the requirements set out in paragraph 7. The transaction documentation shall specify whether any of the call rights referred to in points (d) and (e) are included in the transaction concerned and how such call rights are structured. 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. Where the time call is exercised, originators shall notify competent authorities how this requirement is fulfilled, including with a justification of the use of the time call and a plausible account showing that the reason to exercise the call is not a deterioration in the quality of the underlying assets. In the case of funded credit protection, upon termination of the credit protection agreement,

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• 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.		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.)	collateral shall be returned to investors in order of the seniority of the tranches subject to the provisions of the relevant insolvency law, as applicable to the originator. 5a. The investors may not terminate a transaction prior to its scheduled maturity for any other reason than a failure to pay the credit protection premium or any other material breach of contractual obligations by the originator.
Criterion 34: Synthetic excess spread The originator (protection buyer) can commit to the SES, which is available as credit enhancement for the investors under the following conditions: • 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 percentage of the total outstanding portfolio balance (fixed SES). • 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	n/a	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. 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. Not allowing the inclusion of SES among the STS criteria would substantially limit the use of STS balance-sheet synthetics for many asset classes. However, if the amount of SES subordinated to the investor (protection seller) position is	**Article 26e** 6. The originator may commit **synthetic excess spread**[59], which shall be available as credit enhancement for the investors, where all of the following conditions are met: (a) the amount of the synthetic excess spread that the originator commits to using as credit enhancement at each payment period is specified in the transaction documentation and expressed as a fixed percentage of the total outstanding portfolio balance at the start of the relevant payment period (fixed synthetic excess spread); (b) the synthetic excess spread which is not used to cover credit losses that materialise

[59] Note that the Securitisation Regulation Amendments provide for the following new definition of this term: Article 2(28) – "**synthetic excess spread**" means the amount that, according to the documentation of a synthetic securitisation, is contractually designated by the originator to cover losses of the securitised exposures that might occur during the life of the transaction.

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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). If any SES is included in a transaction, these conditions should be clearly specified in the transaction documentation.		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. 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). 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. For the avoidance of doubt, the SES criterion for balance-sheet synthetics does not impede or prevent any consideration of 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	during each payment period shall be returned to the originator; (c) for originators using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013, the total committed amount per year shall not be higher than the one-year regulatory expected loss amounts on the underlying portfolio of underlying exposures, calculated in accordance with Article 158 of Regulation (EU) No 575/2013; (d) for originators not using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013, the calculation of the one-year expected loss of the underlying portfolio shall be clearly determined in the transaction documentation; (e) the transaction documentation specifies the conditions laid down in this paragraph.

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		published before January 2021, will provide considerations on SES for the purpose of SRT and commensurate risk transfer.	
Criterion 35: Eligible credit protection agreement, counterparties and collateral Only the following credit protection arrangements establishing the synthetic securitisation should be allowed: 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; B. a guarantee meeting the requirements set out in Chapter 4 of Part Three, Title II, of the CRR, which benefits from a counter-guarantee of any of the entities referred to in point (A); C. other credit protection in the form of guarantees, credit derivatives or credit link notes	n/a	Unlike in the case of traditional (true sale) securitisation, the actual extent of credit risk transfer in synthetic securitisation transactions also depends on: • 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. 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. If the counterparty is not recognised by the CRR as being eligible for a 0% risk weight, 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	**Article 26e** 7. The credit protection agreements shall meet one of the following conditions: (a) a guarantee meeting the requirements set out in Chapter 4 of Part Three, Title II, of Regulation (EU) No 575/2013, by which the credit risk is transferred to any of the entities listed in points (a) to (d) of Article 214(2) of Regulation (EU) No 575/2013, provided that the exposures to the investor qualify for a 0 % risk weight under Chapter 2 of Part Three, Title II, of that Regulation; (b) a guarantee meeting the requirements set out in Chapter 4 of Part Three, Title II, of Regulation (EU) No 575/2013, which benefits from a counter-guarantee of any of the entities referred to in point (a) of this paragraph; (c) other credit protection not referred to in points (a) and (b) of this paragraph in the form of guarantees, credit derivatives or credit linked notes that meet the requirements set out in Article 249 of Regulation (EU) No 575/2013, provided that the obligations of the investor are

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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. 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: • 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.		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. 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.	secured by collateral meeting the requirements laid down in paragraphs 8 and 9 of this Article. 8. The other credit protection referred to in point (c) of paragraph 7 shall meet the following requirements: (a) the right of the originator to use the collateral to meet protection payment obligations of the investors is enforceable and the enforceability of that right is ensured through appropriate collateral arrangements; (b) the right of the investors, when the securitisation is unwound or as the tranches amortise, to return any collateral that has not been used to meet protection payments is enforceable; (c) where the collateral is invested in securities, the transaction documentation sets out the eligibility criteria and custody arrangement for such securities. The transaction documentation shall specify whether investors remain exposed to the credit risk of the originator. The originator shall obtain an opinion from a qualified legal counsel confirming the enforceability of the credit protection in all relevant jurisdictions.

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• 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. 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			9. Where other credit protection is provided in accordance with point (c) of paragraph (7) of this Article, the originator and the investor shall have recourse to high-quality collateral, which shall be either of the following: (a) collateral in the form of 0 % risk-weighted debt securities referred to in Part Three, Title II, Chapter 2 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 shall be no longer than the remaining period up to the next payment date; (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 with credit quality step 3 or above as referred to in Article 136 of Regulation (EU) No 575/2013. As a derogation from the first subparagraph, subject to the explicit consent in the final

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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.			transaction documentation by the investor after having conducted its due diligence according to Article 5, including an assessment of any relevant counterparty credit risk exposure, only the originator may have recourse to high quality collateral in the form of cash on deposit with the originator, or one of its affiliates, subject to a minimum credit quality step 2 as referred to in Article 136 of Regulation (EU) No 575/2013. The competent authorities designated pursuant to Article 29(5) may, after consulting EBA, allow collateral in the form of cash on deposit with the originator, or one of its affiliates, subject to a credit quality step 3 provided that market difficulties, objective impediments related to the credit quality step assigned to the Member State of the institution or significant potential concentration problems in the Member State concerned due to the application of a minimum credit quality step 2 requirement referred to in the second subparagraph can be documented. Where the third-party credit institution or the originator no longer satisfies the minimum credit quality step, the collateral shall be transferred within nine months to a third-party credit institution with a credit quality step of 3 or above or the collateral shall be invested in securities meeting the criteria laid down in point (a) of the first subparagraph.

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			The requirements set out in this paragraph 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. The EBA shall monitor the application of the collateralisation practices in this Article, paying particular attention to the counterparty credit risk and other economic and financial risks borne by investors resulting from such collateralisation practices. The EBA shall publish a report on its findings to the Commission by...[24 months after the date of entry into force of this amending Regulation]. By ... [30 months after the date of entry into force of this amending Regulation] the Commission shall, on the basis of that EBA report submit a report to the European Parliament and the Council on the application of this Article with particular regard to the risk of excessive build-up of counterparty credit risk in the financial system, together with a legislative proposal for amending this Article, if appropriate.

Appendix 2 – Redline of the eligibility criteria showing differences between the Commission Proposals and the final compromise proposals

Article 26b

Requirements relating to simplicity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) at the ~~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.

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

For the purpose of this paragraph, the substitution of ~~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.

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

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

(a) has been fully repaid or matured otherwise;

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

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

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

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

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

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

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

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

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

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

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

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

11. The underlying exposures shall not include, at the time of ~~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:

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

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

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

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

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

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

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

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

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

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

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

Article 26c

Requirements relating to standardisation

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

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

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

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

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

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

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

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

4. Following the occurrence of an enforcement event in respect of the originator, the investor shall be permitted to take enforcement action~~, terminate the credit protection agreement or do both.~~.

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

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

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

Transactions ~~that~~which feature non-sequential ~~amortisation~~priority of payments shall ~~have~~include triggers ~~for~~related to the performance of the underlying exposures ~~changing~~resulting in the priority of payments reverting the amortisation to sequential payments in order of seniority. Such performance-related triggers shall include as a minimum:

(a) either the ~~deterioration in the credit quality~~increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses greater than a given percentage of the outstanding amount of the underlying exposures below a pre-determined threshold. portfolio;

(b) one additional backward-looking trigger; and

(c) one forward-looking trigger.

The EBA shall develop draft regulatory technical standards on the specification and where relevant calibration of the performance-related triggers.

The EBA shall submit those draft regulatory technical standards to the Commission by 30 June 2021.

Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

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

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

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

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

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

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

7. The transaction documentation shall clearly specify:

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

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

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

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

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

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

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

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

Article 26d

Requirements relating to transparency

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

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

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

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

By derogation from the first subparagraph, originators may, from 1 June 2021 onwards, decide to publish the available information related to the principal adverse impacts on sustainability factors of the assets financed by the underlying exposures.

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~~to (d) of the first subparagraph of Article 7(1) shall be made available before pricing at least in draft or initial form. The final ~~transaction~~ documentation shall be made available to investors at the latest 15 days after closing of the transaction.

5a. By ... [3 months after entry into force of this amending Regulation], the ESAs shall develop, through the Joint Committee, draft regulatory technical standards in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 on the content, methodologies and presentation of information referred to in the second subparagraph of paragraphs 4 of this Article in respect of the sustainability indicators in relation to adverse impacts on the climate and other environmental, social and governance-related adverse impacts.

Where relevant, those draft regulatory technical standards shall mirror or draw upon the regulatory technical standards elaborated in compliance with the mandate given to the ESAs in Regulation (EU) 2019/2088, in particular as laid down in Article 2a, and Article 4(6) and (7) thereof.

The Commission is empowered to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No1094/2010 and (EU) No 1095/2010.

Article 26e

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

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

(a) ~~failure to pay by the underlying obligor, which includes the default~~where the transfer of risk is achieved by the use of guarantees, the credit events referred to in point (~~b~~a) of Article ~~178~~215(1) of Regulation (EU) No 575/2013;

(b) ~~bankruptcy of the underlying obligor, which includes the elements~~where the transfer of risk is achieved by the use of credit derivatives, the credit events referred to in ~~points~~point ~~(e) and (f~~a) of Article ~~178~~216(~~3~~1) of Regulation (EU) No 575/2013~~;~~.

~~(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.~~

All credit events shall be documented.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the insolvency of the investor;

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

(c) relevant regulatory events, including:

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

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

(d) the 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 the closing date;

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

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

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

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.

Where the time call is exercised, originators shall notify competent authorities how this requirement is fulfilled, including with a justification of the use of the time call and a plausible account showing that the reason to exercise the call is not a deterioration in the quality of the underlying assets.

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

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

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

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

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

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

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

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

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

(a) a guarantee meeting the requirements set out in Chapter 4 of Part Three, Title II, of Regulation (EU) No 575/2013, by which the credit risk is transferred to any of the entities listed in points (a) to

(d) of Article 214(2) of Regulation (EU) No 575/2013, provided that the exposures to the investor qualify for a 0 % risk weight under Chapter 2 of Part Three, Title II, of that Regulation;

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

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

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

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

(i) those ~~debts~~debt securities have a remaining maximum maturity of three months which ~~matches the~~shall be no longer than the remaining period up to the next payment ~~dates~~date;

(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~~ with credit quality step 3 or above as referred to in Article 136 of Regulation (EU) No 575/2013.

As a derogation from the first subparagraph, subject to the explicit consent in the final transaction documentation by the investor after having conducted its due diligence according to Article 5, including an assessment of any relevant counterparty credit risk exposure, only the originator may have recourse to high quality collateral in the form of cash on deposit with the originator, or one of its affiliates, subject to a minimum credit quality step 2 as referred to in Article 136 of Regulation (EU) No 575/2013.

The competent authorities designated pursuant to Article 29(5) may, after consulting EBA, allow collateral in the form of cash on deposit with the originator, or one of its affiliates, subject to a credit quality step 3 provided that market difficulties, objective impediments related to the credit quality step assigned to the Member State of the institution or significant potential concentration problems in the Member State concerned due to the application of a minimum credit quality step 2 requirement referred to in the second subparagraph can be documented.

~~For the purposes of point (b), where~~Where the third-party credit institution or the originator no longer ~~satisfy~~satisfies the minimum credit quality step ~~2~~, the collateral shall be ~~promptly~~ transferred within nine months to a third-party credit institution with a credit quality step of ~~2~~3 or ~~higher~~above or the collateral shall be invested in securities meeting the criteria laid down in point (a) of ~~this paragraph.~~ the first subparagraph.

The requirements set out in this ~~point (b)~~paragraph 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.

The EBA shall monitor the application of the collateralisation practices in this Article, paying particular attention to the counterparty credit risk and other economic and financial risks borne by investors resulting from such collateralisation practices.

The EBA shall publish a report on its findings to the Commission by...[24 months after the date of entry into force of this amending Regulation].

By ... [30 months after the date of entry into force of this amending Regulation] the Commission shall, on the basis of that EBA report submit a report to the European Parliament and the Council on the application of this Article with particular regard to the risk of excessive build-up of counterparty credit risk in the financial system, together with a legislative proposal for amending this Article, if appropriate.

Appendix 3 – Other amendments relating to the Final On-Balance Sheet STS Framework to note from the Securitisation Regulation Amendments and the CRR Amendments

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'

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

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

(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) Amendment to insert new Article 26d(5a) in the standardisation requirements

5a. By ... [3 months after entry into force of this amending Regulation], the ESAs shall develop, through the Joint Committee, draft regulatory technical standards in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 on the content, methodologies and presentation of information referred to in the second subparagraph of paragraphs 4 of this Article in respect of the sustainability indicators in relation to adverse impacts on the climate and other environmental, social and governance-related adverse impacts.

Where relevant, those draft regulatory technical standards shall mirror or draw upon the regulatory technical standards elaborated in compliance with the mandate given to the ESAs in Regulation (EU) 2019/2088, in particular as laid down in Article 2a, and Article 4(6) and (7) thereof.

The Commission is empowered to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No1094/2010 and (EU) No 1095/2010.

(6) 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, Articles 26a to 26e ('STS notification'). In the case of an ABCP programme, only the sponsor shall be responsible for the notification of that programme and, within that programme, of the ABCP transactions complying with Article 24. In case of synthetic securitisation, only the originator shall be responsible for the notification.

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 26a 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 26a 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, where applicable, 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 26a 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 26a 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.

(7) 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 26a to 26e. The competent authority shall grant the authorisation if the following conditions are met:

(8) Amendments 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:

(a) the processes and mechanisms to correctly measure and retain the material net economic interest on an ongoing basis in accordance with Article 6(1) and~~,~~ the gathering and timely disclosure of all information to be made available in accordance with Article 7 ~~and the credit-granting criteria in accordance with Article 9~~;

(aa) for exposures that are not part of an NPE Securitisation:

(i) the credit-granting criteria applied to performing exposures in accordance with Article 9;

(ii) the sound standards for selection and pricing applied to underlying exposures that are non-performing exposures as referred to in the second subparagraph of Article 9(1);

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

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

(-d) for NPE securitisations, the processes and mechanisms to ensure compliance with Article 9(1) preventing any abuse of the derogation provided for in the second subparagraph of Article 9(1);

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

(9) Amendments to Article 31

Article 31

Macroprudential oversight of the securitisation market

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

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

3. Without prejudice to paragraph 2 and the report referred to in Article 44, the ESRB shall, in close cooperation with ESMA, EBA and EIOPA, publish by 31 December 2022 a report assessing the impact on financial stability of the introduction of STS on-balance-sheet securitisations, and any potential systemic risks, such as risks created by concentration and inter-connectedness among non-public credit protection sellers.

The report shall take into account the specific features of synthetic securitisation, namely its typical bespoke and private character in financial markets, and examine whether the treatment of STS on-balance sheet securitisation is conducive to overall risk reduction in the financial system and to better financing of the real economy.

When preparing the report, the ESRB shall use a variety of relevant data sources, such as:

(a) data collected by competent authorities in accordance with Article 7(1);

(b) the outcome of reviews carried out by competent authorities in accordance with Article 30(2); and

(c) data held in securitisation repositories in accordance with Article 10.

4. In accordance with Article 16 of Regulation (EU) No 1092/2010, the ESRB shall provide warnings and, where appropriate, issue recommendations for remedial action in response to the risks referred to in paragraphs 2 and 3 of this Article, including on the appropriateness of modifying the risk-retention levels, or other macroprudential measures.

Within three months of the date of transmission of the recommendation, the addressee of the recommendation shall, in accordance with Article 17 of Regulation (EU) No 1092/2010, communicate to the ESRB, the European Parliament and the Council the actions taken in response to the recommendation and shall provide adequate justification for any inaction.

(10) Amendments to Article 32

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 26a to 26e;

[…]

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

[…]

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

[…]

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

(11) Amendment to insert new Article 43a

Article 43a

Transitional provision for STS on-balance sheet securitisations

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

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

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

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

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

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

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

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

(c) in Article 26d(5):

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

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

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

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

(12) Amendment to delete Article 45[60]

[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 THE CAPITAL REQUIREMENTS REGULATION

(1) Amendment to Article 242

Article 242

Definitions

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

[…]

(19a) 'synthetic excess spread' means a synthetic excess spread as defined in point (28) of Article 2 of Regulation (EU) 2017/2402.

(2) Amendments to Article 248

Article 248

Exposure value

1. The exposure value of a securitisation position shall be calculated as follows:

[…]

(e) the exposure value of a synthetic excess spread shall include, as applicable, the following:

(i) any income from the securitised exposures already recognised by the originator institution in its income statement under the applicable accounting framework that the originator institution has contractually designated to the transaction as synthetic excess spread that is still available to absorb losses;

(ii) any synthetic excess spread contractually designated by the originator institution in any previous periods that is still available to absorb losses;

(iii) any synthetic excess spread contractually designated by the originator institution for the current period that is still available to absorb losses;

(iv) any synthetic excess spread contractually designated by the originator institution for future periods.

For the purposes of this point, any amount that is provided as collateral or credit enhancement in relation to the synthetic securitisation and that is already subject to an own funds requirement in accordance with the provisions of this Chapter shall not be included in the exposure value.

[…]

3a. The EBA shall develop draft regulatory technical standards to specify how originator institutions shall determine the exposure value referred to in point (e) of paragraph 1, taking into account the relevant losses expected to be covered by the synthetic excess spread.

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

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

(3) Amendment to Article 256

Article 256

Additional own funds requirements for securitisations of revolving exposures with early amortisation provisions

[…]

5a. For the purposes of calculating the attachment points (A) and detachment points (D) of a synthetic securitisation, the originator institution of the securitisation shall treat the exposure value of the securitisation position corresponding to synthetic excess spread referred to in point (e) of Article 248 as a tranche, and adjust the attachment points (A) and detachment points (D) of the other tranches it retains by adding that exposure value to the outstanding balance of the pool of underlying exposures in the securitisation. Institutions other than the originator institution shall not make this adjustment.

(4) Amendments to Article 270

Article 270

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

1. An originator institution may calculate the risk-weighted exposure amounts of a securitisation position in an STS on-balance sheet securitisation as referred to in Article 26a(1) of Regulation (EU) 2017/2402~~in respect of a securitisation position~~ in accordance with Articles 260, 262 or 264 of this Regulation, as applicable, where that position meets 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.~~

2. The EBA shall monitor the application of paragraph 1 of this Article in particular with regard to:

(a) the market volume and market share of STS on-balance sheet securitisations in respect of which the originator institution applies paragraph 1, across different asset classes;

(b) the observed allocation of losses to the senior tranche and to other tranches of STS on-balance sheet securitisations, where the originator institution applies paragraph 1 in respect of the senior position held in such securitisations;

(c) the impact of the application of paragraph 1 on the leverage of institutions;

(d) the impact of the use of STS on-balance sheet securitisations in respect of which the originator institution applies paragraph 1 on the issuance of capital instruments by the respective originator institutions.

3. The EBA shall submit a report on its findings to the Commission by … [24 months after the date of entry into force of this amending Regulation].

4. By … [30 months after the date of entry into force of this amending Regulation] the Commission shall, on the basis of the EBA report referred to in paragraph 3, submit a report to the European Parliament and the Council on the application of this Article with particular regard to the risk of excessive leverage resulting from and to the potential substitution of the issuance of capital instruments by originator institutions through the use of STS on-balance sheet securitisations qualifying for the treatment in accordance with paragraph 1, together with a legislative proposal for amending this Article, where appropriate.

(5) Amendment to Article 430

Article 430

Reporting on prudential requirements and financial information

1. Institutions shall report to their competent authorities on:

(a) own funds requirements, including the leverage ratio, as set out in Article 92 and Part Seven;

(b) the requirements laid down in Articles 92a and 92b, for institutions that are subject to those requirements;

(c) large exposures as set out in Article 394;

(d) liquidity requirements as set out in Article 415;

(e) the aggregate data for each national immovable property market as set out in Article 430a(1);

(f) the requirements and guidance set out in Directive 2013/36/EU qualified for standardised reporting, except for any additional reporting requirement under point (j) of Article 104(1) of that Directive;

(g) the level of asset encumbrance, including a breakdown by the type of asset encumbrance, such as repurchase agreements, securities lending, securitised exposures or loans.

Institutions exempted in accordance with Article 6(5) shall not be subject to the reporting requirement on the leverage ratio set out in point (a) of the first subparagraph of this paragraph on an individual basis.

1a. For the purposes of point (a) of paragraph 1 of this Article, when institutions report on own funds requirements on securitisations, the information they report shall include information on NPE securitisations benefitting from the treatment set out in Article 269a, information on STS on-balance sheet securitisations they originate, and the breakdown of the assets underlying those STS on-balance sheet securitisations by asset class.

[…]

(6) Amendment to insert new Article 494ba

Article 494ba

Grandfathering of senior securitisation positions

By way of derogation from Article 270, an originator institution may calculate the risk-weighted exposure amounts of a senior securitisation position in accordance with Article 260, 262 or 264 where both the following conditions are met:

(a) the securitisation was issued before … [date of entry into force of this amending Regulation];

(b) the securitisation met, on … [day before date of entry into force of this amending Regulation], the conditions laid down in Article 270 as applicable at that date.

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