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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 pandemic
- Outcome of the European Parliament's first reading
(Brussels, 24 to 25 March 2021)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the rapporteur, Paul Tang (S&D, NL) presented a compromise amendment (amendment number 3) to the abovementioned proposal for a Regulation on behalf of the Committee on Economic and Monetary Affairs. This amendment had been agreed during the informal contacts referred to above.

¹ OJ C 145, 30.6.2007, p. 5.

In addition, the Left political group tabled one amendment (amendment number 2).

II. VOTE

When it voted on 25 March 2021, the plenary adopted the compromise amendment (amendment number 3) to the abovementioned proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution of 25 March 2021, as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

P9_TA(2021)0099

General framework for securitisation and specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis *I**

European Parliament legislative resolution of 25 March 2021 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 pandemic (COM(2020)0282 – C9-0207/2020 – 2020/0151(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0282),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0207/2020),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank of 23 September 2020³,
 - having regard to the opinion of the European Economic and Social Committee of 29 October 2020⁴,
 - having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letters of 16 December 2020 and 17 March 2021 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0215/2020),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially

³ OJ C 377, 9.11.2020, p. 1.

⁴ OJ C 10, 11.1.2021, p. 30.

amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P9_TC1-COD(2020)0151

Position of the European Parliament adopted at first reading on 25 March 2021 with a view to the adoption of Regulation (EU) 2021/... of the European Parliament and of the Council amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Acting in accordance with the ordinary legislative procedure⁷,

⁵ OJ C 377, 9.11.2020, p. 1.

⁶ OJ C 10, 11.1.2021, p. 30.

⁷ Position of the European Parliament of 25 March 2021.

Whereas:

- (1) The COVID-19 crisis is severely affecting people, companies, health systems and the economies of Member States. In its Communication of 27 *May* 2020 entitled 'Europe's Moment: Repair and Prepare for the Next Generation', the Commission stressed that liquidity and access to finance will continue to be a challenge in the months to come. It is therefore crucial to support the recovery from the severe economic shock caused by the COVID-19 pandemic by introducing targeted amendments to existing pieces of financial legislation.
- (2) The severe economic shock caused by the COVID-19 pandemic and the exceptional containment measures required are having a far-reaching impact on the economy. Businesses are facing disruption to supply chains, temporary closures and reduced demand, while households are confronted with unemployment and a fall in income. Public authorities at Union and Member State level have taken far-reaching action to support households and solvent undertakings in withstanding the severe but temporary slowdown in economic activity and the resulting liquidity shortages.

- (3) It is important that credit institutions and investment firms (institutions) employ their capital where it is most needed and the Union regulatory framework facilitates their doing so while ensuring that institutions act prudently. In addition to the flexibility provided for by the existing rules, targeted changes to Regulation (EU) 2017/2402 of the European Parliament and of the Council⁸ would ensure that the Union securitisation framework provides for an additional tool to foster economic recovery in the aftermath of the COVID-19 crisis.
- (4) The extraordinary circumstances of the COVID-19 crisis and the unprecedented magnitude of the attendant challenges triggered a call for immediate action to ensure that institutions have the ability to channel sufficient funds to businesses, so as to help them absorb the economic shock caused by the COVID-19 pandemic.

⁸ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

- (5) *The COVID-19 crisis risks increasing the number of non-performing exposures (NPEs), and increases the need for institutions to manage and deal with their NPEs. One way for institutions to do so is to trade their NPEs on the market through securitisation. Additionally, in the current context, it is vital that risks are moved away from the systemically important parts of the financial system and that lenders strengthen their capital positions. Synthetic securitisation is one way of achieving this, as well as, for example, raising new own funds.*
- (6) *Securitisation special purpose entities (SSPEs) should only be established in third countries that are not listed by the Union⁹ on the EU list of non-cooperative jurisdictions for tax purposes, and updates thereto (Annex I), or in the list of high-risk third countries which have strategic deficiencies in their regimes on anti-money laundering and counter terrorist financing. Annex II on the State of play of the cooperation with the EU with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles reports on the state of play of discussions with certain cooperating third countries, some of which currently maintain harmful tax practices. Such discussions should lead to a timely termination of such harmful tax practices to avoid future restrictions on the establishment of SSPEs.*

⁹ *See in particular: Council Conclusions of 8 November 2016 on the criteria for and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes and the Annex thereto (OJ C 461, 10.12.2016, p. 2) and Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the Annexes thereto (OJ C 66, 26.2.2021, p. 40).*

- (7) *To reinforce the capability of national authorities in countering tax avoidance, an investor should notify the competent tax authorities of the Member State in which it is resident for tax purposes whenever it is due to invest in an SSPE established, after the date of application of this Regulation, in a jurisdiction mentioned in Annex II for the reason of operating a harmful tax regime. This information may be used to assess whether the investor derives a tax benefit.*
- (8) As pointed out by the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council¹⁰, in its Opinion on the Regulatory Treatment of Non-Performing Exposure Securitisation¹¹, the risks associated with the assets backing NPE securitisations are economically distinct from those of securitisations of performing assets. NPEs are securitised at a discount on their nominal or outstanding value and reflect the market's assessment of, inter alia, the likelihood *of* the debt workout **generating** sufficient cash flow and asset recovery. The risk for investors is, therefore, that the debt workout for the assets **does not generate sufficient cash flow and asset** recovery to cover the net value at which the NPEs have been purchased. The actual risk *of* loss for investors does, therefore, not represent the nominal value of the portfolio, but the discounted value, namely, net of the price discount at which the underlying assets are transferred. It is therefore appropriate, in the case of NPE securitisations, to calculate the amount of the risk retention on the basis of that discounted value.

¹⁰ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

¹¹ Opinion of the European Banking Authority to the European Commission on the Regulatory Treatment of Non-Performing Exposure Securitisations, EBA-OP-2019-13, published on 23 October 2019.

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

- (10) Before the **2008** financial crisis, some securitisation activities followed an ‘originate to distribute’ model. In that model, assets of inferior quality were selected for securitisation to the detriment of investors, who ended up with more risk than they might have intended to undertake. The requirement to verify the credit granting standards used in the creation of securitised assets was introduced to prevent such practices in the future. For NPE securitisations, however, ***the credit granting standards applicable at the origination of the securitised assets are of minor importance due to*** the specific circumstances including the purchase of those non-performing assets and the type of securitisation. ***Instead, the application of sound standards in the selection and pricing of the exposures is a more important factor with respect to investments in NPE securitisations.*** It is therefore necessary to amend the verification of credit granting standards to enable the investor to carry out a due diligence on the quality and performance of the non-performing assets in order to make a sensible and well-informed investment decision, ***while ensuring that the derogation is not abused. Therefore, for NPE securitisation, the competent authorities should review the application of sound standards for selection and pricing of the exposures.***

- (11) ■ Synthetic *securitisations involve* transferring the credit risk of a set of loans, typically large corporate loans or loans to small and medium-sized enterprises (SMEs), by means of a credit protection agreement where the originator buys credit protection from the investor. Such credit protection is achieved by the use of financial guarantees or credit derivatives while the ownership of the assets remains with the originator and is not transferred to a *SSPE*, as is the case in traditional securitisations. The originator, as protection buyer, commits to pay a credit protection premium, which generates the return for investors. In turn, the investor, as protection seller, commits to a specified credit protection payment when a pre-determined credit event occurs.
- (12) The overall complexity of the securitisation structures and associated risks should be appropriately mitigated and no regulatory incentives should be provided to originators which would cause them to prefer synthetic securitisations over traditional securitisations. The requirements for simple, transparent and standardised (STS) on-balance-sheet ■ securitisations should therefore be highly consistent with the STS criteria for traditional true sale securitisations.

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

- (14) The object of a credit risk transfer should be exposures originated or purchased by a Union regulated institution within its core lending business activity and held on its balance sheet or, in the case of a group structure, on its consolidated balance sheet at the closing date of the transaction. The requirement for an originator to hold the securitised exposures on the balance sheet should exclude arbitrage securitisations from the scope of the STS label.
- (15) ***It is important that the interests of originators, sponsors, and original lenders that are involved in a securitisation are aligned. The risk-retention requirement set out in Regulation (EU) 2017/2402, which applies to all types of securitisations, works to align those interests. Such a requirement should also apply to STS on-balance-sheet securitisations. As a minimum, the originator, sponsor or original lender should retain, on an ongoing basis, a material net economic interest in the securitisation of not less than 5 %. Higher risk retention ratios might be justifiable and have already been observed in the market.***

- (16) The originator should make sure that it does not hedge the same credit risk more than once by obtaining credit protection in addition to the credit protection provided by the ***STS on-balance-sheet*** securitisation. In order to ensure the robustness of the credit protection agreement, it should meet the credit risk mitigation requirements laid down in Article 249 of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹² that have to be met by institutions seeking significant risk transfer through a synthetic securitisation.
- (17) ***STS on-balance-sheet securitisation might feature non-sequential amortisation in order to avoid disproportionate costs for protecting the underlying exposures and the evolution of the portfolio. Certain performance-related triggers should determine the application of sequential amortisation in order to ensure that tranches providing credit protection have not already been amortised when significant losses occur at the end of the transaction, thereby ensuring that significant risk transfer is not undermined.***

¹² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

- (18) To avoid conflicts between the originator and the investor, and to ensure legal certainty in terms of the scope of the credit protection purchased for underlying exposures, such credit protection should reference clearly identified reference obligations, giving rise to the underlying exposures, of clearly identified entities or obligors. Therefore, the reference obligations on which protection is purchased should be clearly identified at all times, via a reference register, and kept up to date. That requirement should also be indirectly part of the criteria defining the *STS on-balance-sheet* securitisation and excluding arbitrage securitisation from the STS framework.
- (19) Credit events that trigger payments under the credit protection agreement should include at least those referred to in *Chapter 4 of Title II of Part Three* of Regulation (EU) No 575/2013. Such events are well-known and recognisable from a market perspective and should serve to ensure consistency with the prudential framework. Forbearance measures, which consist of concessions towards a debtor that is experiencing or about to experience difficulties in meeting its financial commitments, should not preclude the triggering of the credit event. ■

- (20) The right of the originator, as protection buyer, to receive timely payments on actual losses, should be adequately protected. Accordingly, the transaction documentation should provide for a sound and transparent settlement process for the determination of actual losses in the reference portfolio, to prevent the originator from being underpaid. As working out the losses might be a lengthy process and to ensure timely payments to the originator, interim payments should be made at the latest six months after a credit event has occurred. Furthermore, there should be a final adjustment mechanism to ensure that interim payments cover actual losses and to prevent those interim losses from overpaying, which would be to the detriment of investors. The loss settlement mechanism should also clearly specify the maximum extension period that should apply to the workout process for those exposures and such extension period should be no longer than two years. That loss settlement mechanism should ensure the effectiveness of the credit protection agreement from the originator's perspective, and give investors legal certainty on the termination date of their obligation to make payments, and therefore contribute to a well-functioning market.

- (21) Having a third-party verification agent is a widespread market practice that enhances legal certainty for all parties involved in a transaction, thereby decreasing the likelihood of disputes and litigation that could arise as a result of the loss allocation process. To enhance the soundness of the transaction's loss settlement mechanism, a third-party verification agent should be appointed to carry out a review of the correctness and accuracy of certain aspects of the credit protection when a credit event has been triggered.
- (22) Credit protection premiums should depend only on the outstanding size and credit risk of the protected tranche. Non-contingent premiums should not be permitted in STS on-balance-sheet securitisations as they could be used to undermine the effective risk transfer from the originator as protection buyer to the protection sellers. Other arrangements, such as upfront premium payments, rebate mechanisms or overly complex premium structures, should also be prohibited for STS on-balance-sheet securitisations.

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

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

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

- (26) Member States should designate the competent authorities responsible for supervising the requirements that *the* synthetic securitisation has to meet in order to qualify for the STS designation. The competent authority could be the same as the one designated to supervise the compliance of originators, sponsors and SSPEs with the requirements that traditional securitisations have to meet in order to acquire the STS designation. As in the case of traditional securitisations, such competent authority could be different from the competent authority responsible for supervising the compliance of originators, original lenders, SSPEs, sponsors and investors with the prudential obligations laid down in Articles 5 to 9 of Regulation (EU) 2017/2402, the compliance with which was specifically entrusted to the competent authorities in charge of the prudential supervision of the relevant financial institutions, due to the prudential dimension of those obligations.
- (27) *In order to avoid negative consequences for financial stability, the introduction of a specific framework for STS on-balance-sheet securitisations should be accompanied by an appropriate macroprudential oversight. In particular, the European Systemic Risk Board (ESRB), established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council¹³ should monitor macroprudential risks associated with synthetic securitisation and assess whether they are sufficiently removed from the systemic part of the financial system.*

¹³ Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

(28) For the purpose of integrating sustainability-related transparency requirements in Regulation (EU) 2017/2402, EBA, in close cooperation with the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹⁴, and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council¹⁵, should be mandated to publish a report on developing a specific sustainable securitisation framework. That report should duly assess, in particular, the introduction of sustainability factors, the implementation of proportionate disclosure and due diligence requirements, the content, methodologies and presentation of information in relation to environmental, social and governance-related adverse impacts, and any potential effects on financial stability and on the scaling up of the Union securitisation market and of bank lending capacity. Based on that report, the Commission should submit a report to the European Parliament and to the Council on the creation of a specific sustainable securitisation framework, together with a legislative proposal, if appropriate.

¹⁴ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

¹⁵ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

(29) *Disclosures of the integration of sustainability risks and the consideration of adverse sustainability impacts on investment decision-making to investors are insufficiently developed because such disclosures are not yet subject to harmonised requirements. Pursuant to Regulation (EU) 2019/2088 of the European Parliament and of the Council¹⁶, manufacturers of financial products and financial advisers to end-investors are obliged to consider the principal adverse impacts of investment decisions on sustainability factors, and to disclose how their due diligence policies take those principal adverse impacts into account. The disclosures of adverse sustainability impacts are accompanied by regulatory technical standards, which are jointly developed by EBA, ESMA and EIOPA (collectively, the ‘European Supervisory Authorities’) on the content, methodologies and presentation of the relevant information to be disclosed under Regulation (EU) 2019/2088. Originators of STS securitisations should also have the option to disclose specific information regarding the consideration of adverse impacts on sustainability factors, giving particular attention to climate and other environmental, social and governance-related impacts. To harmonise information disclosure and to ensure consistency between Regulation (EU) 2019/2088 and Regulation (EU) 2017/2402, the Joint Committee of the European Supervisory Authorities should develop regulatory technical standards, building as much as possible on their work in the context of Regulation (EU) 2019/2088 and adapting it, where necessary and relevant, to the specificities of securitisations.*

¹⁶ *Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).*

- (30) Since the objectives of this Regulation, namely to extend the STS securitisation framework to ■ synthetic securitisation and to remove regulatory obstacles to securitisation of NPEs to further increase lending capacities without lowering the prudential standards for bank lending, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (31) Regulation (EU) 2017/2402 should therefore be amended accordingly.
- (32) In view of the need to introduce targeted measures to support economic recovery from the COVID-19 crisis as quickly as possible, this Regulation should enter into force as a matter of urgency on the third day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EU) 2017/2402

Regulation (EU) 2017/2402 is amended as follows:

(1) in Article 2, the following points are added:

“(24) ‘non-performing exposure’ or ‘NPE’ means an exposure that meets any of the conditions set out in Article 47a(3) of Regulation (EU) No 575/2013;

(25) ‘NPE securitisation’ means a securitisation backed by a pool of non-performing exposures the *nominal* value of which makes up *not less than* 90 % of the entire pool’s *nominal* value at the time of origination *and at any later time where assets are added to or removed from the underlying pool due to replenishment, restructuring or any other relevant reason*;

(26) ‘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 means of credit derivatives or ■ guarantees, whereby the originator commits to pay an amount, known as a credit protection premium, to the investor and the investor commits to pay an amount, known as a credit protection payment, to the originator in the event that one of the contractually defined *credit* events occurs;

- (27) ‘credit protection premium’ means the amount the originator has committed to pay to the investor under the credit protection agreement for the credit protection promised by the investor;
- (28) ‘credit protection payment’ *means* the amount the investor has committed to pay to the originator under the credit protection agreement in the event that a credit event defined in *the* credit protection agreement occurs;
- (29) ‘synthetic excess spread’ means the amount *that, according to the* documentation of *a synthetic securitisation, is contractually designated* by the originator to absorb losses of the *securitised exposures* that might occur before the maturity date ■ of the transaction;
- (30) ‘sustainability factors’ *mean sustainability factors as defined in point (24) of Article 2 of Regulation (EU) 2019/2088 of the European Parliament and of the Council**;

(31) ‘non-refundable purchase price discount’ means the difference between the outstanding balance of the exposures in the underlying pool and the price at which those exposures are sold by the originator to the SSPE, where neither the originator nor the original lender are reimbursed for that difference.

*** Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).”;**

(2) Article 4 is amended as follows:

(a) point (a) is replaced by the following:

“(a) the third country is listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council*;

*** Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).”;**

(b) the following point is inserted:

“(aa) the third country is listed in Annex I of the EU list of non-cooperative jurisdictions for tax purposes;”;

(c) the following paragraph is added:

“For an SSPE established, after ... [the date of entry into force of this amending Regulation], in a jurisdiction mentioned in Annex II for the reason of operating a harmful tax regime, the investor shall notify the investment in securities issued by that SSPE to the competent tax authorities of the Member State in which the investor is resident for tax purposes.”;

(3) *in Article 5(1), the following point is added:*

“(f) in the case of non-performing exposures, sound standards are applied in the selection and pricing of the exposures.”;

(4) Article 6 is amended as follows:

(a) in paragraph 1, the following subparagraphs are added:

“When measuring the material net economic interest, the retainer shall take into account any fees that may in practice be used to reduce the effective material net economic interest.

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

(b) the following paragraph is inserted:

“3a. By way of derogation from **■** paragraph 3 , in the case of NPE securitisations, *where a non-refundable purchase price discount has been agreed*, the retention of a material net economic interest for the purposes of *that paragraph* shall not be less than 5 % *of the sum* of the net value of the securitised exposures that qualify as non-performing exposures *and, if applicable, the nominal value of any performing securitised exposures*.

The net value of a non-performing *exposure* shall be calculated by deducting the non-refundable purchase price discount agreed at *the level of the individual securitised exposure at the time of origination or, where applicable, a corresponding share of the non-refundable purchase price discount agreed at the level of the pool of underlying exposures at the time of origination* from the exposure’s nominal value or, where applicable, its outstanding value at the **■** *time of origination. In addition, for the purpose of determining the net value of the securitised non-performing exposures, the non-refundable purchase price discount may include the difference between the nominal amount of the tranches of the NPE securitisation underwritten by the originator for subsequent sale and the price at which these tranches are first sold to unrelated third parties.*”;

(c) *paragraph 7 is amended as follows:*

(i) *in the first subparagraph, the following points are added:*

“(f) the modalities of retaining risk pursuant to paragraphs 3 and 3a in the case of NPE securitisations;

“(g) the impact of fees paid to the retainer on the effective material net economic interest within the meaning of paragraph 1.”;

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

“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].”;

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

“By way of derogation from the first subparagraph, with regard to underlying exposures that were non-performing exposures at the time the originator purchased them from the relevant third party, sound standards shall apply in the selection and pricing of the exposures.”;

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

“(a) the securitisation meets all the requirements set out in Section 1, 2 or 2a of this Chapter, and ESMA has been notified pursuant to Article 27(1); and”;

(7) the title of Section 1 of Chapter 4 is replaced by the following:

“Requirements for simple, transparent and standardised non-ABCP traditional securitisation”

(8) Article 19 is amended as follows:

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

“Simple, transparent and standardised non-ABCP traditional securitisation”;

(b) paragraph 1 is replaced by the following:

“1. Traditional securitisations, except for ABCP programmes and ABCP transactions, that meet the requirements set out in Articles 20, 21 and 22, shall be considered to be STS.”;

(9) *Article 22 is amended as follows:*

(a) *in paragraph 4, the following subparagraph is added:*

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

(b) the following paragraph is added:

“6. By ... [three months after the date of entry into force of this amending Regulation], the ESAs shall develop, through the Joint Committee of the European Supervisory Authorities, 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 paragraph 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, the draft regulatory technical standards referred to in the first subparagraph shall mirror or draw upon the regulatory technical standards developed pursuant to the mandate given to the ESAs in Regulation (EU) 2019/2088, in particular in Article 2a and Article 4(6) and (7) thereof.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.”;

(10) the following Section is inserted:

“SECTION 2A

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

Article 26a

Simple, transparent and standardised on-balance-sheet securitisations

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

Article 26b

Requirements relating to simplicity

1. An originator shall be an entity that is authorised or licenced in the Union.

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

2. Underlying exposures shall be originated as part of the core business activity of the originator.
3. At the closing *of a transaction*, the underlying exposures shall be held on the balance sheet of the originator or of an entity that belongs to the same group *as* the originator.

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

- (a) a group of legal entities that is subject to prudential consolidation in accordance with Chapter 2 of Title II of Part One 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 hedge *its exposure to* the credit risk of the underlying exposures of the *securitisation beyond the protection obtained through the credit protection agreement*.
 5. The credit protection agreement shall comply with the credit risk mitigation rules laid down in Article 249 of Regulation (EU) No 575/2013, or where that Article is not applicable, with requirements that are no less stringent than the requirements set out in 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 its 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(1), for a credit protection payment ***in accordance with the credit protection agreement contained within the securitisation documentation***;
- (d) to the best of the originator's knowledge, the contract for each underlying exposure contains ***a*** legal, valid, binding and enforceable obligation on 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 the 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 the 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 an 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 a way that the enforceability or collectability of that underlying exposure has been affected.

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

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

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

- (a) has been *fully* repaid or matured otherwise;

- (b) has been disposed of during the ordinary course of the business of the originator, provided that such disposal does not constitute implicit support as referred to in Article 250 of Regulation (EU) No 575/2013;
 - (c) is subject to an amendment that is not credit driven, such as refinancing or restructuring of debt, and which occurs during the ordinary course of servicing of that underlying exposure; or
 - (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 asset 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 referred to in the first subparagraph shall contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors.

The underlying exposures referred to in the first subparagraph 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 referred to in the first subparagraph of this paragraph 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. Underlying exposures shall not include any securitisation positions.
10. The underwriting standards pursuant to which 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 the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable, intermediaries were made aware that the information provided might not be verified by the lender.

The assessment of the borrower's creditworthiness shall meet the requirements set out in Article 8 of Directive 2008/48/EC or Article 18(1) to (4), point (a) of Article 18(5) and Article 18(6), 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. 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 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; and
 - (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. 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; or
 - (b) the exposure ■ represents the refinancing of *an* exposure that is already included in the transaction.

13. 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.

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].

The Commission is empowered 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.

Article 26c

Requirements relating to standardisation

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

2. The interest rate and currency risks arising from a 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 the 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.

3. Any referenced interest rate payments in relation to the transaction shall be based on either of the following:
 - (a) generally used market interest rates, or generally used sectoral rates that are reflective of the costs of funds, and do not reference complex formulae or derivatives;
 - (b) income generated by the collateral securing the obligations of the investor under the protection agreement.

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

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

In the 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.

By way of derogation from the second subparagraph, 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 portfolio;*
- (b) one additional backward-looking trigger; and*
- (c) one forward-looking trigger.*

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

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

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

As tranches amortise, the 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 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 nominal amount of those underlying exposures, minus the amount of any interim payment made in relation to those underlying exposures.

6. The transaction documentation shall include appropriate early amortisation *provisions or* triggers for ■ termination of the revolving period, where a securitisation is a revolving securitisation, including at least the following:
 - (a) a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold;
 - (b) a rise in losses above a predetermined threshold;
 - (c) a failure to generate sufficient new underlying exposures that meet the predetermined *credit quality* during a specified period.

7. The transaction documentation shall clearly specify:
- (a) the contractual obligations, duties and responsibilities of the servicer, 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 of the transaction 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 during the entire life of the 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 nominal 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 the 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 *which* precisely represents the contractual relationship between the underlying exposures and the payments flowing between the originator, investors, other third parties and, where applicable, the SSPE, and shall, after pricing, make *that* model available to investors on an ongoing basis and to potential investors upon request.

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

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 the closing of the transaction.

6. *By ... [three months after the date of entry into force of this amending Regulation], the ESAs shall develop, through the Joint Committee of the European Supervisory Authorities, 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 paragraph 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, the draft regulatory technical standards referred to in the first subparagraph of this paragraph shall mirror or draw upon the regulatory technical standards developed in compliance with the mandate given to the ESAs in Regulation (EU) 2019/2088, in particular in Article 2a, and Article 4(6) and (7) thereof.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 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 ***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 within the meaning of Article 47b of Regulation (EU) No 575/2013 that are applied to the underlying exposures shall not preclude the ***triggering*** of eligible credit events.

2. The credit protection payment following the occurrence of a credit event shall be calculated based on the actual realised loss suffered by the originator or the *original* lender, as worked out in accordance with their standard recovery policies and procedures for the relevant exposure types and recorded in their financial statements at the time the payment is made. The final credit protection payment shall be payable within a specified period of time after the debt workout for the relevant underlying exposure where the debt workout has been completed 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 the occurrence of a credit event as referred to in paragraph 1 in cases where the debt workout of the losses for the relevant underlying exposure has not been completed by the end of that six-month 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 ***on 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 Chapter 3 of Title II of Part Three 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 nominal amount of the corresponding underlying exposure that is covered by the credit protection agreement.

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

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

3. The credit protection agreement shall specify the maximum extension period that shall apply for the debt workout for *the* underlying exposures in relation to which a credit event as referred to in paragraph 1 has occurred, but where the debt workout 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 on *the assumption that the credit protection agreement does not exist and does not cover any losses*.

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

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

By way of derogation from the third subparagraph of this paragraph, 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 entire life 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. For each of the underlying exposures for which a credit event notice is given, the third party verification agent shall verify, *as a minimum*, all of the following:
- (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 of the transaction.

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

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

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

- (a) the insolvency of the investor;
- (b) the investor's failures to pay any amounts due under the credit protection agreement or a breach by the investor of any material obligation laid down in the transaction documents;
- (c) relevant regulatory events, including:
 - (i) relevant changes in Union or national law, relevant changes by competent authorities to officially published interpretations of such laws, *where applicable*, or relevant changes in the taxation or accounting treatment of the transaction that have a material adverse effect on the *economic efficiency of a transaction*, in each case compared with that anticipated at the time of entering into the transaction and which could not reasonably be expected at that time;
 - (ii) a determination by a competent authority that the originator or any affiliate of the originator is not or is no longer permitted to recognise significant credit risk transfer in accordance with Article 245(2) or (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 of the transaction is equal to or greater than the weighted average life of the initial reference portfolio at ***the closing date of the transaction***;
- (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 no longer qualifies as an eligible protection provider in accordance with the requirements set out in paragraph 8.***

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 the requirements referred to in the second and third subparagraphs are 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.

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

- (a) the amount of the synthetic excess spread that the originator commits to using as credit enhancement at each payment period is specified in the transaction documentation and expressed as a fixed percentage of the total outstanding portfolio balance at the start of the relevant payment period (fixed synthetic excess spread);
- (b) the synthetic excess spread which is not used to cover credit losses that materialise during *each* payment period shall be returned to the originator;
- (c) for originators using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013, the total committed amount per year shall not be higher than the one-year regulatory expected loss amounts on all underlying exposures for that year, calculated in accordance with Article 158 of that Regulation;
- (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.
8. A credit protection agreement shall take the form of:
- (a) a guarantee meeting the requirements set out in Chapter 4 of Title II of Part Three 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 Title II of Part Three of that Regulation;
 - (b) a guarantee meeting the requirements set out in Chapter 4 of Title II of Part Three 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; or
 - (c) another credit protection not referred to in points (a) and (b) of this paragraph in the form of a guarantee, a credit derivative or a credit linked note that meets 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 **9 and 10** of this Article.

9. Another credit protection referred to in point (c) of paragraph 8 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.

10. Where another credit protection is provided in accordance with point (c) of paragraph 8 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** Title II of Part Three 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** in line with the mapping set out in Article 136 of Regulation (EU) No 575/2013.

By way of derogation from the first subparagraph of this paragraph, subject to the explicit consent in the final transaction documentation by the investor after having conducted its due diligence according to Article 5 of this Regulation, 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, if the originator or one of its affiliates qualifies as a minimum for credit quality step 2 in line with the mapping set out 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, if the originator or one of its affiliates qualifies for 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 the minimum credit quality step 2 requirement referred to in the second subparagraph can be documented.

■ Where the third-party credit institution or the originator or one of its affiliates no longer *qualifies* for the minimum credit quality step ■ , the collateral shall be ■ transferred *within nine months* to a third-party credit institution with credit quality step 3 or *above* or the collateral shall be invested in securities meeting the criteria laid down in point (a) of *the first subparagraph*.

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.

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

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].

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 to 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.”;

(11) Article 27 is amended as follows:

(a) in paragraph 1, the first and second subparagraphs are replaced by the following:

“Originators and sponsors shall jointly notify ESMA by means of the template referred to in paragraph 7 of this Article where a securitisation meets the requirements set out in Articles 19 to 22, Articles 23 to 26 *or* 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 the 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 the STS criteria set out in Articles 20 to 22, Articles 24 to 26 or Articles 26b to 26e have been complied with.”;

(b) paragraph 2 is amended as follows:

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

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

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

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

(c) paragraph 4 is replaced by the following:

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

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

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

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

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

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

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

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

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

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

“Member States shall inform the Commission and ESMA of the designation of competent authorities pursuant to this paragraph by ... [six months after the date of entry into force of this amending Regulation]. Until the designation of a competent authority to supervise the compliance with the requirements set out in Articles 26a to 26e, the competent authority designated to supervise the compliance with the requirements set out in Articles 18 to 27 applicable at ... [one day before the date of entry into force of this amending Regulation] shall also supervise the compliance with the requirements set out in Articles 26a to 26e.”;

(14) Article 30(2) is amended as follows:

(a) *point (a) is replaced by the following:*

“(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;”;

(b) the following point is inserted:

“(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);”;***

(c) the following points are added:

“(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);

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

(15) *Article 31 is replaced by the following:*

“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, and at least every three years, the ESRB shall, in cooperation with EBA, publish a report on the financial stability implications of the securitisation market in order to highlight financial stability risks.*

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

The ESRB report referred to in the first subparagraph 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 its 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 European Parliament, the Council , the Commission and the ESRB the actions it has taken in response to the recommendation and shall provide adequate justification for any inaction.”;

(16) Article 32 is amended as follows:

(a) in paragraph 1, point (e) is replaced by the following:

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

(b) *paragraph 2 is amended as follows:*

(i) *point (d) is replaced by the following:*

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

(ii) *point (h) is replaced by the following:*

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

(17) the following article is inserted:

“Article 43a

Transitional provisions 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 date 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 to be STS provided that:***

- (a) they met, at the time of the creation of the initial securitisation positions, the requirements set out in Articles 26b(1) to (5), (7) to (9) and (11) and (12), Articles 26c(1) and (3), Article 26e(1), the first subparagraph of Article 26e(2), the third and fourth subparagraph of Article 26e(3), and Articles 26e(6) to (9); and*
 - (b) they meet, as of the time of notification pursuant to Article 27(1), the requirements set out in Articles 26b(6) and (10), Articles 26c(2) and (4) to (10), Articles 26d(1) to (5) and the second to seventh subparagraph of Article 26e(2), the first, second and fifth subparagraph of Article 26e(3) and Articles 26e(4) and (5).*
- 4. For the purposes of point (b) of paragraph 3 of this Article, 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).”;**

(18) Article 44 is amended as follows:

(a) in the first paragraph, the following point is added:

“(e) the geographical location of SSPEs.”;

(b) the following paragraph is added:

“Based on the information provided to it every three years under point (e), the Commission shall provide an assessment of the reasons behind the location choice, including, subject to the availability and accessibility of information, to what extent the existence of a favourable tax and regulatory regime plays a critical role.”;

(19) Article 45 is deleted.

(20) *the following article is inserted:*

“Article 45a

Development of a sustainable securitisation framework

1. By 1 November 2021, EBA, in close cooperation with ESMA and EIOPA, shall publish a report on developing a specific sustainable securitisation framework for the purpose of integrating sustainability-related transparency requirements into this Regulation. That report shall duly assess in particular:

- (a) the implementation of proportionate disclosure and due diligence requirements relating to potential positive and adverse impacts of the assets financed by the underlying exposures on sustainability factors;*
- (b) the content, methodologies and presentation of information in respect of sustainability factors in relation to positive and adverse impacts on environmental, social and governance-related matters;*

- (c) *how to establish a specific sustainable securitisation framework that mirrors or draws upon financial products covered under Articles 8 and 9 of Regulation (EU) 2019/2088 and takes into account, where appropriate, Regulation (EU) 2020/852 of the European Parliament and of the Council**;
- (d) *possible effects of a sustainable securitisation framework on financial stability, the scaling up of the Union securitisation market and of bank lending capacity.*
2. *In drafting the report referred to in paragraph 1 of this Article, EBA shall where relevant, mirror or draw upon the transparency requirements set out in Articles 3, 4, 7, 8 and 9 of Regulation (EU) 2019/2088 and seek input from the European Environment Agency and the Joint Research Centre of the European Commission.*
3. *In conjunction with the review report under Article 46, the Commission shall, based on the EBA report referred to in paragraph 1 of this Article, submit a report to the European Parliament and to the Council on the creation of a specific sustainable securitisation framework. The Commission's report shall, where appropriate, be accompanied by a legislative proposal.*

* *Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).”;*

(21) in Article 46, the second paragraph is amended as follows:

(a) point (f) is replaced by the following:

“(f) the implementation of the requirements set out in Articles 22(4) and 26d(4) and whether they may be extended to securitisation where the underlying exposures are not residential loans or auto loans or leases, with a view to mainstreaming environmental, social and governance disclosure;”;

(b) the following point is added:

“(i) the possibility for further standardisation and disclosure requirements in view of evolving market practices, namely through the use of templates, for both traditional and synthetic securitisations, including for bespoke private securitisations where no prospectus has to be drawn up in compliance with Regulation (EU) 2017/1129 of the European Parliament and of the Council*.

*** Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).”.**

Article 2

Entry into force

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

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President
