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Contents

I *Legislative acts*

REGULATIONS

- ★ **Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms** 1

- ★ **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** ... 35

- ★ **Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008** 81

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2017/2401 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 December 2017
amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) Securitisations are an important constituent part of well-functioning financial markets insofar as they contribute to diversifying the funding and risk diversification sources of credit institutions and investment firms ('institutions') and releasing regulatory capital which can then be reallocated to support further lending, in particular the funding of the real economy. Furthermore, securitisations provide institutions and other market participants with additional investment opportunities, thus allowing portfolio diversification and facilitating the flow of funding to businesses and individuals both within Member States and on a cross-border basis throughout the Union. Those benefits should however be weighed against their potential costs and risks, including their impact on financial stability. As seen during the first phase of the financial crisis starting in the summer of 2007, unsound practices in securitisation markets resulted in significant threats to the integrity of the financial system, namely due to excessive leverage, opaque and complex structures that made pricing problematic, mechanistic reliance on external ratings or misalignment between the interests of investors and originators ('agency risks').
- (2) In recent years, securitisation issuance volumes in the Union have remained below their pre-crisis peak for a number of reasons, including the stigma generally associated with such transactions. In order to prevent a recurrence of the circumstances that triggered the financial crisis, the recovery of securitisation markets should be based on sound and prudent market practices. To that end, Regulation (EU) 2017/2402 of the European Parliament and of the Council ⁽⁴⁾ lays down the substantive elements of an overarching securitisation framework, with criteria to identify simple, transparent and standardised ('STS') securitisations and a system of supervision to monitor the correct application of those criteria by originators, sponsors, issuers and institutional investors. Furthermore, that Regulation provides for a set of common requirements on risk retention, due diligence and disclosure for all financial services sectors.

⁽¹⁾ OJ C 219, 17.6.2016, p. 2.

⁽²⁾ OJ C 82, 3.3.2016, p. 1.

⁽³⁾ Position of the European Parliament of 26 October 2017 (not yet published in the Official Journal) and decision of the Council of 20 November 2017.

⁽⁴⁾ 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, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

- (3) In accordance with the objectives of Regulation (EU) 2017/2402, the regulatory capital requirements laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council⁽¹⁾ for institutions originating, sponsoring or investing in securitisations should be amended to adequately reflect the specific features of STS securitisations when such securitisations also meet the additional requirements laid down in this Regulation, and to address the shortcomings which became apparent during the financial crisis, namely mechanistic reliance on external ratings, excessively low risk weights for highly-rated securitisation tranches and, conversely, excessively high risk weights for low-rated tranches, and insufficient risk sensitivity. On 11 December 2014 the Basel Committee on Banking Supervision (the 'BCBS') published its 'Revisions to the securitisation framework' (the 'Revised Basel Framework') setting out various changes to the regulatory capital standards for securitisations to address specifically those shortcomings. On 11 July 2016, the BCBS published an updated standard for the regulatory capital treatment of securitisation exposures that includes the regulatory capital treatment for 'simple, transparent and comparable' securitisations. That standard amends the Revised Basel Framework. The amendments to Regulation (EU) No 575/2013 should take into account the provisions of the Revised Basel Framework as amended.
- (4) Capital requirements for positions in a securitisation under Regulation (EU) No 575/2013 should be subject to the same calculation methods for all institutions. In the first instance and to remove any form of mechanistic reliance on external ratings, an institution should use its own calculation of regulatory capital requirements where the institution has permission to apply the Internal Ratings Based Approach (the 'IRB Approach') in relation to exposures of the same type as those underlying the securitisation and is able to calculate regulatory capital requirements in relation to the underlying exposures as if these had not been securitised (K_{IRB}), in each case subject to certain pre-defined inputs (the Securitisation IRB Approach — 'SEC-IRBA'). A Securitisation Standardised Approach (SEC-SA) should then be available to institutions that are not able to use the SEC-IRBA in relation to their positions in a given securitisation. The SEC-SA should rely on a formula using as an input the capital requirements that would be calculated under the Standardised Approach to credit risk in relation to the underlying exposures as if they had not been securitised ('KSA'). When the first two approaches are not available, institutions should be able to apply the Securitisation External Ratings Based Approach (SEC-ERBA). Under the SEC-ERBA, capital requirements should be assigned to securitisation tranches on the basis of their external rating. However, institutions should always use the SEC-ERBA as a fallback when the SEC-IRBA is not available for low-rated tranches and certain medium-rated tranches of STS securitisations identified through appropriate parameters. For non-STs securitisations, the use of the SEC-SA after the SEC-IRBA should be further restricted. Moreover, competent authorities should be able to prohibit the use of the SEC-SA when the latter is not able to adequately tackle the risks that the securitisation poses to the solvability of the institution or to financial stability. Upon notification to the competent authority, institutions should be allowed to use the SEC-ERBA in respect of all rated securitisations they hold when they cannot use the SEC-IRBA.
- (5) Agency and model risks are more prevalent for securitisations than for other financial assets and give rise to some degree of uncertainty in the calculation of capital requirements for securitisations even after all appropriate risk drivers have been taken into account. In order to capture those risks adequately, Regulation (EU) No 575/2013 should be amended to provide for a minimum 15 % risk-weight floor for all securitisation positions. Resecuritisations, however, exhibit greater complexity and riskiness and, accordingly, only certain forms of resecuritisations are permitted under Regulation (EU) 2017/2402. In addition, positions in resecuritisations should be subject to a more conservative regulatory capital calculation and a 100 % risk-weight floor.
- (6) An institution should not be required to apply a higher risk weight to a senior position than that which would apply if it held the underlying exposures directly, thus reflecting the benefit of credit enhancement that senior positions receive from junior tranches in the securitisation structure. Regulation (EU) No 575/2013 should therefore provide for a 'look-through' approach according to which a senior securitisation position should be assigned a maximum risk weight equal to the exposure-weighted-average risk weight applicable to the underlying exposures, and such approach should be available irrespective of whether the relevant position is rated or unrated and the approach used for the underlying pool (Standardised Approach or IRB Approach), subject to certain conditions.

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

- (7) An overall cap in terms of maximum risk-weighted exposure amounts is available under the current framework for institutions that can calculate the capital requirements for the underlying exposures in accordance with the IRB Approach as if those exposures had not been securitised (K_{IRB}). Insofar as the securitisation process reduces the risk attached to the underlying exposures, this cap should be available to all originator and sponsor institutions, regardless of the approach they use for the calculation of regulatory capital requirements for the positions in the securitisation.
- (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 Council⁽¹⁾, in its report on qualifying securitisation of July 2015, empirical evidence on defaults and losses shows that STS securitisations exhibited better performance than other securitisations during the financial crisis, reflecting the use of simple and transparent structures and robust execution practices in STS securitisation which deliver lower credit, operational and agency risks. It is therefore appropriate to amend Regulation (EU) No 575/2013 to provide for an appropriately risk-sensitive calibration for STS securitisations, provided that they also meet additional requirements to minimise risk, in the manner recommended by the EBA in that report which involves, in particular, a lower risk-weight floor of 10 % for senior positions.
- (9) Lower capital requirements applicable to STS securitisations should be limited to securitisations where the ownership of the underlying exposures is transferred to a securitisation special purpose entity or SSPE ('traditional securitisations'). However, institutions retaining senior positions in synthetic securitisations backed by an underlying pool of loans to small and medium-size enterprises ('SMEs') should also be allowed to apply to these positions the lower capital requirements available for STS securitisations where such transactions are regarded as of high quality in accordance with certain strict criteria, including on the eligible investors. In particular, such subset of synthetic securitisations should benefit from the guarantee or counterguarantee either by the central government or central bank of a Member State or a promotional entity, or by an institutional investor provided that the guarantee or counterguarantee provided by the latter is fully collateralised by cash on deposit with the originator institutions. The preferential regulatory capital treatment for STS securitisations that would be available to those transactions under Regulation (EU) No 575/2013 is without prejudice to compliance with the Union State aid framework, as set out in Directive 2014/59/EU of the European Parliament and of the Council⁽²⁾.
- (10) In order to harmonise supervisory practices throughout the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission, having taken account of the report by the EBA, in respect of further specifying the conditions for the transfer of credit risk to third parties, the notion of commensurate transfer of credit risk to third parties and the requirements for competent authorities assessment of transfer of credit risk, both with regard to traditional and synthetic securitisations. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁽³⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (11) Technical standards in financial services should ensure adequate protection of investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust the EBA with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.

⁽¹⁾ 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).

⁽²⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁽³⁾ OJ L 123, 12.5.2016, p. 1.

- (12) The Commission should be empowered to adopt regulatory technical standards developed by the EBA, with regard to what constitutes an appropriately conservative method for measuring the amount of the undrawn portion of the cash advance facilities in the context of calculating the exposure value of a securitisation and with regard to further specifying the conditions to allow institutions to calculate K_{IRB} for the pool of underlying exposures of a securitisation like in the case of purchased receivables. The Commission should adopt those draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.
- (13) Only consequential changes should be made to the remaining regulatory capital requirements for securitisations laid down in Regulation (EU) No 575/2013 insofar as necessary to reflect the new hierarchy of approaches and the specific provisions for STS securitisations. In particular, the provisions related to the recognition of significant risk transfer and the requirements on external credit assessments should continue to apply in broadly the same terms as they do currently. However, Part Five of Regulation (EU) No 575/2013 should be deleted in its entirety with the exception of the requirement to hold additional risk weights which should be imposed on institutions found in breach of the provisions in Chapter 2 of Regulation (EU) 2017/2402.
- (14) It is appropriate for the amendments to Regulation (EU) No 575/2013 provided for in this Regulation to apply to all securitisation positions held by an institution. However, in order to mitigate transitional costs insofar as possible and to allow for a smooth migration to the new framework, institutions should continue to apply, until 31 December 2019, the previous framework, namely the relevant provisions of Regulation (EU) No 575/2013 that applied prior to the date of application of this Regulation, to all outstanding securitisation positions that they hold on the date of application of this Regulation,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendment of Regulation (EU) No 575/2013

Regulation (EU) No 575/2013 is amended as follows:

(1) Article 4(1) is amended as follows:

(a) points (13) and (14) are replaced by the following:

‘(13) “originator” means an originator as defined in point (3) of Article 2 of Regulation (EU) 2017/2402 (*);

(14) “sponsor” means a sponsor as defined in point (5) of Article 2 of Regulation (EU) 2017/2402;

(*): 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, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).;

(b) the following point is inserted:

‘(14a) “original lender” means an original lender as defined in point (20) of Article 2 of Regulation (EU) 2017/2402’;

(c) points (61), (62) and (63) are replaced by the following:

‘(61) “securitisation” means a securitisation as defined in point (1) of Article 2 of Regulation (EU) 2017/2402;

(62) “securitisation position” means a securitisation position as defined in point (19) of Article 2 of Regulation (EU) 2017/2402;

(63) “resecuritisation” means a resecuritisation as defined in point (4) of Article 2 of Regulation (EU) 2017/2402’;

(d) points (66) and (67) are replaced by the following:

(66) “securitisation special purpose entity” or “SSPE” means a securitisation special purpose entity or SSPE as defined in point (2) of Article 2 of Regulation (EU) 2017/2402;

(67) “tranche” means a tranche as defined in point (6) of Article 2 of Regulation (EU) 2017/2402;

(e) the following point is added:

(129) “servicer” means a servicer as defined in point (13) of Article 2 of Regulation (EU) 2017/2402.

(2) In point (k) of Article 36(1), point (ii) is replaced by the following:

(ii) securitisation positions, in accordance with point (b) of Article 244(1), point (b) of Article 245(1) and Article 253;

(3) Article 109 is replaced by the following:

Article 109

Treatment of securitisation positions

Institutions shall calculate the risk-weighted exposure amount for a position they hold in a securitisation in accordance with Chapter 5.

(4) In Article 134, paragraph 6 is replaced by the following:

6. Where an institution provides credit protection for a number of exposures subject to the condition that the *n*th default among the exposures shall trigger payment and that this credit event shall terminate the contract, the risk weights of the exposures included in the basket will be aggregated, excluding *n*-1 exposures, up to a maximum of 1 250 % and multiplied by the nominal amount of the protection provided by the credit derivative to obtain the risk-weighted exposure amount. The *n*-1 exposures to be excluded from the aggregation shall be determined on the basis that they shall include those exposures each of which produces a lower risk-weighted exposure amount than the risk-weighted exposure amount of any of the exposures included in the aggregation.

(5) In Article 142(1), point (8) is deleted.

(6) In Article 153, paragraphs 7 and 8 are replaced by the following:

7. For purchased corporate receivables, refundable purchase price discounts, collaterals or partial guarantees that provide first loss protection for default losses, dilution losses, or both, may be treated as a first loss protection by the purchaser of the receivables or by the beneficiary of the collateral or of the partial guarantee in accordance with Subsections 2 and 3 of Section 3 of Chapter 5. The seller providing the refundable purchase price discount and the provider of a collateral or a partial guarantee shall treat those as an exposure to a first loss position in accordance with Subsections 2 and 3 of Section 3 of Chapter 5.

8. Where an institution provides credit protection for a number of exposures subject to the condition that the *n*th default among the exposures shall trigger payment and that this credit event shall terminate the contract, the risk weights of the exposures included in the basket will be aggregated, excluding *n*-1 exposures, where the sum of the expected loss amount multiplied by 12,5 and the risk-weighted exposure amount shall not exceed the nominal amount of the protection provided by the credit derivative multiplied by 12,5. The *n*-1 exposures to be excluded from the aggregation shall be determined on the basis that they shall include those exposures each of which produces a lower risk-weighted exposure amount than the risk-weighted exposure amount of any of the exposures included in the aggregation. A 1 250 % risk weight shall apply to positions in a basket for which an institution cannot determine the risk-weight under the IRB Approach.

(7) In Article 154, paragraph 6 is replaced by the following:

6. For purchased retail receivables, refundable purchase price discounts, collaterals or partial guarantees that provide first loss protection for default losses, dilution losses, or both, may be treated as a first loss protection by the purchaser of the receivables or by the beneficiary of the collateral or of the partial guarantee in accordance with Subsections 2 and 3 of Section 3 of Chapter 5. The seller providing the refundable purchase price discount and the provider of a collateral or a partial guarantee shall treat those as an exposure to a first loss position in accordance with Subsections 2 and 3 of Section 3 of Chapter 5.

(8) In Article 197(1), point (h) is replaced by the following:

‘(h) securitisation positions that are not resecuritisation positions and which are subject to a 100 % risk weight or lower in accordance with Article 261 to Article 264;’.

(9) Chapter 5 of Title II, Part Three is replaced by the following:

‘CHAPTER 5

Securitisation

Section 1

Definitions and criteria for simple, transparent and standardised securitisations

Article 242

Definitions

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

- (1) “clean-up call option” means a contractual option that entitles the originator to call the securitisation positions before all of the securitised exposures have been repaid, either by repurchasing the underlying exposures remaining in the pool in the case of traditional securitisations or by terminating the credit protection in the case of synthetic securitisations, in both cases when the amount of outstanding underlying exposures falls to or below certain pre-specified level;
- (2) “credit-enhancing interest-only strip” means an on-balance sheet asset that represents a valuation of cash flows related to future margin income and is a subordinated tranche in the securitisation;
- (3) “liquidity facility” means a liquidity facility as defined in point (14) of Article 2 of Regulation (EU) 2017/2402;
- (4) “unrated position” means a securitisation position which does not have an eligible credit assessment in accordance with Section 4;
- (5) “rated position” means a securitisation position which has an eligible credit assessment in accordance with Section 4;
- (6) “senior securitisation position” means a position backed or secured by a first claim on the whole of the underlying exposures, disregarding for these purposes amounts due under interest rate or currency derivative contracts, fees or other similar payments, and irrespective of any difference in maturity with one or more other senior tranches with which that position shares losses on a pro-rata basis;
- (7) “IRB pool” means a pool of underlying exposures of a type in relation to which the institution has permission to use the IRB Approach and is able to calculate risk-weighted exposure amounts in accordance with Chapter 3 for all of these exposures;
- (8) “mixed pool” means a pool of underlying exposures of a type in relation to which the institution has permission to use the IRB Approach and is able to calculate risk-weighted exposure amounts in accordance with Chapter 3 for some, but not all, of the exposures;
- (9) “overcollateralisation” means any form of credit enhancement by virtue of which underlying exposures are posted in value which is higher than the value of the securitisation positions;
- (10) “simple, transparent and standardised securitisation” or “STS securitisation” means a securitisation that meets the requirements set out in Article 18 of Regulation (EU) 2017/2402;
- (11) “asset-backed commercial paper programme” or “ABCP programme” means an asset backed commercial paper programme or ABCP programme as defined in point (7) of Article 2 of Regulation (EU) 2017/2402;
- (12) “asset-backed commercial paper transaction” or “ABCP transaction” means an asset-backed commercial paper transaction or ABCP transaction as defined in point (8) of Article 2 of Regulation (EU) 2017/2402;
- (13) “traditional securitisation” means a traditional securitisation as defined in point (9) of Article 2 of Regulation (EU) 2017/2402;

- (14) “synthetic securitisation” means a synthetic securitisation as defined in point (10) of Article 2 of Regulation (EU) 2017/2402;
- (15) “revolving exposure” means a revolving exposure as defined in point (15) of Article 2 of Regulation (EU) 2017/2402;
- (16) “early amortisation provision” means an early amortisation provision as defined in point (17) of Article 2 of Regulation (EU) 2017/2402;
- (17) “first loss tranche” means a first loss tranche as defined in point (18) of Article 2 of Regulation (EU) 2017/2402;
- (18) “mezzanine securitisation position” means a position in the securitisation which is subordinated to the senior securitisation position and more senior than the first loss tranche, and which is subject to a risk weight lower than 1 250 % and higher than 25 % in accordance with Subsections 2 and 3 of Section 3;
- (19) “promotional entity” means any undertaking or entity established by a Member State’s central, regional or local government, which grants promotional loans or grants promotional guarantees, whose primary goal is not to make profit or maximise market share but to promote that government’s public policy objectives, provided that, subject to State aid rules, that government has an obligation to protect the economic basis of the undertaking or entity and maintain its viability throughout its lifetime, or that at least 90 % of its original capital or funding or the promotional loan it grants is directly or indirectly guaranteed by the Member State’s central, regional or local government.

Article 243

Criteria for STS securitisations qualifying for differentiated capital treatment

1. Positions in an ABCP programme or ABCP transaction that qualify as positions in an STS securitisation shall be eligible for the treatment set out in Articles 260, 262 and 264 where the following requirements are met:

- (a) the underlying exposures meet, at the time of their inclusion in the ABCP programme, to the best knowledge of the originator or the original lender, the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than 75 % on an individual exposure basis where the exposure is a retail exposure or 100 % for any other exposures; and
- (b) the aggregate exposure value of all exposures to a single obligor at ABCP programme level does not exceed 2 % of the aggregate exposure value of all exposures within the ABCP programme at the time the exposures were added to the ABCP programme. For the purposes of this calculation, loans or leases to a group of connected clients, to the best knowledge of the sponsor, shall be considered as exposures to a single obligor.

In the case of trade receivables, point (b) of the first subparagraph shall not apply where the credit risk of those trade receivables is fully covered by eligible credit protection in accordance with Chapter 4, provided that in that case the protection provider is an institution, an insurance undertaking or a reinsurance undertaking. For the purposes of this subparagraph, only the portion of the trade receivables remaining after taking into account the effect of any purchase price discount and overcollateralisation shall be used to determine whether they are fully covered and whether the concentration limit is met.

In the case of securitised residual leasing values, point (b) of the first subparagraph shall not apply where those values are not exposed to refinancing or resell risk due to a legally enforceable commitment to repurchase or refinance the exposure at a pre-determined amount by a third party eligible under Article 201(1).

By way of derogation from point (a) of the first subparagraph, where an institution applies Article 248(3) or has been granted permission to apply the Internal Assessment Approach in accordance with Article 265, the risk weight that institution would assign to a liquidity facility that completely covers the ABCP issued under the programme is equal to or smaller than 100 %.

2. Positions in a securitisation, other than an ABCP programme or ABCP transaction, that qualify as positions in an STS securitisation, shall be eligible for the treatment set out in Articles 260, 262 and 264 where the following requirements are met:

- (a) at the time of inclusion in the securitisation, the aggregate exposure value of all exposures to a single obligor in the pool does not exceed 2 % of the exposure values of the aggregate outstanding exposure values of the pool of underlying exposures. For the purposes of this calculation, loans or leases to a group of connected clients shall be considered as exposures to a single obligor.

In the case of securitised residual leasing values, the first subparagraph of this point shall not apply where those values are not exposed to refinancing or resell risk due to a legally enforceable commitment to repurchase or refinance the exposure at a pre-determined amount by a third party eligible under Article 201(1);

- (b) at the time of their inclusion in the securitisation, the underlying exposures meet the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than:
- (i) 40 % on an exposure value-weighted average basis for the portfolio where the exposures are loans secured by residential mortgages or fully guaranteed residential loans, as referred to in point (e) of Article 129(1);
 - (ii) 50 % on an individual exposure basis where the exposure is a loan secured by a commercial mortgage;
 - (iii) 75 % on an individual exposure basis where the exposure is a retail exposure;
 - (iv) for any other exposures, 100 % on an individual exposure basis;
- (c) where points (b)(i) and (b)(ii) apply, the loans secured by lower ranking security rights on a given asset shall only be included in the securitisation where all loans secured by prior ranking security rights on that asset are also included in the securitisation;
- (d) where point (b)(i) of this paragraph applies, no loan in the pool of underlying exposures shall have a loan-to-value ratio higher than 100 %, at the time of inclusion in the securitisation, measured in accordance with point (d)(i) of Article 129(1) and Article 229(1).

Section 2

Recognition of significant risk transfer

Article 244

Traditional securitisation

1. The originator institution of a traditional securitisation may exclude underlying exposures from its calculation of risk-weighted exposure amounts and, where relevant, expected loss amounts if either of the following conditions is fulfilled:

- (a) significant credit risk associated with the underlying exposures has been transferred to third parties;
- (b) the originator institution applies a 1 250 % risk weight to all securitisation positions it holds in the securitisation or deducts these securitisation positions from Common Equity Tier 1 items in accordance with point (k) of Article 36(1).

2. Significant credit risk shall be considered as transferred in either of the following cases:

- (a) the risk-weighted exposure amounts of the mezzanine securitisation positions held by the originator institution in the securitisation do not exceed 50 % of the risk-weighted exposure amounts of all mezzanine securitisation positions existing in this securitisation;
- (b) the originator institution does not hold more than 20 % of the exposure value of the first loss tranche in the securitisation, provided that both of the following conditions are met:
- (i) the originator can demonstrate that the exposure value of the first loss tranche exceeds a reasoned estimate of the expected loss on the underlying exposures by a substantial margin;
 - (ii) there are no mezzanine securitisation positions.

Where the possible reduction in risk-weighted exposure amounts, which the originator institution would achieve by the securitisation under points (a) or (b), is not justified by a commensurate transfer of credit risk to third parties, competent authorities may decide on a case-by-case basis that significant credit risk shall not be considered as transferred to third parties.

3. By way of derogation from paragraph 2, competent authorities may allow originator institutions to recognise significant credit risk transfer in relation to a securitisation where the originator institution demonstrates in each case that the reduction in own funds requirements which the originator achieves by the securitisation is justified by a commensurate transfer of credit risk to third parties. Permission may only be granted where the institution meets both of the following conditions:

- (a) the institution has adequate internal risk management policies and methodologies to assess the transfer of credit risk;
- (b) the institution has also recognised the transfer of credit risk to third parties in each case for the purposes of the institution's internal risk management and its internal capital allocation.

4. In addition to the requirements set out in paragraphs 1, 2 and 3, all of the following conditions shall be met:

- (a) the transaction documentation reflects the economic substance of the securitisation;
- (b) the securitisation positions do not constitute payment obligations of the originator institution;
- (c) the underlying exposures are placed beyond the reach of the originator institution and its creditors in a manner that meets the requirement set out in Article 20(1) of Regulation (EU) 2017/2402;
- (d) the originator institution does not retain control over the underlying exposures. It shall be considered that control is retained over the underlying exposures where the originator has the right to repurchase from the transferee the previously transferred exposures in order to realise their benefits or if it is otherwise required to re-assume transferred risk. The originator institution's retention of servicing rights or obligations in respect of the underlying exposures shall not of itself constitute control of the exposures;
- (e) the securitisation documentation does not contain terms or conditions that:
 - (i) require the originator institution to alter the underlying exposures to improve the average quality of the pool; or
 - (ii) increase the yield payable to holders of positions or otherwise enhance the positions in the securitisation in response to a deterioration in the credit quality of the underlying exposures;
- (f) where applicable, the transaction documentation makes it clear that the originator or the sponsor may only purchase or repurchase securitisation positions or repurchase, restructure or substitute the underlying exposures beyond their contractual obligations where such arrangements are executed in accordance with prevailing market conditions and the parties to them act in their own interest as free and independent parties (arm's length);
- (g) where there is a clean-up call option, that option shall also meet all of the following conditions:
 - (i) it can be exercised at the discretion of the originator institution;
 - (ii) it may only be exercised when 10 % or less of the original value of the underlying exposures remains unamortised;
 - (iii) it is not structured to avoid allocating losses to credit enhancement positions or other positions held by investors in the securitisation and is not otherwise structured to provide credit enhancement;
- (h) the originator institution has received an opinion from a qualified legal counsel confirming that the securitisation complies with the conditions set out in point (c) of this paragraph.

5. The competent authorities shall inform the EBA of those cases where they have decided that the possible reduction in risk-weighted exposure amounts was not justified by a commensurate transfer of credit risk to third parties in accordance with paragraph 2, and the cases where institutions have chosen to apply paragraph 3.

6. The EBA shall monitor the range of supervisory practices in relation to the recognition of significant risk transfer in traditional securitisations in accordance with this Article. In particular, the EBA shall review:

- (a) the conditions for the transfer of significant credit risk to third parties in accordance with paragraphs 2, 3 and 4;
- (b) the interpretation of 'commensurate transfer of credit risk to third parties' for the purposes of the competent authorities' assessment provided for in the second subparagraph of paragraph 2 and in paragraph 3;
- (c) the requirements for the competent authorities' assessment of securitisation transactions in relation to which the originator seeks recognition of significant credit risk transfer to third parties in accordance with paragraph 2 or 3.

The EBA shall report its findings to the Commission by 2 January 2021. The Commission may, having taken into account the report from the EBA, adopt a delegated act in accordance with Article 462, to supplement this Regulation by further specifying the items listed in points (a), (b) and (c) of this paragraph.

Article 245

Synthetic securitisation

1. The originator institution of a synthetic securitisation may calculate risk-weighted exposure amounts, and, where relevant, expected loss amounts with respect to the underlying exposures in accordance with Articles 251 and 252, where either of the following conditions is met:

- (a) significant credit risk has been transferred to third parties either through funded or unfunded credit protection;
- (b) the originator institution applies a 1 250 % risk weight to all securitisation positions that it retains in the securitisation or deducts these securitisation positions from Common Equity Tier 1 items in accordance with point (k) of Article 36(1).

2. Significant credit risk shall be considered as transferred in either of the following cases:

- (a) the risk-weighted exposure amounts of the mezzanine securitisation positions held by the originator institution in the securitisation do not exceed 50 % of the risk-weighted exposure amounts of all mezzanine securitisation positions existing in this securitisation;
- (b) the originator institution does not hold more than 20 % of the exposure value of the first loss tranche in the securitisation, provided that both of the following conditions are met:
 - (i) the originator can demonstrate that the exposure value of the first loss tranche exceeds a reasoned estimate of the expected loss on the underlying exposures by a substantial margin;
 - (ii) there are no mezzanine securitisation positions.

Where the possible reduction in risk-weighted exposure amounts, which the originator institution would achieve by the securitisation, is not justified by a commensurate transfer of credit risk to third parties, competent authorities may decide on a case-by-case basis that significant credit risk shall not be considered as transferred to third parties.

3. By way of derogation from paragraph 2, competent authorities may allow originator institutions to recognise significant credit risk transfer in relation to a securitisation where the originator institution demonstrates in each case that the reduction in own funds requirements which the originator achieves by the securitisation is justified by a commensurate transfer of credit risk to third parties. Permission may only be granted where the institution meets both of the following conditions:

- (a) the institution has adequate internal risk-management policies and methodologies to assess the transfer of risk;
- (b) the institution has also recognised the transfer of credit risk to third parties in each case for the purposes of the institution's internal risk management and its internal capital allocation.

4. In addition to the requirements set out in paragraphs 1, 2 and 3, all of the following conditions shall be met:

- (a) the transaction documentation reflects the economic substance of the securitisation;
- (b) the credit protection by virtue of which credit risk is transferred complies with Article 249;

- (c) the securitisation documentation does not contain terms or conditions that:
 - (i) impose significant materiality thresholds below which credit protection is deemed not to be triggered if a credit event occurs;
 - (ii) allow for the termination of the protection due to deterioration of the credit quality of the underlying exposures;
 - (iii) require the originator institution to alter the composition of the underlying exposures to improve the average quality of the pool; or
 - (iv) increase the institution's cost of credit protection or the yield payable to holders of positions in the securitisation in response to a deterioration in the credit quality of the underlying pool;
- (d) the credit protection is enforceable in all relevant jurisdictions;
- (e) where applicable, the transaction documentation makes it clear that the originator or the sponsor may only purchase or repurchase securitisation positions or repurchase, restructure or substitute the underlying exposures beyond their contractual obligations where such arrangements are executed in accordance with prevailing market conditions and the parties to them act in their own interest as free and independent parties (arm's length);
- (f) where there is a clean-up call option, that option meets all the following conditions:
 - (i) it may be exercised at the discretion of the originator institution;
 - (ii) it may only be exercised when 10 % or less of the original value of the underlying exposures remains unamortised;
 - (iii) it is not structured to avoid allocating losses to credit enhancement positions or other positions held by investors in the securitisation and is not otherwise structured to provide credit enhancement;
- (g) the originator institution has received an opinion from a qualified legal counsel confirming that the securitisation complies with the conditions set out in point (d) of this paragraph;

5. The competent authorities shall inform the EBA of the cases where they have decided that the possible reduction in risk-weighted exposure amounts was not justified by a commensurate transfer of credit risk to third parties in accordance with paragraph 2, and the cases where institutions have chosen to apply paragraph 3.

6. The EBA shall monitor the range of supervisory practices in relation to the recognition of significant risk transfer in synthetic securitisations in accordance with this Article. In particular, the EBA shall review:

- (a) the conditions for the transfer of significant credit risk to third parties in accordance with paragraphs 2, 3 and 4;
- (b) the interpretation of "commensurate transfer of credit risk to third parties" for the purposes of the competent authorities' assessment provided for in the second subparagraph of paragraph 2 and in paragraph 3; and
- (c) the requirements for the competent authorities' assessment of securitisation transactions in relation to which the originator seeks recognition of significant credit risk transfer to third parties in accordance with paragraph 2 or 3.

The EBA shall report its findings to the Commission by 2 January 2021. The Commission may, having taken into account the report from the EBA, adopt a delegated act in accordance with Article 462, to supplement this Regulation by further specifying the items listed in points (a), (b) and (c) of this paragraph.

Article 246

Operational requirements for early amortisation provisions

Where the securitisation includes revolving exposures and early amortisation provisions or similar provisions, significant credit risk shall only be considered transferred by the originator institution where the requirements laid down in Articles 244 and 245 are met and the early amortisation provision, once triggered, does not:

- (a) subordinate the institution's senior or *pari passu* claim on the underlying exposures to the other investors' claims;
- (b) subordinate further the institution's claim on the underlying exposures relative to other parties' claims; or
- (c) otherwise increase the institution's exposure to losses associated with the underlying revolving exposures.

Section 3

Calculation of risk-weighted exposure amounts

Subsection 1

General Provisions

Article 247

Calculation of risk-weighted exposure amounts

1. Where an originator institution has transferred significant credit risk associated with the underlying exposures of the securitisation in accordance with Section 2, that institution may:

- (a) in the case of a traditional securitisation, exclude the underlying exposures from its calculation of risk-weighted exposure amounts, and, as relevant, expected loss amounts;
- (b) in the case of a synthetic securitisation, calculate risk-weighted exposure amounts, and, where relevant, expected loss amounts, with respect to the underlying exposures in accordance with Articles 251 and 252.

2. Where the originator institution has decided to apply paragraph 1, it shall calculate the risk-weighted exposure amounts as set out in this Chapter for the positions that it may hold in the securitisation.

Where the originator institution has not transferred significant credit risk or has decided not to apply paragraph 1, it shall not be required to calculate risk-weighted exposure amounts for any position it may have in the securitisation but shall continue including the underlying exposures in its calculation of risk-weighted exposure amounts and, where relevant, expected loss amounts as if they had not been securitised.

3. Where there is an exposure to positions in different tranches in a securitisation, the exposure to each tranche shall be considered a separate securitisation position. The providers of credit protection to securitisation positions shall be considered as holding positions in the securitisation. Securitisation positions shall include exposures to a securitisation arising from interest rate or currency derivative contracts that the institution has entered into with the transaction.

4. Unless a securitisation position is deducted from Common Equity Tier 1 items pursuant to point (k) of Article 36(1), the risk-weighted exposure amount shall be included in the institution's total of risk-weighted exposure amounts for the purposes of Article 92(3).

5. The risk-weighted exposure amount of a securitisation position shall be calculated by multiplying the exposure value of the position, calculated as set out in Article 248, by the relevant total risk weight.

6. The total risk weight shall be determined as the sum of the risk weight set out in this Chapter and any additional risk weight in accordance with Article 270a.

Article 248

Exposure value

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

- (a) the exposure value of an on-balance sheet securitisation position shall be its accounting value remaining after any relevant specific credit risk adjustments on the securitisation position have been applied in accordance with Article 110;
- (b) the exposure value of an off-balance sheet securitisation position shall be its nominal value less any relevant specific credit risk adjustments on the securitisation position in accordance with Article 110, multiplied by the relevant conversion factor as set out in this point. The conversion factor shall be 100 %, except in the case of cash advance facilities. To determine the exposure value of the undrawn portion of the cash advance facilities, a conversion factor of 0 % may be applied to the nominal amount of a liquidity facility that is unconditionally cancellable provided that repayment of draws on the facility are senior to any other claims on the cash flows arising from the underlying exposures and the institution has demonstrated to the satisfaction of the competent authority that it is applying an appropriately conservative method for measuring the amount of the undrawn portion;

- (c) the exposure value for the counterparty credit risk of a securitisation position that results from a derivative instrument listed in Annex II, shall be determined in accordance with Chapter 6;
- (d) an originator institution may deduct from the exposure value of a securitisation position which is assigned 1 250 % risk weight in accordance with Subsection 3 or deducted from Common Equity Tier 1 in accordance with point (k) of Article 36(1), the amount of the specific credit risk adjustments on the underlying exposures in accordance with Article 110, and any non-refundable purchase price discounts connected with such underlying exposures to the extent that such discounts have caused the reduction of own funds.

The EBA shall develop draft regulatory technical standards to specify what constitutes an appropriately conservative method for measuring the amount of the undrawn portion referred to in point (b) of the first subparagraph.

The EBA shall submit those draft regulatory technical standards to the Commission by 18 January 2019.

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

2. Where an institution has two or more overlapping positions in a securitisation, it shall include only one of the positions in its calculation of risk-weighted exposure amounts.

Where the positions partially overlap, the institution may split the position into two parts and recognise the overlap in relation to one part only in accordance with the first subparagraph. Alternatively, the institution may treat the positions as if they were fully overlapping by expanding for capital calculation purposes the position that produces the higher risk-weighted exposure amounts.

The institution may also recognise an overlap between the specific risk own funds requirements for positions in the trading book and the own funds requirements for securitisation positions in the non-trading book, provided that the institution is able to calculate and compare the own funds requirements for the relevant positions.

For the purposes of this paragraph, two positions shall be deemed to be overlapping where they are mutually offsetting in such a manner that the institution is able to preclude the losses arising from one position by performing the obligations required under the other position.

3. Where point (d) of Article 270c applies to positions in an ABCP, the institution may use the risk weight assigned to a liquidity facility in order to calculate the risk-weighted exposure amount for the ABCP, provided that the liquidity facility covers 100 % of the ABCP issued by the ABCP programme and the liquidity facility ranks *pari passu* with the ABCP in a manner that they form an overlapping position. The institution shall notify the competent authorities where it has applied the provisions laid down in this paragraph. For the purposes of determining the 100 % coverage set out in this paragraph, the institution may take into account other liquidity facilities in the ABCP programme, provided that they form an overlapping position with the ABCP.

Article 249

Recognition of credit risk mitigation for securitisation positions

1. An institution may recognise funded or unfunded credit protection with respect to a securitisation position where the requirements for credit risk mitigation laid down in this Chapter and in Chapter 4 are met.
2. Eligible funded credit protection shall be limited to financial collateral which is eligible for the calculation of risk-weighted exposure amounts under Chapter 2 as laid down under Chapter 4 and recognition of credit risk mitigation shall be subject to compliance with the relevant requirements as laid down under Chapter 4.

Eligible unfunded credit protection and unfunded credit protection providers shall be limited to those which are eligible in accordance with Chapter 4 and recognition of credit risk mitigation shall be subject to compliance with the relevant requirements as laid down under Chapter 4.

3. By way of derogation from paragraph 2, the eligible providers of unfunded credit protection listed in points (a) to (h) of Article 201(1) shall have been assigned a credit assessment by a recognised ECAI which is credit quality step 2 or above at the time the credit protection was first recognised and credit quality step 3 or above thereafter. The requirement set out in this subparagraph shall not apply to qualifying central counterparties.

Institutions which are allowed to apply the IRB Approach to a direct exposure to the protection provider may assess eligibility in accordance with the first subparagraph based on the equivalence of the PD for the protection provider to the PD associated with the credit quality steps referred to in Article 136.

4. By way of derogation from paragraph 2, SSPEs shall be eligible protection providers where all of the following conditions are met:

- (a) the SSPE owns assets that qualify as eligible financial collateral in accordance with Chapter 4;
- (b) the assets referred to in point (a) are not subject to claims or contingent claims ranking ahead or *pari passu* with the claim or contingent claim of the institution receiving unfunded credit protection; and
- (c) all the requirements for the recognition of financial collateral set out in Chapter 4 are met.

5. For the purposes of paragraph 4, the amount of the protection adjusted for any currency and maturity mismatches (Ga) in accordance with Chapter 4 shall be limited to the volatility adjusted market value of those assets and the risk weight of exposures to the protection provider as specified under the Standardised Approach (g) shall be determined as the weighted-average risk weight that would apply to those assets as financial collateral under the Standardised Approach.

6. Where a securitisation position benefits from full credit protection or a partial credit protection on a pro-rata basis, the following requirements shall apply:

- (a) the institution providing credit protection shall calculate risk-weighted exposure amounts for the portion of the securitisation position benefiting from credit protection in accordance with Subsection 3 as if it held that portion of the position directly;
- (b) the institution buying credit protection shall calculate risk-weighted exposure amounts in accordance with Chapter 4 for the protected portion.

7. In all cases not covered by paragraph 6, the following requirements shall apply:

- (a) the institution providing credit protection shall treat the portion of the position benefiting from credit protection as a securitisation position and shall calculate risk-weighted exposure amounts as if it held that position directly in accordance with Subsection 3, subject to paragraphs 8, 9 and 10;
- (b) the institution buying credit protection shall calculate risk-weighted exposure amounts for the protected portion of the position referred to in point (a) in accordance with Chapter 4. The institution shall treat the portion of the securitisation position not benefiting from credit protection as a separate securitisation position and shall calculate risk-weighted exposure amounts in accordance with Subsection 3, subject to paragraphs 8, 9 and 10.

8. Institutions using the Securitisation Internal Ratings Based Approach (SEC-IRBA) or the Securitisation Standardised Approach (SEC-SA) under Subsection 3 shall determine the attachment point (A) and detachment point (D) separately for each of the positions derived in accordance with paragraph 7 as if these had been issued as separate securitisation positions at the time of origination of the transaction. The value of K_{IRB} or K_{SA} , respectively, shall be calculated taking into account the original pool of exposures underlying the securitisation.

9. Institutions using the Securitisation External Ratings Based Approach (SEC-ERBA) under Subsection 3 for the original securitisation position shall calculate risk-weighted exposure amounts for the positions derived in accordance with paragraph 7 as follows:

- (a) where the derived position has the higher seniority, it shall be assigned the risk weight of the original securitisation position;

- (b) where the derived position has the lower seniority, it may be assigned an inferred rating in accordance with Article 263(7). In that case, thickness input T shall only be computed on the basis of the derived position. Where a rating may not be inferred, the institution shall apply the higher of the risk weight resulting from either:
- (i) applying the SEC-SA in accordance with paragraph 8 and Subsection 3; or
 - (ii) the risk weight of the original securitisation position under the SEC-ERBA.

10. The derived position with the lower seniority shall be treated as a non-senior securitisation position even if the original securitisation position prior to protection qualifies as senior.

Article 250

Implicit support

1. A sponsor institution, or an originator institution which in respect of a securitisation has made use of Article 247(1) and (2) in the calculation of risk-weighted exposure amounts or has sold instruments from its trading book to the effect that it is no longer required to hold own funds for the risks of those instruments shall not provide support, directly or indirectly, to the securitisation beyond its contractual obligations with a view to reducing potential or actual losses to investors.

2. A transaction shall not be considered as support for the purposes of paragraph 1 where the transaction has been duly taken into account in the assessment of significant credit risk transfer and both parties have executed the transaction acting in their own interest as free and independent parties (arm's length). For these purposes, the institution shall undertake a full credit review of the transaction and, at a minimum, take into account all of the following items:

- (a) the repurchase price;
- (b) the institution's capital and liquidity position before and after repurchase;
- (c) the performance of the underlying exposures;
- (d) the performance of the securitisation positions;
- (e) the impact of support on the losses expected to be incurred by the originator relative to investors.

3. The originator institution and the sponsor institution shall notify the competent authority of any transaction entered into in relation to the securitisation in accordance with paragraph 2.

4. The EBA shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines on what constitutes "arm's length" for the purposes of this Article and the circumstances under which a transaction is not structured to provide support.

5. If an originator institution or a sponsor institution fails to comply with paragraph 1 in respect of a securitisation, the institution shall include all of the underlying exposures of that securitisation in its calculation of risk-weighted exposure amounts as if they had not been securitised and disclose:

- (a) that it has provided support to the securitisation in breach of paragraph 1; and
- (b) the impact of the support provided in terms of own funds requirements.

Article 251

Originator institutions' calculation of risk-weighted exposure amounts securitised in a synthetic securitisation

1. For the purpose of calculating risk-weighted exposure amounts for the underlying exposures, the originator institution of a synthetic securitisation shall use the calculation methodologies set out in this Section where applicable instead of those set out in Chapter 2. For institutions calculating risk-weighted exposure amounts and, where relevant, expected loss amounts with respect to the underlying exposures under Chapter 3, the expected loss amount in respect of such exposures shall be zero.

2. The requirements set out in paragraph 1 of this Article shall apply to the entire pool of exposures backing the securitisation. Subject to Article 252, the originator institution shall calculate risk-weighted exposure amounts with respect to all tranches in the securitisation in accordance with this Section, including the positions in relation to which the institution is able to recognise credit risk mitigation in accordance with Article 249. The risk weight to be applied to positions which benefit from credit risk mitigation may be amended in accordance with Chapter 4.

*Article 252***Treatment of maturity mismatches in synthetic securitisations**

For the purposes of calculating risk-weighted exposure amounts in accordance with Article 251, any maturity mismatch between the credit protection by which the transfer of risk is achieved and the underlying exposures shall be calculated as follows:

- (a) the maturity of the underlying exposures shall be taken to be the longest maturity of any of those exposures subject to a maximum of 5 years. The maturity of the credit protection shall be determined in accordance with Chapter 4;
- (b) an originator institution shall ignore any maturity mismatch in calculating risk-weighted exposure amounts for securitisation positions subject to a risk weight of 1 250 % in accordance with this Section. For all other positions, the maturity mismatch treatment set out in Chapter 4 shall be applied in accordance with the following formula:

$$RW^* = RW_{SP} \cdot [(t - t^*) / (T - t^*)] + RW_{ASS} \cdot [(T - t) / (T - t^*)]$$

where:

RW^* = risk-weighted exposure amounts for the purposes of point (a) of Article 92(3);

RW_{ASS} = risk-weighted exposure amounts for the underlying exposures as if they had not been securitised, calculated on a pro-rata basis;

RW_{SP} = risk-weighted exposure amounts calculated under Article 251 as if there was no maturity mismatch;

T = maturity of the underlying exposures, expressed in years;

t = maturity of credit protection, expressed in years;

t^* = 0,25

*Article 253***Reduction in risk-weighted exposure amounts**

1. Where a securitisation position is assigned a 1 250 % risk weight under this Section, institutions may deduct the exposure value of such position from Common Equity Tier 1 capital in accordance with point (k) of Article 36(1) as an alternative to including the position in their calculation of risk-weighted exposure amounts. For that purpose, the calculation of the exposure value may reflect eligible funded credit protection in accordance with Article 249.

2. Where an institution makes use of the alternative set out in paragraph 1, it may subtract the amount deducted in accordance with point (k) of Article 36(1) from the amount specified in Article 268 as maximum capital requirement that would be calculated in respect of the underlying exposures as if they had not been securitised.

*Subsection 2***Hierarchy of methods and common parameters***Article 254***Hierarchy of methods**

1. Institutions shall use one of the methods set out in Subsection 3 to calculate risk-weighted exposure amounts in accordance with the following hierarchy:

- (a) where the conditions set out in Article 258 are met, an institution shall use the SEC-IRBA in accordance with Articles 259 and 260;
- (b) where the SEC-IRBA may not be used, an institution shall use the SEC-SA in accordance with Articles 261 and 262;
- (c) where the SEC-SA may not be used, an institution shall use the SEC-ERBA in accordance with Articles 263 and 264 for rated positions or positions in respect of which an inferred rating may be used.

2. For rated positions or positions in respect of which an inferred rating may be used, an institution shall use the SEC-ERBA instead of the SEC-SA in each of the following cases:

- (a) where the application of the SEC-SA would result in a risk weight higher than 25 % for positions qualifying as positions in an STS securitisation;
- (b) where the application of the SEC-SA would result in a risk weight higher than 25 % or the application of the SEC-ERBA would result in a risk weight higher than 75 % for positions not qualifying as positions in an STS securitisation;
- (c) for securitisation transactions backed by pools of auto loans, auto leases and equipment leases.

3. In cases not covered by paragraph 2, and by way of derogation from point (b) of paragraph 1, an institution may decide to apply the SEC-ERBA instead of the SEC-SA to all of its rated securitisation positions or positions in respect of which an inferred rating may be used.

For the purposes of the first subparagraph, an institution shall notify its decision to the competent authority no later than 17 November 2018.

Any subsequent decision to further change the approach applied to all of its rated securitisation positions shall be notified by the institution to its competent authority before the 15th November immediately following that decision.

In the absence of any objection by the competent authority by 15 December immediately following the deadline referred to in the second or third subparagraph, as appropriate, the decision notified by the institution shall take effect from 1 January of the following year and shall be valid until a subsequently notified decision comes into effect. An institution shall not use different approaches in the course of the same year.

4. By way of derogation from paragraph 1, competent authorities may prohibit institutions, on a case by case basis, from applying the SEC-SA when the risk-weighted exposure amount resulting from the application of the SEC-SA is not commensurate to the risks posed to the institution or to financial stability, including but not limited to the credit risk embedded in the exposures underlying the securitisation. In the case of exposures not qualifying as positions in an STS securitisation, particular regard shall be had to securitisations with highly complex and risky features.

5. Without prejudice to paragraph 1 of this Article, an institution may apply the Internal Assessment Approach to calculate risk-weighted exposure amounts in relation to an unrated position in an ABCP programme or ABCP transaction in accordance with Article 266, provided that the conditions set out in Article 265 are met. Where an institution has received permission to apply the Internal Assessment Approach in accordance with Article 265(2), and a specific position in an ABCP programme or ABCP transaction falls within the scope of application covered by such permission, the institution shall apply that approach to calculate the risk-weighted exposure amount of that position.

6. For a position in a re-securitisation, institutions shall apply the SEC-SA in accordance with Article 261, with the modifications set out in Article 269.

7. In all other cases, a risk weight of 1 250 % shall be assigned to securitisation positions.

8. The competent authorities shall inform the EBA of any notification made pursuant to paragraph 3 of this Article. The EBA shall monitor the impact of this Article on capital requirements and the range of supervisory practices in connection with paragraph 4 of this Article, and shall report annually to the Commission on its findings and issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010.

Article 255

Determination of K_{IRB} and K_{SA}

1. Where an institution applies the SEC-IRBA under Subsection 3, the institution shall calculate K_{IRB} in accordance with paragraphs 2 to 5.

2. Institutions shall determine K_{IRB} by multiplying the risk-weighted exposure amounts that would be calculated under Chapter 3 in respect of the underlying exposures as if they had not been securitised by 8 % divided by the exposure value of the underlying exposures. K_{IRB} shall be expressed in decimal form between zero and one.

3. For K_{IRB} calculation purposes, the risk-weighted exposure amounts that would be calculated under Chapter 3 in respect of the underlying exposures shall include:

- (a) the amount of expected losses associated with all the underlying exposures of the securitisation including defaulted underlying exposures that are still part of the pool in accordance with Chapter 3; and
- (b) the amount of unexpected losses associated with all the underlying exposures including defaulted underlying exposures in the pool in accordance with Chapter 3.

4. Institutions may calculate K_{IRB} in relation to the underlying exposures of the securitisation in accordance with the provisions set out in Chapter 3 for the calculation of capital requirements for purchased receivables. For these purposes, retail exposures shall be treated as purchased retail receivables and non-retail exposures as purchased corporate receivables.

5. Institutions shall calculate K_{IRB} separately for dilution risk in relation to the underlying exposures of a securitisation where dilution risk is material to such exposures.

Where losses from dilution and credit risks are treated in an aggregate manner in the securitisation, institutions shall combine the respective K_{IRB} for dilution and credit risk into a single K_{IRB} for the purposes of Subsection 3. The presence of a single reserve fund or overcollateralisation available to cover losses from either credit or dilution risk may be regarded as an indication that these risks are treated in an aggregate manner.

Where dilution and credit risk are not treated in an aggregate manner in the securitisation, institutions shall modify the treatment set out in the second subparagraph to combine the respective K_{IRB} for dilution and credit risk in a prudent manner.

6. Where an institution applies the SEC-SA under Subsection 3, it shall calculate K_{SA} by multiplying the risk-weighted exposure amounts that would be calculated under Chapter 2 in respect of the underlying exposures as if they had not been securitised by 8 % divided by the value of the underlying exposures. K_{SA} shall be expressed in decimal form between zero and one.

For the purposes of this paragraph, institutions shall calculate the exposure value of the underlying exposures without netting any specific credit risk adjustments and additional value adjustments in accordance with Articles 34 and 110 and other own funds reductions.

7. For the purposes of paragraphs 1 to 6, where a securitisation structure involves the use of an SSPE, all the SSPE's exposures related to the securitisation shall be treated as underlying exposures. Without prejudice to the preceding, the institution may exclude the SSPE's exposures from the pool of underlying exposures for K_{IRB} or K_{SA} calculation purposes if the risk from the SSPE's exposures is immaterial or if it does not affect the institution's securitisation position.

In the case of funded synthetic securitisations, any material proceeds from the issuance of credit-linked notes or other funded obligations of the SSPE that serve as collateral for the repayment of the securitisation positions shall be included in the calculation of K_{IRB} or K_{SA} if the credit risk of the collateral is subject to the tranching loss allocation.

8. For the purposes of the third subparagraph of paragraph 5 of this Article, the EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on the appropriate methods to combine K_{IRB} for dilution and credit risk where these risks are not treated in an aggregate manner in a securitisation.

9. The EBA shall develop draft regulatory technical standards to further specify the conditions to allow institutions to calculate K_{IRB} for the pools of underlying exposures in accordance with paragraph 4, in particular with regard to:

- (a) internal credit policy and models for calculating K_{IRB} for securitisations;
- (b) use of different risk factors relating to the pool of underlying exposures and, where sufficient accurate or reliable data on that pool are not available, of proxy data to estimate PD and LGD; and

(c) due diligence requirements to monitor the actions and policies of sellers of receivables or other originators.

The EBA shall submit those draft regulatory technical standards to the Commission by 18 January 2019.

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

Article 256

Determination of attachment point (A) and detachment point (D)

1. For the purposes of Subsection 3, institutions shall set the attachment point (A) at the threshold at which losses within the pool of underlying exposures would start to be allocated to the relevant securitisation position.

The attachment point (A) shall be expressed as a decimal value between zero and one and shall be equal to the greater of zero and the ratio of the outstanding balance of the pool of underlying exposures in the securitisation minus the outstanding balance of all tranches that rank senior or *pari passu* to the tranche containing the relevant securitisation position including the exposure itself to the outstanding balance of all the underlying exposures in the securitisation.

2. For the purposes of Subsection 3, institutions shall set the detachment point (D) at the threshold at which losses within the pool of underlying exposures would result in a complete loss of principal for the tranche containing the relevant securitisation position.

The detachment point (D) shall be expressed as a decimal value between zero and one and shall be equal to the greater of zero and the ratio of the outstanding balance of the pool of underlying exposures in the securitisation minus the outstanding balance of all tranches that rank senior to the tranche containing the relevant securitisation position to the outstanding balance of all the underlying exposures in the securitisation.

3. For the purposes of paragraphs 1 and 2, institutions shall treat overcollateralisation and funded reserve accounts as tranches and the assets comprising such reserve accounts as underlying exposures.

4. For the purposes of paragraphs 1 and 2, institutions shall disregard unfunded reserve accounts and assets that do not provide credit enhancement, such as those that only provide liquidity support, currency or interest rate swaps and cash collateral accounts related to those positions in the securitisation. For funded reserve accounts and assets providing credit enhancement, the institution shall only treat as securitisation positions the parts of those accounts or assets that are loss-absorbing.

5. Where two or more positions of the same transaction have different maturities but share pro rata loss allocation, the calculation of the attachment points (A) and the detachment points (D) shall be based on the aggregated outstanding balance of those positions and the resulting attachment points (A) and detachment points (D) shall be the same.

Article 257

Determination of tranche maturity (M_T)

1. For the purposes of Subsection 3 and subject to paragraph 2, institutions may measure the maturity of a tranche (M_T) as either:

(a) the weighted average maturity of the contractual payments due under the tranche in accordance with the following formula:

$$\sum_t t \cdot CF_t / \sum_t CF_t,$$

where CF_t denotes all contractual payments (principal, interests and fees) payable by the borrower during period t ; or

(b) the final legal maturity of the tranche in accordance with the following formula:

$$M_T = 1 + (M_L - 1) \cdot 80 \%,$$

where M_L is the final legal maturity of the tranche.

2. For the purposes of paragraph 1, the determination of a tranche maturity (M_T) shall be subject in all cases to a floor of 1 year and a cap of 5 years.

3. Where an institution may become exposed to potential losses from the underlying exposures by virtue of contract, the institution shall determine the maturity of the securitisation position by taking into account the maturity of the contract plus the longest maturity of such underlying exposures. For revolving exposures, the longest contractually possible remaining maturity of the exposure that might be added during the revolving period shall apply.

4. The EBA shall monitor the range of practices in this area, with particular regard to the application of point (a) of paragraph 1 of this Article, and shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines by 31 December 2019.

Subsection 3

Methods to calculate risk-weighted exposure amounts

Article 258

Conditions for the use of the Internal Ratings Based Approach (SEC-IRBA)

1. Institutions shall use the SEC-IRBA to calculate risk-weighted exposure amounts in relation to a securitisation position where the following conditions are met:

- (a) the position is backed by an IRB pool or a mixed pool, provided that, in the latter case, the institution is able to calculate K_{IRB} in accordance with Section 3 on a minimum of 95 % of the underlying exposure amount;
- (b) there is sufficient information available in relation to the underlying exposures of the securitisation for the institution to be able to calculate K_{IRB} ; and
- (c) the institution has not been precluded from using the SEC-IRBA in relation to a specified securitisation position in accordance with paragraph 2.

2. Competent authorities may on a case-by-case basis preclude the use of the SEC-IRBA where securitisations have highly complex or risky features. For these purposes, the following may be regarded as highly complex or risky features:

- (a) credit enhancement that can be eroded for reasons other than portfolio losses;
- (b) pools of underlying exposures with a high degree of internal correlation as a result of concentrated exposures to single sectors or geographical areas;
- (c) transactions where the repayment of the securitisation positions is highly dependent on risk drivers not reflected in K_{IRB} ; or
- (d) highly complex loss allocations between tranches.

Article 259

Calculation of risk-weighted exposure amounts under the SEC-IRBA

1. Under the SEC-IRBA, the risk-weighted exposure amount for a securitisation position shall be calculated by multiplying the exposure value of the position calculated in accordance with Article 248 by the applicable risk weight determined as follows, in all cases subject to a floor of 15 %:

$$RW = 1250 \% \quad \text{when } D \leq K_{IRB}$$

$$RW = 12,5 \cdot K_{SSFA(K_{IRB})} \quad \text{when } A \geq K_{IRB}$$

$$RW = \left[\left(\frac{K_{IRB} - A}{D - A} \right) \cdot 12,5 \right] + \left[\left(\frac{D - K_{IRB}}{D - A} \right) \cdot 12,5 \cdot K_{SSFA(K_{IRB})} \right] \quad \text{when } A < K_{IRB} < D$$

where:

K_{IRB} is the capital charge of the pool of underlying exposures as defined in Article 255

D is the detachment point as determined in accordance with Article 256

A is the attachment point as determined in accordance with Article 256

$$K_{SSFA(K_{IRB})} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u-l)}$$

where:

$$a = -(1/(p * K_{IRB}))$$

$$u = D - K_{IRB}$$

$$l = \max(A - K_{IRB}; 0)$$

where:

$$p = \max[0,3; (A + B*(1/N) + C*K_{IRB} + D*LGD + E*M_T)]$$

where:

N is the effective number of exposures in the pool of underlying exposures, calculated in accordance with paragraph 4;

LGD is the exposure-weighted average loss-given-default of the pool of underlying exposures, calculated in accordance with paragraph 5;

M_T is the maturity of the tranche as determined in accordance with Article 257.

The parameters A, B, C, D, and E shall be determined according to the following look-up table:

		A	B	C	D	E
Non-retail	Senior, granular ($N \geq 25$)	0	3,56	- 1,85	0,55	0,07
	Senior, non-granular ($N < 25$)	0,11	2,61	- 2,91	0,68	0,07
	Non-senior, granular ($N \geq 25$)	0,16	2,87	- 1,03	0,21	0,07
	Non-senior, non-granular ($N < 25$)	0,22	2,35	- 2,46	0,48	0,07
Retail	Senior	0	0	- 7,48	0,71	0,24
	Non-senior	0	0	- 5,78	0,55	0,27

2. If the underlying IRB pool comprises both retail and non-retail exposures, the pool shall be divided into one retail and one non-retail subpool and, for each subpool, a separate p-parameter (and the corresponding input parameters N , K_{IRB} and LGD) shall be estimated. Subsequently, a weighted average p-parameter for the transaction shall be calculated on the basis of the p-parameters of each subpool and the nominal size of the exposures in each subpool.

3. Where an institution applies the SEC-IRBA to a mixed pool, the calculation of the p-parameter shall be based on the underlying exposures subject to the IRB Approach only. The underlying exposures subject to the Standardised Approach shall be ignored for these purposes.

4. The effective number of exposures (N) shall be calculated as follows:

$$N = \frac{(\sum_i EAD_i)^2}{\sum_i EAD_i^2}$$

where EAD_i represents the exposure value associated with the i th exposure in the pool.

Multiple exposures to the same obligor shall be consolidated and treated as a single exposure.

5. The exposure-weighted average LGD shall be calculated as follows:

$$\text{LGD} = \frac{\sum_i \text{LGD}_i \cdot \text{EAD}_i}{\sum_i \text{EAD}_i}$$

where LGD_i represents the average LGD associated with all exposures to the i th obligor.

Where credit and dilution risks for purchased receivables are managed in an aggregate manner in a securitisation, the LGD input shall be construed as a weighted average of the LGD for credit risk and 100 % LGD for dilution risk. The weights shall be the stand-alone IRB Approach capital requirements for credit risk and dilution risk, respectively. For these purposes, the presence of a single reserve fund or overcollateralisation available to cover losses from either credit or dilution risk may be regarded as an indication that these risks are managed in an aggregate manner.

6. Where the share of the largest underlying exposure in the pool (C_1) is no more than 3 %, institutions may use the following simplified method to calculate N and the exposure-weighted average LGDs:

$$N = \left(C_1 \cdot C_m + \left(\frac{C_m - C_1}{m-1} \right) \cdot \max\{1 - m \cdot C_1, 0\} \right)^{-1}$$

$$\text{LGD} = 0,50$$

where

C_m denotes the share of the pool corresponding to the sum of the largest m exposures; and

m is set by the institution.

If only C_1 is available and this amount is no more than 0,03, then the institution may set LGD as 0,50 and N as $1/C_1$.

7. Where the position is backed by a mixed pool and the institution is able to calculate K_{IRB} on at least 95 % of the underlying exposure amounts in accordance with point (a) of Article 258(1), the institution shall calculate the capital charge for the pool of underlying exposures as:

$$d \cdot K_{\text{IRB}} + (1 - d) \cdot K_{\text{SA}},$$

where

d is the share of the exposure amount of underlying exposures for which the institution can calculate K_{IRB} over the exposure amount of all underlying exposures.

8. Where an institution has a securitisation position in the form of a derivative to hedge market risks, including interest rate or currency risks, the institution may attribute to that derivative an inferred risk weight equivalent to the risk weight of the reference position calculated in accordance with this Article.

For the purposes of the first subparagraph, the reference position shall be the position that is *pari passu* in all respects to the derivative or, in the absence of such *pari passu* position, the position that is immediately subordinate to the derivative.

Article 260

Treatment of STS securitisations under the SEC-IRBA

Under the SEC-IRBA, the risk weight for a position in an STS securitisation shall be calculated in accordance with Article 259, subject to the following modifications:

risk-weight floor for senior securitisation positions = 10 %

$$p = \max [0,3; 0,5 \cdot (A + B \cdot (1/N) + C \cdot K_{\text{IRB}} + D \cdot \text{LGD} + E \cdot M_T)]$$

Article 261

Calculation of risk-weighted exposure amounts under the Standardised Approach (SEC-SA)

1. Under the SEC-SA, the risk-weighted exposure amount for a position in a securitisation shall be calculated by multiplying the exposure value of the position as calculated in accordance with Article 248 by the applicable risk weight determined as follows, in all cases subject to a floor of 15 %:

$$\begin{aligned}
 RW &= 1\,250\% && \text{when } D \leq K_A \\
 RW &= 12,5 \cdot K_{SSFA(K_A)} && \text{when } A \geq K_A \\
 RW &= \left[\left(\frac{K_A - A}{D - A} \right) \cdot 12,5 \right] + \left[\left(\frac{D - K_A}{D - A} \right) \cdot 12,5 \cdot K_{SSFA(K_A)} \right] && \text{when } A < K_A < D
 \end{aligned}$$

where:

D is the detachment point as determined in accordance with Article 256;

A is the attachment point as determined in accordance with Article 256;

K_A is a parameter calculated in accordance with paragraph 2;

$$K_{SSFA(K_A)} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u-l)}$$

where:

$$a = -(1/(p \cdot K_A))$$

$$u = D - K_A$$

$$l = \max(A - K_A; 0)$$

p = 1 for a securitisation exposure that is not a re-securitisation exposure

2. For the purposes of paragraph 1, K_A shall be calculated as follows:

$$K_A = (1 - W) \cdot K_{SA} + W \cdot 0,5$$

where:

K_{SA} is the capital charge of the underlying pool as defined in Article 255;

W = ratio of:

- (a) the sum of the nominal amount of underlying exposures in default, to
- (b) the sum of the nominal amount of all underlying exposures.

For these purposes, an exposure in default shall mean an underlying exposure which is either: (i) 90 days or more past due; (ii) subject to bankruptcy or insolvency proceedings; (iii) subject to foreclosure or similar proceeding; or (iv) in default in accordance with the securitisation documentation.

Where an institution does not know the delinquency status for 5 % or less of underlying exposures in the pool, the institution may use the SEC-SA subject to the following adjustment in the calculation K_A :

$$K_A = \left(\frac{EAD_{\text{Subpool 1 where W known}}}{EAD_{\text{Total}}} \times K_A^{\text{Subpool 1 where W known}} \right) + \frac{EAD_{\text{Subpool 2 where W unknown}}}{EAD_{\text{Total}}}$$

Where the institution does not know the delinquency status for more than 5 % of underlying exposures in the pool, the position in the securitisation must be risk-weighted at 1 250 %.

3. Where an institution has a securitisation position in the form of a derivative to hedge market risks, including interest rate or currency risks, the institution may attribute to that derivative an inferred risk weight equivalent to the risk weight of the reference position calculated in accordance with this Article.

For the purposes of this paragraph, the reference position shall be the position that is *pari passu* in all respects to the derivative or, in the absence of such *pari passu* position, the position that is immediately subordinate to the derivative.

Article 262

Treatment of STS securitisations under the SEC-SA

Under the SEC-SA the risk weight for a position in an STS securitisation shall be calculated in accordance with Article 261, subject to the following modifications:

risk-weight floor for senior securitisation positions = 10 %

$p = 0,5$

Article 263

Calculation of risk-weighted exposure amounts under the External Ratings Based Approach (SEC-ERBA)

1. Under the SEC-ERBA, the risk-weighted exposure amount for a securitisation position shall be calculated by multiplying the exposure value of the position as calculated in accordance with Article 248 by the applicable risk weight in accordance with this Article.

2. For exposures with short-term credit assessments or when a rating based on a short-term credit assessment may be inferred in accordance with paragraph 7, the following risk weights shall apply:

Table 1

Credit Quality Step	1	2	3	All other ratings
Risk weight	15 %	50 %	100 %	1 250 %

3. For exposures with long-term credit assessments or when a rating based on a long-term credit assessment may be inferred in accordance with paragraph 7 of this Article, the risk weights set out in Table 2 shall apply, adjusted as applicable for tranche maturity (M_T) in accordance with Article 257 and paragraph 4 of this Article and for tranche thickness for non-senior tranches in accordance with paragraph 5 of this Article:

Table 2

Credit Quality Step	Senior tranche		Non-senior (thin) tranche	
	Tranche maturity (M_T)		Tranche maturity (M_T)	
	1 year	5 years	1 year	5 years
1	15 %	20 %	15 %	70 %
2	15 %	30 %	15 %	90 %
3	25 %	40 %	30 %	120 %
4	30 %	45 %	40 %	140 %
5	40 %	50 %	60 %	160 %
6	50 %	65 %	80 %	180 %
7	60 %	70 %	120 %	210 %
8	75 %	90 %	170 %	260 %
9	90 %	105 %	220 %	310 %
10	120 %	140 %	330 %	420 %
11	140 %	160 %	470 %	580 %

Credit Quality Step	Senior tranche		Non-senior (thin) tranche	
	Tranche maturity (M _T)		Tranche maturity (M _T)	
	1 year	5 years	1 year	5 years
12	160 %	180 %	620 %	760 %
13	200 %	225 %	750 %	860 %
14	250 %	280 %	900 %	950 %
15	310 %	340 %	1 050 %	1 050 %
16	380 %	420 %	1 130 %	1 130 %
17	460 %	505 %	1 250 %	1 250 %
All other	1 250 %	1 250 %	1 250 %	1 250 %

4. In order to determine the risk weight for tranches with a maturity between 1 and 5 years, institutions shall use linear interpolation between the risk weights applicable for 1 and 5 years maturity respectively in accordance with Table 2.

5. In order to account for tranche thickness, institutions shall calculate the risk weight for non-senior tranches as follows:

$$RW = [\text{RW after adjusting for maturity according to paragraph 4}] \cdot [1 - \min(T; 50\%)]$$

where

T = tranche thickness measured as D – A

where

D is the detachment point as determined in accordance with Article 256

A is the attachment point as determined in accordance with Article 256

6. The risk weights for non-senior tranches resulting from paragraphs 3, 4 and 5 shall be subject to a floor of 15 %. In addition, the resulting risk weights shall be no lower than the risk weight corresponding to a hypothetical senior tranche of the same securitisation with the same credit assessment and maturity.

7. For the purposes of using inferred ratings, institutions shall attribute to an unrated position an inferred rating equivalent to the credit assessment of a rated reference position which meets all of the following conditions:

- the reference position ranks *pari passu* in all respects to the unrated securitisation position or, in the absence of a *pari passu* ranking position, the reference position is immediately subordinate to the unrated position;
- the reference position does not benefit from any third-party guarantees or other credit enhancements that are not available to the unrated position;
- the maturity of the reference position shall be equal to or longer than that of the unrated position in question;
- on an ongoing basis, any inferred rating shall be updated to reflect any changes in the credit assessment of the reference position.

8. Where an institution has a securitisation position in the form of a derivative to hedge market risks, including interest rate or currency risks, the institution may attribute to that derivative an inferred risk weight equivalent to the risk weight of the reference position calculated in accordance with this Article.

For the purposes of the first subparagraph, the reference position shall be the position that is *pari passu* in all respects to the derivative or, in the absence of such *pari passu* position, the position that is immediately subordinate to the derivative.

Article 264

Treatment of STS securitisations under the SEC-ERBA

1. Under the SEC-ERBA, the risk weight for a position in an STS securitisation shall be calculated in accordance with Article 263, subject to the modifications laid down in this Article.

2. For exposures with short-term credit assessments or when a rating based on a short-term credit assessment may be inferred in accordance with Article 263(7), the following risk weights shall apply:

Table 3

Credit Quality Step	1	2	3	All other ratings
Risk weight	10 %	30 %	60 %	1 250 %

3. For exposures with long-term credit assessments or when a rating based on a long-term credit assessment may be inferred in accordance with Article 263(7), risk weights shall be determined in accordance with Table 4, adjusted for tranche maturity (M_T) in accordance with Article 257 and Article 263(4) and for tranche thickness for non-senior tranches in accordance with Article 263(5):

Table 4

Credit Quality Step	Senior tranche		Non-senior (thin) tranche	
	Tranche maturity (M_T)		Tranche maturity (M_T)	
	1 year	5 years	1 year	5 years
1	10 %	10 %	15 %	40 %
2	10 %	15 %	15 %	55 %
3	15 %	20 %	15 %	70 %
4	15 %	25 %	25 %	80 %
5	20 %	30 %	35 %	95 %
6	30 %	40 %	60 %	135 %
7	35 %	40 %	95 %	170 %
8	45 %	55 %	150 %	225 %
9	55 %	65 %	180 %	255 %
10	70 %	85 %	270 %	345 %
11	120 %	135 %	405 %	500 %
12	135 %	155 %	535 %	655 %
13	170 %	195 %	645 %	740 %
14	225 %	250 %	810 %	855 %
15	280 %	305 %	945 %	945 %
16	340 %	380 %	1 015 %	1 015 %
17	415 %	455 %	1 250 %	1 250 %
All other	1 250 %	1 250 %	1 250 %	1 250 %

*Article 265***Scope and operational requirements for the Internal Assessment Approach**

1. Institutions may calculate the risk-weighted exposure amounts for unrated positions in ABCP programmes or ABCP transactions under the Internal Assessment Approach in accordance with Article 266 where the conditions set out in paragraph 2 of this Article are met.

Where an institution has received permission to apply the Internal Assessment Approach in accordance with paragraph 2 of this Article, and a specific position in an ABCP programme or ABCP transaction falls within the scope of application covered by such permission, the institution shall apply that approach to calculate the risk-weighted exposure amount of that position.

2. The competent authorities shall grant institutions permission to apply the Internal Assessment Approach within a clearly defined scope of application where all of the following conditions are met:

- (a) all positions in the commercial paper issued from the ABCP programme are rated positions;
- (b) the internal assessment of the credit quality of the position reflects the publicly available assessment methodology of one or more ECAIs for the rating of securitisation positions backed by underlying exposures of the type securitised;
- (c) the commercial paper issued from the ABCP programme is predominantly issued to third-party investors;
- (d) the institution's internal assessment process is at least as conservative as the publicly available assessments of those ECAIs which have provided an external rating for the commercial paper issued from the ABCP programme, in particular with regard to stress factors and other relevant quantitative elements;
- (e) the institution's internal assessment methodology takes into account all relevant publicly available rating methodologies of the ECAIs that rate the commercial paper of the ABCP programme and includes rating grades corresponding to the credit assessments of ECAIs. The institution shall document in its internal records an explanatory statement describing how the requirements set out in this point have been met and shall update such statement on a regular basis;
- (f) the institution uses the internal assessment methodology for internal risk management purposes, including in its decision-making, management information and internal capital allocation processes;
- (g) internal or external auditors, an ECAI, or the institution's internal credit review or risk management function perform regular reviews of the internal assessment process and the quality of the internal assessments of the credit quality of the institution's exposures to an ABCP programme or ABCP transaction;
- (h) the institution tracks the performance of its internal ratings over time to evaluate the performance of its internal assessment methodology and makes adjustments, as necessary, to that methodology when the performance of the exposures routinely diverges from that indicated by the internal ratings;
- (i) the ABCP programme includes underwriting and liability management standards in the form of guidelines to the programme administrator on, at least:
 - (i) the asset eligibility criteria, subject to point (j);
 - (ii) the types and monetary value of the exposures arising from the provision of liquidity facilities and credit enhancements;
 - (iii) the loss distribution between the securitisation positions in the ABCP programme or ABCP transaction;
 - (iv) the legal and economic isolation of the transferred assets from the entity selling the assets;
- (j) the asset eligibility criteria in the ABCP programme provide for, at least:
 - (i) exclusion of the purchase of assets that are significantly past due or defaulted;
 - (ii) limitation of excessive concentration to individual obligor or geographic area; and
 - (iii) limitation of the tenor of the assets to be purchased;
- (k) an analysis of the asset seller's credit risk and business profile is performed including, at least, an assessment of the seller's:
 - (i) past and expected future financial performance;

- (ii) current market position and expected future competitiveness;
- (iii) leverage, cash flow, interest coverage and debt rating; and
- (iv) underwriting standards, servicing capabilities, and collection processes;
- (l) the ABCP programme has collection policies and processes that take into account the operational capability and credit quality of the servicer and comprises features that mitigate performance-related risks of the seller and the servicer. For the purposes of this point, performance-related risks may be mitigated through triggers based on the seller or servicer's current credit quality to prevent commingling of funds in the event of the seller's or servicer's default;
- (m) the aggregated estimate of loss on an asset pool that may be purchased under the ABCP programme takes into account all sources of potential risk, such as credit and dilution risk;
- (n) where the seller-provided credit enhancement is sized based only on credit-related losses and dilution risk is material for the particular asset pool, the ABCP programme comprises a separate reserve for dilution risk;
- (o) the size of the required enhancement level in the ABCP programme is calculated taking into account several years of historical information, including losses, delinquencies, dilutions, and the turnover rate of the receivables;
- (p) the ABCP programme comprises structural features in the purchase of exposures in order to mitigate potential credit deterioration of the underlying portfolio. Such features may include wind-down triggers specific to a pool of exposures;
- (q) the institution evaluates the characteristics of the underlying asset pool, such as its weighted-average credit score, and identifies any concentrations to an individual obligor or geographic area and the granularity of the asset pool.

3. Where the institution's internal audit, credit review, or risk management functions perform the review provided for in point (g) of paragraph 2, those functions shall be independent from the institution's internal functions dealing with ABCP programme business and customer relations.

4. Institutions which have received permission to apply the Internal Assessment Approach shall not revert to the use of other methods for positions that fall within scope of application of the Internal Assessment Approach unless both of the following conditions are met:

- (a) the institution has demonstrated to the satisfaction of the competent authority that the institution has good cause to do so;
- (b) the institution has received the prior permission of the competent authority.

Article 266

Calculation of risk-weighted exposure amounts under the Internal Assessment Approach

1. Under the Internal Assessment Approach, the institution shall assign the unrated position in the ABCP programme or ABCP transaction to one of the rating grades laid down in point (e) of Article 265(2) on the basis of its internal assessment. The position shall be attributed a derived rating which shall be the same as the credit assessments corresponding to that rating grade as laid down in point (e) of Article 265(2).

2. The rating derived in accordance with paragraph 1 shall be at least at the level of investment grade or better at the time it was first assigned and shall be regarded as an eligible credit assessment by an ECAI for the purposes of calculating risk-weighted exposure amounts in accordance with Article 263 or Article 264, as applicable.

Subsection 4

Caps for securitisation positions

Article 267

Maximum risk weight for senior securitisation positions: look-through approach

1. An institution which has knowledge at all times of the composition of the underlying exposures may assign the senior securitisation position a maximum risk weight equal to the exposure-weighted-average risk weight that would be applicable to the underlying exposures as if the underlying exposures had not been securitised.

2. In the case of pools of underlying exposures where the institution uses exclusively the Standardised Approach or the IRB Approach, the maximum risk weight of the senior securitisation position shall be equal to the exposure-weighted-average risk weight that would apply to the underlying exposures under Chapter 2 or 3, respectively, as if they had not been securitised.

In the case of mixed pools the maximum risk weight shall be calculated as follows:

- (a) where the institution applies the SEC-IRBA, the Standardised Approach portion and the IRB Approach portion of the underlying pool shall each be assigned the corresponding Standardised Approach risk weight and IRB Approach risk weight respectively;
- (b) where the institution applies the SEC-SA or the SEC-ERBA, the maximum risk weight for senior securitisation positions shall be equal to the Standardised Approach weighted-average risk weight of the underlying exposures.

3. For the purposes of this Article, the risk weight that would be applicable under the IRB Approach in accordance with Chapter 3 shall include the ratio of:

- (a) expected losses multiplied by 12,5 to
- (b) the exposure value of the underlying exposures.

4. Where the maximum risk weight calculated in accordance with paragraph 1 results in a lower risk weight than the risk-weight floors set out in Articles 259 to 264, as applicable, the former shall be used instead.

Article 268

Maximum capital requirements

1. An originator institution, a sponsor institution or other institution using the SEC-IRBA or an originator institution or sponsor institution using the SEC-SA or the SEC-ERBA may apply a maximum capital requirement for the securitisation position it holds equal to the capital requirements that would be calculated under Chapter 2 or 3 in respect of the underlying exposures had they not been securitised. For the purposes of this Article, the IRB Approach capital requirement shall include the amount of the expected losses associated with those exposures calculated under Chapter 3 and that of unexpected losses.

2. In the case of mixed pools, the maximum capital requirement shall be determined by calculating the exposure-weighted average of the capital requirements of the IRB Approach and Standardised Approach portions of the underlying exposures in accordance with paragraph 1.

3. The maximum capital requirement shall be the result of multiplying the amount calculated in accordance with paragraphs 1 or 2 by the largest proportion of interest that the institution holds in the relevant tranches (V), expressed as a percentage and calculated as follows:

- (a) for an institution that has one or more securitisation positions in a single tranche, V shall be equal to the ratio of the nominal amount of the securitisation positions that the institution holds in that given tranche to the nominal amount of the tranche;
- (b) for an institution that has securitisation positions in different tranches, V shall be equal to the maximum proportion of interest across tranches. For these purposes, the proportion of interest for each of the different tranches shall be calculated as set out in point (a).

4. When calculating the maximum capital requirement for a securitisation position in accordance with this Article, the entire amount of any gain on sale and credit-enhancing interest-only strips arising from the securitisation transaction shall be deducted from Common Equity Tier 1 items in accordance with point (k) of Article 36(1).

Subsection 5

Miscellaneous provisions

Article 269

Re-securitisations

1. For a position in a re-securitisation, institutions shall apply the SEC-SA in accordance with Article 261, with the following changes:

- (a) $W = 0$ for any exposure to a securitisation tranche within the pool of underlying exposures;

- (b) $p = 1,5$;
 - (c) the resulting risk weight shall be subject to a risk-weight floor of 100 %.
2. K_{SA} for the underlying securitisation exposures shall be calculated in accordance with Subsection 2.
 3. The maximum capital requirements set out in Subsection 4 shall not be applied to re-securitisation positions.
 4. Where the pool of underlying exposures consists of a mix of securitisation tranches and other types of assets, the K_A parameter shall be determined as the nominal exposure weighted-average of the K_A calculated individually for each subset of exposures.

Article 270

Senior positions in SME securitisations

An originator institution may calculate the risk-weighted exposure amounts in respect of a securitisation position in accordance with Articles 260, 262 or 264, as applicable, where the following conditions are met:

- (a) the securitisation meets the requirements for STS securitisation set out in Chapter 4 of Regulation (EU) 2017/2402 as applicable, other than Article 20(1) to (6) of that Regulation;
- (b) the position qualifies as the senior securitisation position;
- (c) the securitisation is backed by a pool of exposures to undertakings, provided that at least 70 % of those in terms of portfolio balance qualify as SMEs within the meaning of Article 501 at the time of issuance of the securitisation or in the case of revolving securitisations at the time an exposure is added to the securitisation;
- (d) the credit risk associated with the positions not retained by the originator institution is transferred through a guarantee or a counter-guarantee meeting the requirements for unfunded credit protection set out in Chapter 4 for the Standardised Approach to credit risk;
- (e) the third party to which the credit risk is transferred is one or more of the following:
 - (i) the central government or the central bank of a Member State, a multilateral development bank, an international organisation or a promotional entity, provided that the exposures to the guarantor or counter-guarantor qualify for a 0 % risk weight under Chapter 2;
 - (ii) an institutional investor as defined in point (12) of Article 2 of Regulation (EU) 2017/2402 provided that the guarantee or counter-guarantee is fully collateralised by cash on deposit with the originator institution.

Article 270a

Additional risk weight

1. Where an institution does not meet the requirements in Chapter 2 of Regulation (EU) 2017/2402 in any material respect by reason of negligence or omission by the institution, the competent authorities shall impose a proportionate additional risk weight of no less than 250 % of the risk weight, capped at 1 250 %, which shall apply to the relevant securitisation positions in the manner specified in Article 247(6) or Article 337(3) of this Regulation respectively. The additional risk weight shall progressively increase with each subsequent infringement of the due diligence and risk management provisions. The competent authorities shall take into account the exemptions for certain securitisations provided for in Article 6(5) of Regulation (EU) 2017/2402 by reducing the risk weight they would otherwise impose under this Article in respect of a securitisation to which Article 6(5) of Regulation (EU) 2017/2402 applies.

2. The EBA shall develop draft implementing technical standards to facilitate the convergence of supervisory practices with regard to the implementation of paragraph 1, including the measures to be taken in the case of breach of the due diligence and risk management obligations. The EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Section 4

External credit assessments

Article 270b

Use of credit assessments by ECAIs

Institutions may use only credit assessments to determine the risk weight of a securitisation position in accordance with this Chapter where the credit assessment has been issued or has been endorsed by an ECAI in accordance with Regulation (EC) No 1060/2009.

Article 270c

Requirements to be met by the credit assessments of ECAIs

For the purposes of calculating risk-weighted exposure amounts in accordance with Section 3, institutions shall only use a credit assessment of an ECAI where all of the following conditions are met:

- (a) there is no mismatch between the types of payments reflected in the credit assessment and the types of payments to which the institution is entitled under the contract giving rise to the securitisation position in question;
- (b) the ECAI publishes the credit assessments and information on loss and cash-flow analysis, sensitivity of ratings to changes in the underlying ratings assumptions, including the performance of underlying exposures, and on the procedures, methodologies, assumptions, and key elements underpinning the credit assessments in accordance with Regulation (EC) No 1060/2009. For the purposes of this point, information shall be considered as publicly available where it is published in accessible format. Information that is made available only to a limited number of entities shall not be considered as publicly available;
- (c) the credit assessments are included in the ECAI's transition matrix;
- (d) the credit assessments are not based or partly based on unfunded support provided by the institution itself. Where a position is based or partly based on unfunded support, the institution shall consider that position as if it were unrated for the purposes of calculating risk-weighted exposure amounts for this position in accordance with Section 3;
- (e) the ECAI has committed to publishing explanations on how the performance of underlying exposures affects the credit assessment.

Article 270d

Use of credit assessments

1. An institution may decide to nominate one or more ECAIs the credit assessments of which shall be used in the calculation of its risk-weighted exposure amounts under this Chapter (a "nominated ECAI").
2. An institution shall use the credit assessments of its securitisation positions in a consistent and non-selective manner and, for these purposes, shall comply with the following requirements:
 - (a) an institution shall not use an ECAI's credit assessments for its positions in some tranches and another ECAI's credit assessments for its positions in other tranches within the same securitisation that may or may not be rated by the first ECAI;
 - (b) where a position has two credit assessments by nominated ECAIs, the institution shall use the less favourable credit assessment;
 - (c) where a position has three or more credit assessments by nominated ECAIs, the two most favourable credit assessments shall be used. Where the two most favourable assessments are different, the less favourable of the two shall be used;
 - (d) an institution shall not actively solicit the withdrawal of less favourable ratings.

3. Where the exposures underlying a securitisation benefit from full or partial eligible credit protection in accordance with Chapter 4, and the effect of such protection has been reflected in the credit assessment of a securitisation position by a nominated ECAI, the institution shall use the risk weight associated with that credit assessment. Where the credit protection referred to in this paragraph is not eligible under Chapter 4, the credit assessment shall not be recognised and the securitisation position shall be treated as unrated.

4. Where a securitisation position benefits from eligible credit protection in accordance with Chapter 4 and the effect of such protection has been reflected in its credit assessment by a nominated ECAI, the institution shall treat the securitisation position as if it were unrated and calculate the risk-weighted exposure amounts in accordance with Chapter 4.

Article 270e

Securitisation mapping

The EBA shall develop draft implementing technical standards to map in an objective and consistent manner the credit quality steps set out in this Chapter relative to the relevant credit assessments of all ECAIs. For the purposes of this Article, the EBA shall in particular:

- (a) differentiate between the relative degrees of risk expressed by each assessment;
- (b) consider quantitative factors, such as default or loss rates and the historical performance of credit assessments of each ECAI across different asset classes;
- (c) consider qualitative factors such as the range of transactions assessed by the ECAI, its methodology and the meaning of its credit assessments in particular whether such assessments take into account expected loss or first Euro loss, and timely payment of interests or ultimate payment of interests;
- (d) seek to ensure that securitisation positions to which the same risk weight is applied on the basis of the credit assessments of ECAIs are subject to equivalent degrees of credit risk.

The EBA shall submit those draft implementing technical standards to the Commission by 1 July 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’

- (10) Article 337 is replaced by the following:

‘Article 337

Own funds requirement for securitisation instruments

1. For instruments in the trading book that are securitisation positions, the institution shall weight the net positions as calculated in accordance with Article 327(1) with 8 % of the risk weight the institution would apply to the position in its non-trading book according to Section 3 of Chapter 5 of Title II.

2. When determining risk weights for the purposes of paragraph 1, estimates of PD and LGD may be determined based on estimates that are derived from an internal incremental default and migration risk model (IRC model) of an institution that has been granted permission to use an internal model for specific risk of debt instruments. The latter alternative may be used only subject to permission by the competent authorities, which shall be granted if those estimates meet the quantitative requirements for the IRB Approach set out in Chapter 3 of Title II.

In accordance with Article 16 of Regulation (EU) No 1093/2010, the EBA shall issue guidelines on the use of estimates of PD and LGD as inputs when those estimates are based on an IRC model.

3. For securitisation positions that are subject to an additional risk weight in accordance with Article 247(6), 8 % of the total risk weight shall be applied.

4. The institution shall sum its weighted positions resulting from the application of paragraphs 1, 2 and 3 regardless of whether they are long or short, in order to calculate its own funds requirement against specific risk, except for securitisation positions subject to Article 338(4).

5. Where an originator institution of a traditional securitisation does not meet the conditions for significant risk transfer set out in Article 244, the originator institution shall include the exposures underlying the securitisation in its calculation of own funds requirement as if those exposures had not been securitised.

Where an originator institution of a synthetic securitisation does not meet the conditions for significant risk transfer set out in Article 245, the originator institution shall include the exposures underlying the securitisation in its calculation of own funds requirements as if those exposures had not been securitised and shall ignore the effect of the synthetic securitisation for credit protection purposes.’

(11) Part Five is deleted and all references to Part Five shall be read as references to Chapter 2 of Regulation (EU) 2017/2402.

(12) In Article 457, point (c) is replaced by the following:

‘(c) the own funds requirements for securitisation laid down in Articles 242 to 270a;’.

(13) Article 462 is replaced by the following:

‘Article 462

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 244(6) and 245(6) and in Articles 456 to 460 shall be conferred on the Commission for an indeterminate period of time from 28 June 2013.

3. The delegation of power referred to in Articles 244(6) and 245(6) and in Articles 456 to 460 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 244(6) and 245(6) and Articles 456 to 460 shall enter into force only if no objection has been expressed by the European Parliament or the Council within a period of 3 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 3 months at the initiative of the European Parliament or of the Council.’

(14) The following article is inserted:

‘Article 519a

Reporting and review

By 1 January 2022, the Commission shall report to the European Parliament and the Council on the application of the provisions in Chapter 5 of Title II of Part Three in the light of developments in securitisation markets, including from a macroprudential and economic perspective. That report shall, if appropriate, be accompanied by a legislative proposal and shall, in particular, assess the following points:

(a) the impact of the hierarchy of methods set out in Article 254 and of the calculation of the risk-weighted exposure amounts of securitisation positions set out in Articles 258 to 266 on issuance and investment activity by institutions in securitisation markets in the Union;

(b) the effects on the financial stability of the Union and Member States, with a particular focus on potential immovable property market speculation and increased interconnection between financial institutions;

- (c) what measures would be warranted to reduce and counter any negative effects of securitisation on financial stability while preserving its positive effect on financing, including the possible introduction of a maximum limit on exposure to securitisations; and
- (d) the effects on the ability of financial institutions to provide a sustainable and stable funding channel to the real economy, with particular attention to SMEs.

The report shall also take into account regulatory developments in international fora, in particular those relating to international standards on securitisation.

Article 2

Transitional provisions concerning outstanding securitisation positions

In respect of securitisations the securities of which were issued before 1 January 2019, institutions shall continue to apply the provisions set out in Chapter 5 of Title II of Part Three and Article 337 of Regulation (EU) No 575/2013 until 31 December 2019 in the version applicable on 31 December 2018.

For the purposes of this Article, in the case of securitisations which do not involve the issuance of securities, the reference to 'securitisations the securities of which were issued' shall be deemed to mean securitisations the initial securitisation positions of which were created.

Article 3

Entry into force and date of application

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

It shall apply from 1 January 2019.

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

Done at Strasbourg, 12 December 2017.

For the European Parliament

The President

A. TAJANI

For the Council

The President

M. MAASIKAS

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) Securitisation involves transactions that enable a lender or a creditor – typically a credit institution or a corporation – to refinance a set of loans, exposures or receivables, such as residential loans, auto loans or leases, consumer loans, credit cards or trade receivables, by transforming them into tradable securities. The lender pools and repackages a portfolio of its loans, and organises them into different risk categories for different investors, thus giving investors access to investments in loans and other exposures to which they normally would not have direct access. Returns to investors are generated from the cash flows of the underlying loans.
- (2) In its communication of 26 November 2014 on an Investment Plan for Europe, the Commission announced its intention to restart high-quality securitisation markets, without repeating the mistakes made before the 2008 financial crisis. The development of a simple, transparent and standardised securitisation market constitutes a building block of the Capital Markets Union (CMU) and contributes to the Commission's priority objective of supporting job creation and a return to sustainable growth.
- (3) The Union aims to strengthen the legislative framework implemented after the financial crisis to address the risks inherent in highly complex, opaque and risky securitisation. It is essential to ensure that rules are adopted to better differentiate simple, transparent and standardised products from complex, opaque and risky instruments and to apply a more risk-sensitive prudential framework.
- (4) Securitisation is an important element of well-functioning financial markets. Soundly structured securitisation is an important channel for diversifying funding sources and allocating risk more widely within the Union financial system. It allows for a broader distribution of financial-sector risk and can help free up originators' balance sheets to allow for further lending to the economy. Overall, it can improve efficiencies in the financial system and provide additional investment opportunities. Securitisation can create a bridge between credit institutions and capital markets with an indirect benefit for businesses and citizens (through, for example, less expensive loans and business financing, and credits for immovable property and credit cards). Nevertheless, this Regulation recognises the risks of increased interconnectedness and of excessive leverage that securitisation raises, and enhances the microprudential supervision by competent authorities of a financial institution's participation in the securitisation market, as well as the macroprudential oversight of that market by the European Systemic Risk Board (ESRB), established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council ⁽⁴⁾, and by the national competent and designated authorities for macroprudential instruments.

⁽¹⁾ OJ C 219, 17.6.2016, p. 2.

⁽²⁾ OJ C 82, 3.3.2016, p. 1.

⁽³⁾ Position of the European Parliament of 26 October 2017 (not yet published in the Official Journal) and decision of the Council of 20 November 2017.

⁽⁴⁾ Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macroprudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

- (5) Establishing a more risk-sensitive prudential framework for simple, transparent and standardised ('STS') securitisations requires that the Union clearly define what an STS securitisation is, since otherwise the more risk-sensitive regulatory treatment for credit institutions and insurance companies would be available for different types of securitisations in different Member States. This would lead to an unlevel playing field and to regulatory arbitrage, whereas it is important to ensure that the Union functions as a single market for STS securitisations and that it facilitates cross-border transactions.
- (6) In line with the existing definitions in Union sectoral legislation, it is appropriate to provide definitions of all the key concepts of securitisation. In particular, a clear and encompassing definition of securitisation is needed to capture any transaction or scheme whereby the credit risk associated with an exposure or pool of exposures is tranching. An exposure that creates a direct payment obligation for a transaction or scheme used to finance or operate physical assets should not be considered an exposure to a securitisation, even if the transaction or scheme has payment obligations of different seniority.
- (7) A sponsor should be able to delegate tasks to a servicer, but should remain responsible for risk management. In particular, a sponsor should not transfer the risk-retention requirement to his servicer. The servicer should be a regulated asset manager such as an undertaking for the collective investment in transferable securities (UCITS) management company, an alternative investment fund manager (AIFM) or an entity referred to in Directive 2014/65/EU of the European Parliament and of the Council ⁽¹⁾ (MiFID entity).
- (8) This Regulation introduces a ban on resecuritisation, subject to derogations for certain cases of resecuritisations that are used for legitimate purposes and to clarifications as to whether asset-backed commercial paper (ABCP) programmes are considered to be resecuritisations. Resecuritisations could hinder the level of transparency that this Regulation seeks to establish. Nevertheless, resecuritisations can, in exceptional circumstances, be useful in preserving the interests of investors. Therefore, resecuritisations should only be permitted in specific instances as established by this Regulation. In addition, it is important for the financing of the real economy that fully supported ABCP programmes that do not introduce any re-tranching on top of the transactions funded by the programme remain outside the scope of the ban on resecuritisation.
- (9) Investments in or exposures to securitisations not only expose the investor to credit risks of the underlying loans or exposures, but the structuring process of securitisations could also lead to other risks such as agency risk, model risk, legal and operational risk, counterparty risk, servicing risk, liquidity risk and concentration risk. Therefore, it is essential that institutional investors be subject to proportionate due-diligence requirements ensuring that they properly assess the risks arising from all types of securitisations, to the benefit of end investors. Due diligence can thus also enhance confidence in the market and between individual originators, sponsors and investors. It is necessary that investors also exercise appropriate due diligence with regard to STS securitisations. They can inform themselves with the information disclosed by the securitising parties, in particular the STS notification and the related information disclosed in this context, which should provide investors with all the relevant information on the way STS criteria are met. Institutional investors should be able to place appropriate reliance on the STS notification and the information disclosed by the originator, sponsor and securitisation special purpose entity (SSPE) on whether a securitisation meets the STS requirements. However, they should not rely solely and mechanically on such a notification and such information.
- (10) It is essential that the interests of originators, sponsors, original lenders that are involved in a securitisation and investors be aligned. To achieve this, the originator, sponsor or original lender should retain a significant interest in the underlying exposures of the securitisation. It is therefore important for the originator, sponsor or original lender to retain a material net economic exposure to the underlying risks in question. More generally, securitisation transactions should not be structured in such a way so as to avoid the application of the retention requirement. That requirement should be applicable in all situations where the economic substance of a securitisation is applicable, whatever legal structures or instruments are used. There is no need for multiple applications of the retention requirement. For any given securitisation, it suffices that only the originator, the sponsor or the original

⁽¹⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

lender is subject to the requirement. Similarly, where securitisation transactions contain other securitisations positions as underlying exposures, the retention requirement should be applied only to the securitisation which is subject to the investment. The STS notification should indicate to investors that the originator, sponsor or original lender is retaining a material net economic exposure to the underlying risks. Certain exceptions should be made for cases in which securitised exposures are fully, unconditionally and irrevocably guaranteed in particular by public authorities. Where support from public resources is provided in the form of guarantees or by other means, this Regulation is without prejudice to State aid rules.

- (11) Originators or sponsors should not take advantage of the fact that they could hold more information than investors and potential investors on the assets transferred to the SSPE, and should not transfer to the SSPE, without the knowledge of the investors or potential investors, assets whose credit-risk profile is higher than that of comparable assets held on the balance sheet of the originators. Any breach of that obligation should be subject to sanctions to be imposed by competent authorities, though only when such a breach is intentional. Negligence alone should not be subject to sanctions in that regard. However, that obligation should not prejudice in any way the right of originators or sponsors to select assets to be transferred to the SSPE that *ex ante* have a higher-than-average credit-risk profile compared to the average credit-risk profile of comparable assets that remain on the balance sheet of the originator, as long as the higher credit-risk profile of the assets transferred to the SSPE is clearly communicated to the investors or potential investors. Competent authorities should supervise compliance with this obligation by comparing the assets underlying a securitisation and comparable assets held on the originator's balance sheet.

The comparison of performance should be made between assets that are *ex ante* expected to have similar performances, for example between non-performing residential mortgages transferred to the SSPE and non-performing residential mortgages held on the balance sheet of the originator.

There is no presumption that the assets underlying a securitisation should perform similarly to the average assets held on the originator's balance sheet.

- (12) The ability of investors and potential investors to exercise due diligence and thus make an informed assessment of the creditworthiness of a given securitisation instrument depends on their access to information on those instruments. Based on the existing *acquis*, it is important to create a comprehensive system under which investors and potential investors will have access to all the relevant information over the entire life of the transactions, to reduce originators', sponsors' and SSPEs' reporting tasks and to facilitate investors' continuous, easy and free access to reliable information on securitisations. To enhance market transparency, a framework for securitisation repositories to collect relevant reports, primarily on underlying exposures in securitisations, should be established. Such securitisation repositories should be authorised and supervised by the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽¹⁾. In specifying the details of such reporting tasks, ESMA should ensure that the information required to be reported to such repositories reflects as closely as possible existing templates for disclosures of such information.
- (13) The main purpose of the general obligation for the originator, sponsor and the SSPE to make available information on securitisations via the securitisation repository is to provide the investors with a single and supervised source of the data necessary for performing their due diligence. Private securitisations are often bespoke. They are important because they allow parties to enter into securitisation transactions without disclosing sensitive commercial information on the transaction (e.g. disclosing that a certain company needs funding to expand production or that an investment firm is entering a new market as part of its strategy) and/or related to the underlying assets (e.g. on the type of trade receivable generated by an industrial firm) to the market and competitors. In those cases, investors are in direct contact with the originator and/or sponsor and receive the information necessary to perform their due diligence directly from them. Therefore, it is appropriate to exempt private securitisations from the requirement to notify the transaction information to a securitisation repository.

⁽¹⁾ 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).

- (14) Originators, sponsors and original lenders should apply to exposures to be securitised the same sound and well-defined criteria for credit-granting which they apply to non-securitised exposures. However, to the extent that trade receivables are not originated in the form of a loan, credit-granting criteria need not be met with respect to trade receivables.
- (15) Securitisation instruments are generally not appropriate for retail clients within the meaning of Directive 2014/65/EU.
- (16) Originators, sponsors and SPEs should make available in the investor report all materially relevant data on the credit quality and performance of underlying exposures, including data allowing investors to clearly identify delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, repurchases, payment holidays, losses, charge offs, recoveries and other asset performance remedies in the pool of underlying exposures. The investor report should include in the case of a securitisation which is not an ABCP transaction data on the cash flows generated by underlying exposures and by the liabilities of the securitisation, including separate disclosure of the securitisation position's income and disbursements, namely scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges, and data relating to the triggering of any event implying changes in the priority of payments or replacement of any counterparties, as well as data on the amount and form of credit enhancement available to each tranche. Although securitisations that are simple, transparent and standardised have in the past performed well, the satisfaction of any STS requirements does not mean that the securitisation position is free of risks, nor does it indicate anything about the credit quality underlying the securitisation. Instead, it should be understood to indicate that a prudent and diligent investor will be able to analyse the risks involved in the securitisation.

In order to allow for the different structural features of long-term securitisations and of short-term securitisations (namely ABCP programmes and ABCP transactions), there should be two types of STS requirements: one for long-term securitisations and one for short-term securitisations corresponding to those two differently functioning market segments. ABCP programmes rely on a number of ABCP transactions consisting of short-term exposures which need to be replaced once matured. In an ABCP transaction, securitisation could be achieved, inter alia, through agreement on a variable purchase-price discount on the pool of underlying exposures, or the issuance of senior and junior notes by an SPE in a co-funding structure where the senior notes are then transferred to the purchasing entities of one or more ABCP programmes. However, ABCP transactions qualifying as STS should not include any resecuritisations. In addition, STS criteria should reflect the specific role of the sponsor providing liquidity support to the ABCP programme, in particular for fully supported ABCP programmes.

- (17) At both the international and Union level, much work has already been done to identify STS securitisation. In Commission Delegated Regulations (EU) 2015/35 ⁽¹⁾ and (EU) 2015/61 ⁽²⁾, criteria have already been set out for STS securitisation for specific purposes to which a more risk-sensitive prudential treatment is given.
- (18) SPEs should only be established in third countries that are not listed as high-risk and non-cooperative jurisdictions by the Financial Action Task Force (FATF). If a specific Union list of third-country jurisdictions that refuse to comply with tax good-governance standards has been adopted by the time a review of this Regulation is conducted, that Union list should be taken into account and could become the reference list for third countries where SPEs are not allowed to be established.
- (19) It is essential to establish a general and cross-sectorally applicable definition of STS securitisation based on the existing criteria, as well as on the criteria adopted by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) on 23 July 2015 for identifying simple, transparent and comparable securitisations in the framework of capital sufficiency for securitisations, and in particular based on the opinion on a European framework for qualifying securitisation published on 7 July 2015 by the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽³⁾.

⁽¹⁾ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

⁽²⁾ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

⁽³⁾ 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).

- (20) Implementation of the STS criteria throughout the Union should not lead to divergent approaches. Divergent approaches would create potential barriers for cross-border investors by obliging them to familiarise themselves with the details of the Member State frameworks, thereby undermining investor confidence in the STS criteria. The EBA should therefore develop guidelines to ensure a common and consistent understanding of the STS requirements throughout the Union, in order to address potential interpretation issues. Such a single source of interpretation would facilitate the adoption of the STS criteria by originators, sponsors and investors. ESMA should also play an active role in addressing potential interpretation issues.
- (21) In order to prevent divergent approaches in the implementation of the STS criteria, the three European Supervisory Authorities (ESAs) should, in the framework of the Joint Committee of the European Supervisory Authorities, coordinate their work and that of the competent authorities to ensure cross-sectoral consistency and assess practical issues which could arise with regard to STS securitisations. In doing so, the views of market participants should also be requested and taken into account to the extent possible. The outcome of those discussions should be made public on the websites of the ESAs so as to help originators, sponsors, SSPEs and investors assess STS securitisations before issuing or investing in such positions. Such a coordination mechanism would be particularly important in the period leading up to the implementation of this Regulation.
- (22) This Regulation only allows for 'true-sale' securitisations to be designated as STS. In a true-sale securitisation, the ownership of the underlying exposures is transferred or effectively assigned to an issuer entity which is a SSPE. The transfer or assignment of the underlying exposures to the SSPE should not be subject to clawback provisions in the event of the seller's insolvency, without prejudice to provisions of national insolvency laws under which the sale of underlying exposures concluded within a certain period before the declaration of the seller's insolvency can, under strict conditions, be invalidated.
- (23) A legal opinion provided by a qualified legal counsel could confirm the true sale or assignment or transfer with the same legal effect of the underlying exposures and the enforceability of that true sale, assignment or transfer with the same legal effect under the applicable law.
- (24) In securitisations which are not true-sale, the underlying exposures are not transferred to an issuer entity which is a SSPE, but rather the credit risk related to the underlying exposures is transferred by means of a derivative contract or guarantees. This introduces an additional counterparty credit risk and potential complexity related in particular to the content of the derivative contract. For those reasons, the STS criteria should not allow synthetic securitisation.

The progress made by the EBA in its report of December 2015, identifying a possible set of STS criteria for synthetic securitisation and defining 'balance-sheet synthetic securitisation' and 'arbitrage synthetic securitisation', should be acknowledged. Once the EBA has clearly determined a set of STS criteria specifically applicable to balance-sheet synthetic securitisations, and with a view to promoting the financing of the real economy and in particular of SMEs, which benefit the most from such securitisations, the Commission should draft a report and, if appropriate, adopt a legislative proposal in order to extend the STS framework to such securitisations. However, no such extension should be proposed by the Commission in respect of arbitrage synthetic securitisations.

- (25) The underlying exposures transferred from the seller to the SSPE should meet predetermined and clearly defined eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. Substitution of exposures that are in breach of representations and warranties should in principle not be considered active portfolio management.
- (26) Underlying exposures should not include exposures in default or exposures to obligors or guarantors that, to the best of the originator's or original lender's knowledge, are in specified situations of credit-impairedness (for example, obligors that have been declared insolvent).

The 'best knowledge' standard should be considered to be fulfilled on the basis of information obtained from debtors on origination of the exposures, information obtained from the originator in the course of its servicing of the exposures or in the course of its risk-management procedure or information notified to the originator by a third party.

A prudent approach should apply to exposures which have been non-performing and have subsequently been restructured. However, the inclusion of the latter in the pool of underlying exposure should not be excluded where such exposures have not presented new arrears since the date of the restructuring, which should have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE. In such cases, adequate disclosure should ensure full transparency.

- (27) To ensure that investors perform robust due diligence and to facilitate the assessment of underlying risks, it is important that securitisation transactions are backed by pools of exposures that are homogenous in asset type, such as pools of residential loans, or pools of corporate loans, business property loans, leases and credit facilities to undertakings of the same category, or pools of auto loans and leases, or pools of credit facilities to individuals for personal, family or household consumption purposes. The underlying exposures should not include transferable securities, as defined in point (44) of Article 4(1) of Directive 2014/65/EU. To cater for those Member States where it is common practice for credit institutions to use bonds instead of loan agreements to provide credit to non-financial corporations, it should be possible to include such bonds, provided that they are not listed on a trading venue.
- (28) It is essential to prevent the recurrence of 'originate to distribute' models. In those situations lenders grant credits applying poor and weak underwriting policies as they know in advance that related risks are eventually sold to third parties. Thus, the exposures to be securitised should be originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards that should not be less stringent than those the originator or original lender applies at the time of origination to similar exposures which are not securitised. Material changes in underwriting standards should be fully disclosed to potential investors or, in the case of fully supported ABCP programmes, to the sponsor and other parties directly exposed to the ABCP transaction. The originator or original lender should have sufficient experience in originating exposures of a similar nature to those which have been securitised. In the case of securitisations where the underlying exposures are residential loans, the pool of loans should not include any loan that was marketed and underwritten on the premise that the loan applicant 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 should also meet where applicable, the requirements set out in Directive 2008/48/EC ⁽¹⁾ or 2014/17/EU ⁽²⁾ of the European Parliament and of the Council or equivalent requirements in third countries.
- (29) A strong reliance of the repayment of securitisation positions on the sale of assets securing the underlying assets creates vulnerabilities, as illustrated by the poor performance of parts of the market for commercial mortgage-backed securities (CMBS) during the financial crisis. Therefore, CMBS should not be considered to be STS securitisations.
- (30) Where data on the environmental impact of assets underlying securitisations are available, the originator and sponsor of such securitisations should publish them.

Therefore, the originator, the sponsor and the SSPE of an STS securitisation where the underlying exposures are residential loans or auto loans or leases should publish the available information related to the environmental performance of the assets financed by such residential loans or auto loans or leases.

- (31) Where originators, sponsors and SSPEs would like their securitisations to use the STS designation, investors, competent authorities and ESMA should be notified that the securitisation meets the STS requirements. The notification should include an explanation on how each of the STS criteria has been complied with. ESMA should then publish it on a list of notified STS securitisations made available on its website for information purposes. The inclusion of a securitisation issuance in ESMA's list of notified STS securitisations does not imply that ESMA or other competent authorities have certified that the securitisation meets the STS requirements. Compliance with the STS requirements remains solely the responsibility of the originators, sponsors and SSPEs. This should ensure that originators, sponsors and SSPEs take responsibility for their claim that the securitisation is STS and that there is transparency on the market.
- (32) Where a securitisation no longer meets the STS requirements, the originator and sponsor should immediately notify ESMA and the relevant competent authority. Moreover, where a competent authority has imposed administrative sanctions with regard to a securitisation notified as being STS, that competent authority should immediately notify ESMA for their inclusion on the STS notifications list allowing investors to be informed about such sanctions and about the reliability of STS notifications. It is therefore in the interest of originators and sponsors to make well-considered notifications in order to avoid reputational consequences.

⁽¹⁾ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

⁽²⁾ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

- (33) Investors should perform their own due diligence on investments commensurate with the risks involved but they should be able to rely on the STS notification and on the information disclosed by the originator, sponsor and SSPE on whether a securitisation meets the STS requirements. However, they should not rely solely and mechanically on such notifications and information.
- (34) The involvement of third parties in helping to check compliance of a securitisation with the STS requirements could be useful for investors, originators, sponsors and SSPEs and contribute to increasing confidence in the market for STS securitisations. Originators, sponsors and SSPEs could also use the services of a third party authorised in accordance with this Regulation to assess whether their securitisation complies with the STS criteria. Those third parties should be subject to authorisation by competent authorities. The notification to ESMA and the subsequent publication on ESMA's website should mention whether STS compliance was confirmed by an authorised third party. However, it is essential that investors make their own assessment, take responsibility for their investment decisions and do not mechanically rely on such third parties. The involvement of a third party should not in any way shift away from originators, sponsors and institutional investors the ultimate legal responsibility for notifying and treating a securitisation transaction as STS.
- (35) Member States should designate competent authorities and provide them with the necessary supervisory, investigative and sanctioning powers. Administrative sanctions should, in principle, be published. Since investors, originators, sponsors, original lenders and SSPEs can be established in different Member States and supervised by different sectoral competent authorities, close cooperation between relevant competent authorities, including the European Central Bank (ECB) with regard to specific tasks conferred on it by Council Regulation (EU) No 1024/2013⁽¹⁾, and with the ESAs should be ensured by the mutual exchange of information and assistance in supervisory activities. Competent authorities should apply sanctions only in the case of intentional or negligent infringements. The application of remedial measures should not depend on evidence of intention or negligence. In determining the appropriate type and level of sanction or remedial measure, when taking into account the financial strength of the responsible natural or legal person, competent authorities should in particular take into consideration the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person.
- (36) Competent authorities should closely coordinate their supervision and ensure consistent decisions, especially in the event of infringements of this Regulation. Where such an infringement concerns an incorrect or misleading notification, the competent authority identifying that infringement should also inform the ESAs and the relevant competent authorities of the Member States concerned. In the event of disagreement between the competent authorities, ESMA, and, where appropriate, the Joint-Committee of the European Supervisory Authorities, should exercise their binding mediation powers.
- (37) The requirements for using the designation 'simple, transparent and standardised' (STS) securitisation are new and will be further specified by EBA guidelines and supervisory practice over time. In order to avoid discouraging market participants from using that designation, competent authorities should have the ability to grant the originator, sponsor and SSPE a grace period of three months to rectify any erroneous use of the designation that they have used in good faith. Good faith should be presumed where the originator, sponsor and SSPE could not know that a securitisation did not meet all the STS criteria to be designated as STS. During that grace period, the securitisation in question should continue to be considered STS-compliant and should not be deleted from the list drawn up by ESMA in accordance with this Regulation.
- (38) This Regulation promotes the harmonisation of a number of key elements in the securitisation market without prejudice to further complementary market-led harmonisation of processes and practices in securitisation markets. For that reason, it is essential that market participants and their professional associations continue working on further standardising market practices, and in particular the standardisation of documentation of securitisations. The Commission should carefully monitor and report on the standardisation efforts made by market participants.

⁽¹⁾ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

- (39) Directives 2009/65/EC ⁽¹⁾, 2009/138/EC ⁽²⁾ and 2011/61/EU ⁽³⁾ of the European Parliament and of the Council and Regulations (EC) No 1060/2009 ⁽⁴⁾ and (EU) No 648/2012 ⁽⁵⁾ of the European Parliament and of the Council are amended accordingly to ensure consistency of the Union legal framework with this Regulation on provisions related to securitisation the main object of which is the establishment and functioning of the internal market, in particular by ensuring a level playing field in the internal market for all institutional investors.
- (40) As regards the amendments to Regulation (EU) No 648/2012, over-the-counter ("OTC") derivative contracts entered into by SSPEs should not be subject to the clearing obligation provided that certain conditions are met. This is because counterparties to OTC derivative contracts entered into with SSPEs are secured creditors under the securitisation arrangements and adequate protection against counterparty credit risk is usually provided for. With respect to non-centrally cleared derivatives, the levels of collateral required should also take into account the specific structure of securitisation arrangements and the protections already provided for therein.
- (41) There is a degree of substitutability between covered bonds and securitisations. Therefore, in order to prevent the possibility of distortion or arbitrage between the use of securitisations and covered bonds because of the different treatment of OTC derivative contracts entered into by covered bond entities or by SSPEs, Regulation (EU) No 648/2012 should be amended to ensure consistency of treatment between derivatives associated with covered bonds and derivatives associated with securitisations, with regard to the clearing obligation and to the margin requirements on non-centrally cleared OTC derivatives.
- (42) In order to harmonise the supervisory fees that are to be charged by ESMA, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of further specifying the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽⁶⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (43) In order to specify the risk-retention requirement, as well as to further clarify the homogeneity criteria and the exposures to be deemed homogenous under the requirements on simplicity, while ensuring that the securitisation of SME loans is not negatively affected, the Commission should be empowered to adopt regulatory technical standards developed by the EBA with regard to the modalities for retaining risk, the measurement of the level of retention, certain prohibitions concerning the retained risk, the retention on a consolidated basis and the exemption for certain transactions, and the specification of homogeneity criteria and of which underlying exposures are deemed to be homogeneous. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. The EBA should consult closely with the other two ESAs.
- (44) In order to facilitate investors continuous, easy and free access to reliable information on securitisations, as well as to specify the terms of the cooperation and exchange of information obligation of competent authorities, the Commission should be empowered to adopt regulatory technical standards developed by ESMA with regard to: comparable information on underlying exposures and regular investor reports; the list of legitimate purposes under which resecuritisations are permitted; the procedures enabling securitisation repositories to verify the completeness and consistency of the details reported, the application for registration and simplified application for an extension

⁽¹⁾ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

⁽²⁾ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

⁽³⁾ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

⁽⁴⁾ Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

⁽⁵⁾ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

⁽⁶⁾ OJ L 123, 12.5.2016, p. 1.

of registration; the details of the securitisation to be provided for transparency reasons, the operational standards required for the collection, aggregation and comparison of data across securitisation repositories, the information to which designated entities have access and the terms and conditions for direct access; the information to be provided in the case of STS notification; the information to be provided to the competent authorities in the application for the authorisation of a third-party verifier; and the information to be exchanged and the content and scope of the notification obligations. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. ESMA should consult closely with the other two ESAs.

- (45) In order to facilitate the process for investors, originators, sponsors and SSPEs, the Commission should also be empowered to adopt implementing technical standards developed by ESMA, with regard to: the templates to be used when making information available to holders of a securitisation position; the format of the application for registration and of the application for an extension of registration of securitisation repositories; template for the provision of information; the templates to be used to provide information to the securitisation repository, taking into account solutions developed by existing securitisation data collectors; and the template for STS notifications that will provide investors and competent authorities with sufficient information for their assessment of compliance with the STS requirements. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. ESMA should consult closely with the other two ESAs.
- (46) Since the objectives of this Regulation, namely laying down a general framework for securitisation and creating a specific framework for STS securitisation, cannot be sufficiently achieved by the Member States given that securitisation markets operate globally and that a level playing field in the internal market for all institutional investors and entities involved in securitisation should be ensured 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 as 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.
- (47) This Regulation should apply to securitisations the securities of which are issued on or after 1 January 2019.
- (48) For securitisation positions outstanding as of 1 January 2019, originators, sponsors and SSPEs should be able to use the designation 'STS' provided that the securitisation complies with the STS requirements, for certain requirements at the time of notification and for other requirements at the time of origination. Therefore, originators, sponsors and SSPEs should be able to submit an STS notification to ESMA pursuant to this Regulation. Any subsequent modification to the securitisation should be accepted provided that the securitisation continues to meet all of the applicable STS requirements.
- (49) The due-diligence requirements that are applied in accordance with existing Union law before the date of application of this Regulation should continue to apply to securitisations issued on or after 1 January 2011, and to securitisations issued before 1 January 2011 where new underlying exposures have been added or substituted after 31 December 2014. The relevant provisions of Commission Delegated Regulation (EU) No 625/2014⁽¹⁾ that specify the risk-retention requirements for credit institutions and investment firms within the meaning of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁽²⁾ should remain applicable until the moment that the regulatory technical standards on risk retention pursuant to this Regulation apply. For reasons of legal certainty, credit institutions or investment firms, insurance undertakings, reinsurance undertakings and alternative investment fund managers should, for securitisation positions outstanding as of the date of application of this Regulation, continue to be subject to Article 405 of Regulation (EU) No 575/2013 and to Chapters I, II and III and Article 22 of Delegated Regulation (EU) No 625/2014, Articles 254 and 255 of Delegated Regulation (EU) 2015/35 and Article 51 of Commission Delegated Regulation (EU) No 231/2013⁽³⁾ respectively.

(1) Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk (OJ L 174, 13.6.2014, p. 16).

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

(3) Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1).

In order to ensure that originators, sponsors and SSPEs comply with their transparency obligations, until the regulatory technical standards to be adopted by the Commission pursuant to this Regulation apply, the information referred to in Annexes I to VIII of Commission Delegated Regulation (EU) 2015/3⁽¹⁾ should be made publicly available,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down a general framework for securitisation. It defines securitisation and establishes due-diligence, risk-retention and transparency requirements for parties involved in securitisations, criteria for credit granting, requirements for selling securitisations to retail clients, a ban on re-securitisation, requirements for SSPEs as well as conditions and procedures for securitisation repositories. It also creates a specific framework for simple, transparent and standardised ('STS') securitisation.
2. This Regulation applies to institutional investors and to originators, sponsors, original lenders and securitisation special purpose entities.

Article 2

Definitions

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

- (1) 'securitisation' means a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranching, having all of the following characteristics:
 - (a) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures;
 - (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;
 - (c) the transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013.
- (2) 'securitisation special purpose entity' or 'SSPE' means a corporation, trust or other entity, other than an originator or sponsor, established for the purpose of carrying out one or more securitisations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the SSPE from those of the originator;
- (3) 'originator' means an entity which:
 - (a) itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised; or
 - (b) purchases a third party's exposures on its own account and then securitises them;
- (4) 're-securitisation' means securitisation where at least one of the underlying exposures is a securitisation position;
- (5) 'sponsor' means a credit institution, whether located in the Union or not, as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, or an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU other than an originator, that:
 - (a) establishes and manages an asset-backed commercial paper programme or other securitisation that purchases exposures from third-party entities, or

⁽¹⁾ Commission Delegated Regulation (EU) 2015/3 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments (OJ L 2, 6.1.2015, p. 57).

- (b) establishes an asset-backed commercial paper programme or other securitisation that purchases exposures from third-party entities and delegates the day-to-day active portfolio management involved in that securitisation to an entity authorised to perform such activity in accordance with Directive 2009/65/EC, Directive 2011/61/EU or Directive 2014/65/EU;
- (6) 'tranche' means a contractually established segment of the credit risk associated with an exposure or a pool of exposures, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in another segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments;
- (7) 'asset-backed commercial paper programme' or 'ABCP programme' means a programme of securitisations the securities issued by which predominantly take the form of asset-backed commercial paper with an original maturity of one year or less;
- (8) 'asset-backed commercial paper transaction' or 'ABCP transaction' means a securitisation within an ABCP programme;
- (9) 'traditional securitisation' means a securitisation involving the transfer of the economic interest in the exposures being securitised through the transfer of ownership of those exposures from the originator to an SSPE or through sub-participation by an SSPE, where the securities issued do not represent payment obligations of the originator;
- (10) 'synthetic securitisation' means a securitisation where the transfer of risk is achieved by the use of credit derivatives or guarantees, and the exposures being securitised remain exposures of the originator;
- (11) 'investor' means a natural or legal person holding a securitisation position;
- (12) 'institutional investor' means an investor which is one of the following:
- (a) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC;
 - (b) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;
 - (c) an institution for occupational retirement provision falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council⁽¹⁾ in accordance with Article 2 thereof, unless a Member State has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive; or an investment manager or an authorised entity appointed by an institution for occupational retirement provision pursuant to Article 32 of Directive (EU) 2016/2341;
 - (d) an alternative investment fund manager (AIFM) as defined in point (b) of Article 4(1) of Directive 2011/61/EU that manages and/or markets alternative investment funds in the Union;
 - (e) an undertaking for the collective investment in transferable securities (UCITS) management company, as defined in point (b) of Article 2(1) of Directive 2009/65/EC;
 - (f) an internally managed UCITS, which is an investment company authorised in accordance with Directive 2009/65/EC and which has not designated a management company authorised under that Directive for its management;
 - (g) a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 for the purposes of that Regulation or an investment firm as defined in point (2) of Article 4(1) of that Regulation;
- (13) 'servicer' means an entity that manages a pool of purchased receivables or the underlying credit exposures on a day-to-day basis;
- (14) 'liquidity facility' means the securitisation position arising from a contractual agreement to provide funding to ensure timeliness of cash flows to investors;
- (15) 'revolving exposure' means an exposure whereby borrowers' outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to an agreed limit;
- (16) 'revolving securitisation' means a securitisation where the securitisation structure itself revolves by exposures being added to or removed from the pool of exposures irrespective of whether the exposures revolve or not;

⁽¹⁾ Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

- (17) 'early amortisation provision' means a contractual clause in a securitisation of revolving exposures or a revolving securitisation which requires, on the occurrence of defined events, investors' securitisation positions to be redeemed before the originally stated maturity of those positions;
- (18) 'first loss tranche' means the most subordinated tranche in a securitisation that is the first tranche to bear losses incurred on the securitised exposures and thereby provides protection to the second loss and, where relevant, higher ranking tranches.
- (19) 'securitisation position' means an exposure to a securitisation;
- (20) 'original lender' means an entity which, itself or through related entities, directly or indirectly, concluded the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised;
- (21) 'fully- supported ABCP programme' means an ABCP programme that its sponsor directly and fully supports by providing to the SSPE(s) one or more liquidity facilities covering at least all of the following:
- (a) all liquidity and credit risks of the ABCP programme;
 - (b) any material dilution risks of the exposures being securitised;
 - (c) any other ABCP transaction-level and ABCP programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP;
- (22) 'fully supported ABCP transaction' means an ABCP transaction supported by a liquidity facility, at transaction level or at ABCP programme level, that covers at least all of the following:
- (a) all liquidity and credit risks of the ABCP transaction;
 - (b) any material dilution risks of the exposures being securitised in the ABCP transaction;
 - (c) any other ABCP transaction-level and ABCP programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP;
- (23) 'securitisation repository' means a legal person that centrally collects and maintains the records of securitisations.

For the purpose of Article 10 of this Regulation, references in Articles 61, 64, 65, 66, 73, 78, 79 and 80 of Regulation (EU) No 648/2012 to 'trade repository' shall be construed as references to 'securitisation repository'.

Article 3

Selling of securitisations to retail clients

1. The seller of a securitisation position shall not sell such a position to a retail client, as defined in point 11 of Article 4(1) of Directive 2014/65/EU, unless all of the following conditions are fulfilled:
 - (a) the seller of the securitisation position has performed a suitability test in accordance with Article 25(2) of Directive 2014/65/EU;
 - (b) the seller of the securitisation position is satisfied, on the basis of the test referred to in point (a), that the securitisation position is suitable for that retail client;
 - (c) the seller of the securitisation position immediately communicates in a report to the retail client the outcome of the suitability test.
2. Where the conditions set out in paragraph 1 are fulfilled and the financial instrument portfolio of that retail client does not exceed EUR 500 000, the seller shall ensure, on the basis of the information provided by the retail client in accordance with paragraph 3, that the retail client does not invest an aggregate amount exceeding 10 % of that client's financial instrument portfolio in securitisation positions, and that the initial minimum amount invested in one or more securitisation positions is EUR 10 000.
3. The retail client shall provide the seller with accurate information on the retail client's financial instrument portfolio, including any investments in securitisation positions.
4. For the purposes of paragraphs 2 and 3, the retail client's financial instrument portfolio shall include cash deposits and financial instruments, but shall exclude any financial instruments that have been given as collateral.

*Article 4***Requirements for SSPEs**

SSPEs shall not be established in a third country to which any of the following applies:

- (a) the third country is listed as a high-risk and non-cooperative jurisdiction by the FATF;
- (b) the third country has not signed an agreement with a Member State to ensure that that third country fully complies with the standards provided for in Article 26 of the Organisation for Economic Cooperation and Development (OECD) Model Tax Convention on Income and on Capital or in the OECD Model Agreement on the Exchange of Information on Tax Matters, and ensures an effective exchange of information on tax matters, including any multi-lateral tax agreements.

CHAPTER 2

PROVISIONS APPLICABLE TO ALL SECURITISATIONS*Article 5***Due-diligence requirements for institutional investors**

1. Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall verify that:

- (a) where the originator or original lender established in the Union is not a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, the originator or original lender grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes in accordance with Article 9(1) of this Regulation;
- (b) where the originator or original lender is established in a third country, the originator or original lender grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes to ensure that credit-granting is based on a thorough assessment of the obligor's creditworthiness;
- (c) if established in the Union, the originator, sponsor or original lender retains on an ongoing basis a material net economic interest in accordance with Article 6 and the risk retention is disclosed to the institutional investor in accordance with Article 7;
- (d) if established in a third country, the originator, sponsor or original lender retains on an ongoing basis a material net economic interest which, in any event, shall not be less than 5 %, determined in accordance with Article 6, and discloses the risk retention to institutional investors;
- (e) the originator, sponsor or SSPE has, where applicable, made available the information required by Article 7 in accordance with the frequency and modalities provided for in that Article;

2. By derogation from paragraph 1, as regards fully supported ABCP transactions, the requirement specified in point (a) of paragraph 1 shall apply to the sponsor. In such cases, the sponsor shall verify that the originator or original lender which is not a credit institution or an investment firm grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes in accordance with Article 9(1).

3. Prior to holding a securitisation position, an institutional investor, other than the originator, sponsor or original lender, shall carry out a due-diligence assessment which enables it to assess the risks involved. That assessment shall consider at least all of the following:

- (a) the risk characteristics of the individual securitisation position and of the underlying exposures;
- (b) all the structural features of the securitisation that can materially impact the performance of the securitisation position, including the contractual priorities of payment and priority of payment-related triggers, credit enhancements, liquidity enhancements, market value triggers, and transaction-specific definitions of default;

- (c) with regard to a securitisation notified as STS in accordance with Article 27, the compliance of that securitisation with the requirements provided for in Articles 19 to 22 or in Articles 23 to 26, and Article 27. Institutional investors may rely to an appropriate extent on the STS notification pursuant to Article 27(1) and on the information disclosed by the originator, sponsor and SSPE on the compliance with the STS requirements, without solely or mechanically relying on that notification or information.

Notwithstanding points (a) and (b) of the first subparagraph, in the case of a fully supported ABCP programme, institutional investors in the commercial paper issued by that ABCP programme shall consider the features of the ABCP programme and the full liquidity support.

4. An institutional investor, other than the originator, sponsor or original lender, holding a securitisation position, shall at least:

- (a) establish appropriate written procedures that are proportionate to the risk profile of the securitisation position and, where relevant, to the institutional investor's trading and non-trading book, in order to monitor, on an ongoing basis, compliance with paragraphs 1 and 3 and the performance of the securitisation position and of the underlying exposures.

Where relevant with respect to the securitisation and the underlying exposures, those written procedures shall include monitoring of the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, recovery rates, repurchases, loan modifications, payment holidays, collateral type and occupancy, and frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification, frequency distribution of loan to value ratios with band widths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisation positions, as permitted under Article 8, institutional investors shall also monitor the exposures underlying those positions;

- (b) in the case of a securitisation other than a fully supported ABCP programme, regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures or, in the absence of sufficient data on cash flows and collateral values, stress tests on loss assumptions, having regard to the nature, scale and complexity of the risk of the securitisation position;
- (c) in the case of fully supported ABCP programme, regularly perform stress tests on the solvency and liquidity of the sponsor;
- (d) ensure internal reporting to its management body so that the management body is aware of the material risks arising from the securitisation position and so that those risks are adequately managed;
- (e) be able to demonstrate to its competent authorities, upon request, that it has a comprehensive and thorough understanding of the securitisation position and its underlying exposures and that it has implemented written policies and procedures for the risk management of the securitisation position and for maintaining records of the verifications and due diligence in accordance with paragraphs 1 and 2 and of any other relevant information; and
- (f) in the case of exposures to a fully supported ABCP programme, be able to demonstrate to its competent authorities, upon request, that it has a comprehensive and thorough understanding of the credit quality of the sponsor and of the terms of the liquidity facility provided.

5. Without prejudice to paragraphs 1 to 4 of this Article, where an institutional investor has given another institutional investor authority to make investment management decisions that might expose it to a securitisation, the institutional investor may instruct that managing party to fulfil its obligations under this Article in respect of any exposure to a securitisation arising from those decisions. Member States shall ensure that, where an institutional investor is instructed under this paragraph to fulfil the obligations of another institutional investor and fails to do so, any sanction under Articles 32 and 33 may be imposed on the managing party and not on the institutional investor who is exposed to the securitisation.

Article 6

Risk retention

1. The originator, sponsor or original lender of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of not less than 5 %. That interest shall be measured at the origination and shall be determined by the notional value for off-balance-sheet items. Where the originator, sponsor or original

lender have not agreed between them who will retain the material net economic interest, the originator shall retain the material net economic interest. There shall be no multiple applications of the retention requirements for any given securitisation. The material net economic interest shall not be split amongst different types of retainers and not be subject to any credit-risk mitigation or hedging.

For the purposes of this Article, an entity shall not be considered to be an originator where the entity has been established or operates for the sole purpose of securitising exposures.

2. Originators shall not select assets to be transferred to the SSPE with the aim of rendering losses on the assets transferred to the SSPE, measured over the life of the transaction, or over a maximum of 4 years where the life of the transaction is longer than four years, higher than the losses over the same period on comparable assets held on the balance sheet of the originator. Where the competent authority finds evidence suggesting contravention of that prohibition, the competent authority shall investigate the performance of assets transferred to the SSPE and comparable assets held on the balance sheet of the originator. If the performance of the transferred assets is significantly lower than that of the comparable assets held on the balance sheet of the originator as a consequence of the intent of the originator, the competent authority shall impose a sanction pursuant to Articles 32 and 33.

3. Only the following shall qualify as a retention of a material net economic interest of not less than 5 % within the meaning of paragraph 1:

- (a) the retention of not less than 5 % of the nominal value of each of the tranches sold or transferred to investors;
- (b) in the case of revolving securitisations or securitisations of revolving exposures, the retention of the originator's interest of not less than 5 % of the nominal value of each of the securitised exposures;
- (c) the retention of randomly selected exposures, equivalent to not less than 5 % of the nominal value of the securitised exposures, where such non-securitised exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is not less than 100 at origination;
- (d) the retention of the first loss tranche and, where such retention does not amount to 5 % of the nominal value of the securitised exposures, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total not less than 5 % of the nominal value of the securitised exposures; or
- (e) the retention of a first loss exposure of not less than 5 % of every securitised exposure in the securitisation.

4. Where a mixed financial holding company established in the Union within the meaning of Directive 2002/87/EC of the European Parliament and of the Council ⁽¹⁾, a parent institution or a financial holding company established in the Union, or one of its subsidiaries within the meaning of Regulation (EU) No 575/2013, as an originator or sponsor, securitises exposures from one or more credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirements referred to in paragraph 1 may be satisfied on the basis of the consolidated situation of the related parent institution, financial holding company, or mixed financial holding company established in the Union.

The first subparagraph shall apply only where credit institutions, investment firms or financial institutions which created the securitised exposures comply with the requirements set out in Article 79 of Directive 2013/36/EU of the European Parliament and of the Council ⁽²⁾ and deliver the information needed to satisfy the requirements provided for in Article 5 of this Regulation, in a timely manner, to the originator or sponsor and to the Union parent credit institution, financial holding company or mixed financial holding company established in the Union.

⁽¹⁾ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

⁽²⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

5. Paragraph 1 shall not apply where the securitised exposures are exposures on or exposures fully, unconditionally and irrevocably guaranteed by:

- (a) central governments or central banks;
- (b) regional governments, local authorities and public sector entities within the meaning of point (8) of Article 4(1) of Regulation (EU) No 575/2013 of Member States;
- (c) institutions to which a 50 % risk weight or less is assigned under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013;
- (d) national promotional banks or institutions within the meaning of point (3) of Article 2 of Regulation (EU) 2015/1017 of the European Parliament and of the Council ⁽¹⁾; or
- (e) the multilateral development banks listed in Article 117 of Regulation (EU) No 575/2013.

6. Paragraph 1 shall not apply to transactions based on a clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than securitisation positions.

7. EBA, in close cooperation with the ESMA and the European Insurance and Occupational Pensions Authority (EIOPA) which was established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council ⁽²⁾, shall develop draft regulatory technical standards to specify in greater detail the risk-retention requirement, in particular with regard to:

- (a) the modalities for retaining risk pursuant to paragraph 3, including the fulfilment through a synthetic or contingent form of retention;
- (b) the measurement of the level of retention referred to in paragraph 1;
- (c) the prohibition of hedging or selling the retained interest;
- (d) the conditions for retention on a consolidated basis in accordance with paragraph 4;
- (e) the conditions for exempting transactions based on a clear, transparent and accessible index referred to in paragraph 6;

The EBA shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

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

Article 7

Transparency requirements for originators, sponsors and SSPEs

1. The originator, sponsor and SSPE of a securitisation shall, in accordance with paragraph 2 of this Article, make at least the following information available to holders of a securitisation position, to the competent authorities referred to in Article 29 and, upon request, to potential investors:

- (a) information on the underlying exposures on a quarterly basis, or, in the case of ABCP, information on the underlying receivables or credit claims on a monthly basis;
- (b) all underlying documentation that is essential for the understanding of the transaction, including but not limited to, where applicable, the following documents:
 - (i) the final offering document or the prospectus together with the closing transaction documents, excluding legal opinions;
 - (ii) for traditional securitisation the asset sale agreement, assignment, novation or transfer agreement and any relevant declaration of trust;

⁽¹⁾ Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

⁽²⁾ 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).

- (iii) the derivatives and guarantee agreements, as well as any relevant documents on collateralisation arrangements where the exposures being securitised remain exposures of the originator;
- (iv) the servicing, back-up servicing, administration and cash management agreements;
- (v) the trust deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms or master trust framework or master definitions agreement or such legal documentation with equivalent legal value;
- (vi) any relevant inter-creditor agreements, derivatives documentation, subordinated loan agreements, start-up loan agreements and liquidity facility agreements;

That underlying documentation shall include a detailed description of the priority of payments of the securitisation;

- (c) where a prospectus has not been drawn up in compliance with Directive 2003/71/EC of the European Parliament and of the Council ⁽¹⁾, a transaction summary or overview of the main features of the securitisation, including, where applicable:
 - (i) details regarding the structure of the deal, including the structure diagrams containing an overview of the transaction, the cash flows and the ownership structure;
 - (ii) details regarding the exposure characteristics, cash flows, loss waterfall, credit enhancement and liquidity support features;
 - (iii) details regarding the voting rights of the holders of a securitisation position and their relationship to other secured creditors;
 - (iv) a list of all triggers and events referred to in the documents provided in accordance with point (b) that could have a material impact on the performance of the securitisation position;
- (d) in the case of STS securitisations, the STS notification referred to in Article 27;
- (e) quarterly investor reports, or, in the case of ABCP, monthly investor reports, containing the following:
 - (i) all materially relevant data on the credit quality and performance of underlying exposures;
 - (ii) information on events which trigger changes in the priority of payments or the replacement of any counterparties, and, in the case of a securitisation which is not an ABCP transaction, data on the cash flows generated by the underlying exposures and by the liabilities of the securitisation;
 - (iii) information about the risk retained, including information on which of the modalities provided for in Article 6(3) has been applied, in accordance with Article 6.
- (f) any inside information relating to the securitisation that the originator, sponsor or SSPE is obliged to make public in accordance with Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council ⁽²⁾ on insider dealing and market manipulation;
- (g) where point (f) does not apply, any significant event such as:
 - (i) a material breach of the obligations provided for in the documents made available in accordance with point (b), including any remedy, waiver or consent subsequently provided in relation to such a breach;
 - (ii) a change in the structural features that can materially impact the performance of the securitisation;
 - (iii) a change in the risk characteristics of the securitisation or of the underlying exposures that can materially impact the performance of the securitisation;

⁽¹⁾ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

⁽²⁾ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

- (iv) in the case of STS securitisations, where the securitisation ceases to meet the STS requirements or where competent authorities have taken remedial or administrative actions;
- (v) any material amendment to transaction documents.

The information described in points (b), (c) and (d) of the first subparagraph shall be made available before pricing.

The information described in points (a) and (e) of the first subparagraph shall be made available simultaneously each quarter at the latest one month after the due date for the payment of interest or, in the case of ABCP transactions, at the latest one month after the end of the period the report covers.

In the case of ABCP, the information described in points (a), (c)(ii) and (e)(i) of the first subparagraph shall be made available in aggregate form to holders of securitisation positions and, upon request, to potential investors. Loan-level data shall be made available to the sponsor and, upon request, to competent authorities.

Without prejudice to Regulation (EU) No 596/2014, the information described in points (f) and (g) of the first subparagraph shall be made available without delay.

When complying with this paragraph, the originator, sponsor and SSPE of a securitisation shall comply with national and Union law governing the protection of confidentiality of information and the processing of personal data in order to avoid potential breaches of such law as well as any confidentiality obligation relating to customer, original lender or debtor information, unless such confidential information is anonymised or aggregated.

In particular, with regard to the information referred to in point (b) of the first subparagraph, the originator, sponsor and SSPE may provide a summary of the documentation concerned.

Competent authorities referred to in Article 29 shall be able to request the provision of such confidential information to them in order to fulfil their duties under this Regulation.

2. The originator, sponsor and SSPE of a securitisation shall designate amongst themselves one entity to fulfil the information requirements pursuant to points (a), (b), (d), (e), (f) and (g) of the first subparagraph of paragraph 1.

The entity designated in accordance with the first subparagraph shall make the information for a securitisation transaction available by means of a securitisation repository.

The obligations referred to in the second and fourth subparagraphs shall not apply to securitisations where no prospectus has to be drawn up in compliance with Directive 2003/71/EC.

Where no securitisation repository is registered in accordance with Article 10, the entity designated to fulfil the requirements set out in paragraph 1 of this Article shall make the information available by means of a website that:

- (a) includes a well-functioning data quality control system;
- (b) is subject to appropriate governance standards and to maintenance and operation of an adequate organisational structure that ensures the continuity and orderly functioning of the website;
- (c) is subject to appropriate systems, controls and procedures that identify all relevant sources of operational risk;
- (d) includes systems that ensure the protection and integrity of the information received and the prompt recording of the information; and
- (e) makes it possible to keep record of the information for at least five years after the maturity date of the securitisation.

The entity responsible for reporting the information, and the securitisation repository where the information is made available shall be indicated in the documentation regarding the securitisation.

3. ESMA, in close cooperation with the EBA and EIOPA, shall develop draft regulatory technical standards to specify the information that the originator, sponsor and SSPE shall provide in order to comply with their obligations under points (a) and (e) of the first subparagraph of paragraph 1 taking into account the usefulness of information for the holder of the securitisation position, whether the securitisation position is of a short-term nature and, in the case of an ABCP transaction, whether it is fully supported by a sponsor;

ESMA shall submit those draft regulatory technical standards to the Commission by 18 January 2019.

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

4. In order to ensure uniform conditions of application for the information to be specified in accordance with paragraph 3, ESMA, in close cooperation with the EBA and EIOPA, shall develop draft implementing technical standards specifying the format thereof by means of standardised templates.

ESMA shall submit those draft implementing technical standards to the Commission by 18 January 2019.

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

Article 8

Ban on resecuritisation

1. The underlying exposures used in a securitisation shall not include securitisation positions.

By way of derogation, the first subparagraph shall not apply to:

- (a) any securitisation the securities of which were issued before 1 January 2019; and
- (b) any securitisation, to be used for legitimate purposes as set out in paragraph 3, the securities of which were issued on or following 1 January 2019.

2. A competent authority designated pursuant to Article 29(2), (3) or (4), as applicable, may grant permission to an entity under its supervision to include securitisation positions as underlying exposures in a securitisation where that competent authority deems the use of a resecuritisation to be for legitimate purposes as set out in paragraph 3 of this Article.

Where such supervised entity is a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, the competent authority referred to in the first subparagraph of this paragraph shall consult with the resolution authority and any other authority relevant for that entity before granting permission for the inclusion of securitisation positions as underlying exposures in a securitisation. Such consultation shall last no longer than 60 days from the date on which the competent authority notifies the resolution authority, and any other authority relevant for that entity, of the need for consultation.

Where the consultation results in a decision to grant permission for the use of securitisation positions as underlying exposures in a securitisation, the competent authority shall notify ESMA thereof.

3. For the purposes of this Article, the following shall be deemed to be legitimate purposes:

- (a) the facilitation of the winding-up of a credit institution, an investment firm or a financial institution;
- (b) ensuring the viability as a going concern of a credit institution, an investment firm or a financial institution in order to avoid its winding-up; or
- (c) where the underlying exposures are non-performing, the preservation of the interests of investors.

4. A fully supported ABCP programme shall not be considered to be a resecuritisation for the purposes of this Article, provided that none of the ABCP transactions within that programme is a resecuritisation and that the credit enhancement does not establish a second layer of tranching at the programme level.

5. In order to reflect market developments of other resecuritisations undertaken for legitimate purposes, and taking into account the overarching objectives of financial stability and preservation of the best interests of the investors, ESMA, in close cooperation with the EBA, may develop draft regulatory technical standards to supplement the list of legitimate purposes set out in paragraph 3.

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

*Article 9***Criteria for credit-granting**

1. Originators, sponsors and original lenders shall apply to exposures to be securitised the same sound and well-defined criteria for credit-granting which they apply to non-securitised exposures. To that end, the same clearly established processes for approving and, where relevant, amending, renewing and refinancing credits shall be applied. Originators, sponsors and original lenders shall have effective systems in place to apply those criteria and processes in order to ensure that credit-granting is based on a thorough assessment of the obligor's creditworthiness taking appropriate account of factors relevant to verifying the prospect of the obligor meeting his obligations under the credit agreement.
2. Where the underlying exposures of securitisations are residential loans made after the entry into force of Directive 2014/17/EU, the pool of those loans shall not include any loan that is marketed and underwritten on the premise that the loan applicant or, where applicable, intermediaries were made aware that the information provided by the loan applicant might not be verified by the lender.
3. Where an originator purchases a third party's exposures for its own account and then securitises them, that originator shall verify that the entity which was, directly or indirectly, involved in the original agreement which created the obligations or potential obligations to be securitised fulfils the requirements referred to in paragraph 1.
4. Paragraph 3 does not apply if:
 - (a) the original agreement, which created the obligations or potential obligations of the debtor or potential debtor, was entered into before the entry into force of Directive 2014/17/EU; and
 - (b) the originator that purchases a third party's exposures for its own account and then securitises them meets the obligations that originator institutions were required to meet under Article 21(2) of Delegated Regulation (EU) No 625/2014 before 1 January 2019.

CHAPTER 3

CONDITIONS AND PROCEDURES FOR REGISTRATION OF A SECURITISATION REPOSITORY*Article 10***Registration of a securitisation repository**

1. A securitisation repository shall register with ESMA for the purposes of Article 5 under the conditions and the procedure set out in this Article.
2. To be eligible to be registered under this Article, a securitisation repository shall be a legal person established in the Union, apply procedures to verify the completeness and consistency of the information made available to it under Article 7(1) of this Regulation, and meet the requirements provided for in Articles 78, 79 and 80(1) to (3), (5) and (6) of Regulation (EU) No 648/2012. For the purposes of this Article, references in Articles 78 and 80 of Regulation (EU) No 648/2012 to Article 9 thereof shall be construed as references to Article 5 of this Regulation.
3. The registration of a securitisation repository shall be effective for the entire territory of the Union.
4. A registered securitisation repository shall comply at all times with the conditions for registration. A securitisation repository shall, without undue delay, notify ESMA of any material changes to the conditions for registration.
5. A securitisation repository shall submit to ESMA either of the following:
 - (a) an application for registration;
 - (b) an application for an extension of registration for the purposes of Article 7 of this Regulation in the case of a trade repository already registered under Chapter 1 of Title VI of Regulation (EU) No 648/2012 or under Chapter III of Regulation (EU) 2015/2365 of the European Parliament and of the Council ⁽¹⁾.

⁽¹⁾ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

6. ESMA shall assess whether the application is complete within 20 working days of receipt of the application.

Where the application is not complete, ESMA shall set a deadline by which the securitisation repository is to provide additional information.

After having assessed an application as complete, ESMA shall notify the securitisation repository accordingly.

7. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of all of the following:

- (a) the procedures referred to in paragraph 2 of this Article which are to be applied by securitisation repositories in order to verify the completeness and consistency of the information made available to them under Article 7(1);
- (b) the application for registration referred to in point (a) of paragraph 5;
- (c) a simplified application for an extension of registration referred to in point (b) of paragraph 5.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 January 2019.

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

8. In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA shall develop draft implementing technical standards specifying the format of both of the following:

- (a) the application for registration referred to in point (a) of paragraph 5;
- (b) the application for an extension of registration referred to in point (b) of paragraph 5.

With regard to point (b) of the first subparagraph, ESMA shall develop a simplified format avoiding duplicate procedures.

ESMA shall submit those draft implementing technical standards to the Commission by 18 January 2019.

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

Article 11

Notification and consultation with competent authorities prior to registration or extension of registration

1. Where a securitisation repository applies for registration or for an extension of its registration as trade repository and is an entity authorised or registered by a competent authority in the Member State where it is established, ESMA shall, without undue delay, notify and consult that competent authority prior to the registration or extension of the registration of the securitisation repository.

2. ESMA and the relevant competent authority shall exchange all information that is necessary for the registration, or the extension of registration, of the securitisation repository as well as for the supervision of the compliance of the entity with the conditions of its registration or authorisation in the Member State where it is established.

Article 12

Examination of the application

1. ESMA shall, within 40 working days of the notification referred to in Article 10(6), examine the application for registration, or for an extension of registration, based on the compliance of the securitisation repository with this Chapter and shall adopt a fully reasoned decision accepting or refusing registration or an extension of registration.

2. A decision issued by ESMA pursuant to paragraph 1 shall take effect on the fifth working day following that of its adoption.

*Article 13***Notification of ESMA decisions relating to registration or extension of registration**

1. Where ESMA adopts a decision as referred to in Article 12 or withdraws the registration as referred to in Article 15(1), it shall notify the securitisation repository within five working days with a fully reasoned explanation for its decision.

ESMA shall, without undue delay, notify the competent authority as referred to in Article 11(1) of its decision.

2. ESMA shall communicate, without undue delay, any decision taken in accordance with paragraph 1 to the Commission.

3. ESMA shall publish on its website a list of securitisation repositories registered in accordance with this Regulation. That list shall be updated within five working days of the adoption of a decision under paragraph 1.

*Article 14***Powers of ESMA**

1. The powers conferred on ESMA in accordance with Articles 61 to 68, 73 and 74 of Regulation (EU) No 648/2012, in conjunction with Annexes I and II thereto, shall also be exercised with respect to this Regulation. References to Article 81(1) and (2) of Regulation (EU) No 648/2012 in Annex I to that Regulation shall be construed as references to Article 17(1) of this Regulation.

2. The powers conferred on ESMA or on any official of or other person authorised by ESMA in accordance with Articles 61 to 63 of Regulation (EU) No 648/2012 shall not be used to require the disclosure of information or documents which are subject to legal privilege.

*Article 15***Withdrawal of registration**

1. Without prejudice to Article 73 of Regulation (EU) No 648/2012, ESMA shall withdraw the registration of a securitisation repository where the securitisation repository:

- (a) expressly renounces the registration or has provided no services for the preceding six months;
- (b) obtained the registration by making false statements or by other irregular means; or
- (c) no longer meets the conditions under which it was registered.

2. ESMA shall, without undue delay, notify the relevant competent authority referred to in Article 11(1) of a decision to withdraw the registration of a securitisation repository.

3. The competent authority of a Member State in which a securitisation repository performs its services and activities and which considers that one of the conditions referred to in paragraph 1 has been met, may request ESMA to examine whether the conditions for the withdrawal of registration of the securitisation repository concerned are met. Where ESMA decides not to withdraw the registration of the securitisation repository concerned, it shall provide detailed reasons for its decision.

4. The competent authority referred to in paragraph 3 of this Article shall be the authority designated under Article 29 of this Regulation.

*Article 16***Supervisory fees**

1. ESMA shall charge the securitisation repositories fees in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 2 of this Article.

Those fees shall be proportionate to the turnover of the securitisation repository concerned and shall fully cover ESMA's necessary expenditure relating to the registration and supervision of securitisation repositories as well as the reimbursement of any costs that the competent authorities incur as a result of any delegation of tasks pursuant to Article 14(1) of this Regulation. Insofar as Article 14(1) of this Regulation refers to Article 74 of Regulation (EU) No 648/2012, references to Article 72(3) of that Regulation shall be construed as references to paragraph 2 of this Article.

Where a trade repository has already been registered under Chapter 1 of Title VI of Regulation (EU) No 648/2012 or under Chapter III of Regulation (EU) 2015/2365, the fees referred to in the first subparagraph of this paragraph shall only be adjusted to reflect additional necessary expenditure and costs relating to the registration and supervision of securitisation repositories pursuant to this Regulation.

2. The Commission is empowered to adopt a delegated act in accordance with Article 47 to supplement this Regulation by further specifying the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Article 17

Availability of data held in a securitisation repository

1. Without prejudice to Article 7(2), a securitisation repository shall collect and maintain details of the securitisation. It shall provide direct and immediate access free of charge to all of the following entities to enable them to fulfil their respective responsibilities, mandates and obligations:

- (a) ESMA;
- (b) the EBA;
- (c) EIOPA;
- (d) the ESRB;
- (e) the relevant members of the European System of Central Banks (ESCB), including the European Central Bank (ECB) in carrying out its tasks within a single supervisory mechanism under Regulation (EU) No 1024/2013;
- (f) the relevant authorities whose respective supervisory responsibilities and mandates cover transactions, markets, participants and assets which fall within the scope of this Regulation;
- (g) the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council ⁽¹⁾;
- (h) the Single Resolution Board established by Regulation (EU) No 806/2014 of the European Parliament and of the Council ⁽²⁾;
- (i) the authorities referred to in Article 29;
- (j) investors and potential investors.

2. ESMA shall, in close cooperation with the EBA and EIOPA and taking into account the needs of the entities referred to in paragraph 1, develop draft regulatory technical standards specifying:

- (a) the details of the securitisation referred to in paragraph 1 that the originator, sponsor or SSPE shall provide in order to comply with their obligations under Article 7(1);
- (b) the operational standards required, to allow the timely, structured and comprehensive:
 - (i) collection of data by securitisation repositories; and
 - (ii) aggregation and comparison of data across securitisation repositories;
- (c) the details of the information to which the entities referred to in paragraph 1 are to have access, taking into account their mandate and their specific needs;
- (d) the terms and conditions under which the entities referred to in paragraph 1 are to have direct and immediate access to data held in securitisation repositories.

⁽¹⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁽²⁾ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

ESMA shall submit those draft regulatory technical standards to the Commission by 18 January 2019.

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

3. In order to ensure uniform conditions of application for paragraph 2, ESMA, in close cooperation with the EBA and EIOPA shall develop draft implementing technical standards specifying the standardised templates by which the originator, sponsor or SSPE shall provide the information to the securitisation repository, taking into account solutions developed by existing securitisation data collectors.

ESMA shall submit those draft implementing technical standards to the Commission by 18 January 2019.

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

CHAPTER 4

SIMPLE, TRANSPARENT AND STANDARDISED SECURITISATION

Article 18

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

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

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

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

SECTION 1

Requirements for simple, transparent and standardised non-ABCP securitisation

Article 19

Simple, transparent and standardised securitisation

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

Article 20

Requirements relating to simplicity

1. The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller’s insolvency.
2. For the purpose of paragraph 1, any of the following shall constitute severe clawback provisions:
 - (a) provisions which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller’s insolvency;
 - (b) provisions where the SSPE can only prevent the invalidation referred to in point (a) if it can prove that it was not aware of the insolvency of the seller at the time of sale.

3. For the purpose of paragraph 1, clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in the case of fraudulent transfers, unfair prejudice to creditors or transfers intended to improperly favour particular creditors over others shall not constitute severe clawback provisions.

4. Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to that seller, whether that true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in paragraphs 1 to 3.

5. Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection shall include at least the following events:

(a) severe deterioration in the seller credit quality standing;

(b) insolvency of the seller; and

(c) unremedied breaches of contractual obligations by the seller, including the seller's default.

6. The seller shall provide representations and warranties that, to the best of its knowledge, the underlying exposures included in the securitisation are not encumbered or otherwise in a condition that can be foreseen to adversely affect the enforceability of the true sale or assignment or transfer with the same legal effect.

7. The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. For the purpose of this paragraph, substitution of exposures that are in breach of representations and warranties shall not be considered active portfolio management. Exposures transferred to the SSPE after the closing of the transaction shall meet the eligibility criteria applied to the initial underlying exposures.

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

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

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

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

10. The underlying exposures shall be originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or original lender applied at the time of origination to similar exposures that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to potential investors without undue delay.

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 paragraphs 1 to 4, point (a) of paragraph 5, and paragraph 6 of Article 18 of Directive 2014/17/EU or, where applicable, equivalent requirements in third countries.

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

11. The underlying exposures shall be transferred to the SSPE after selection without undue delay and 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 origination or has undergone a debt-restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:
 - (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 transfer or assignment of the underlying exposures to the SSPE; and
 - (ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (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 as well as their performance since the date of the restructuring;
- (b) was, at the time of origination, 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 original lender; or
- (c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised.

12. The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of revolving securitisations 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.

13. The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced.

The repayment of the holders of the securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party shall not be considered to depend on the sale of assets securing those underlying exposures.

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

The EBA shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

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

Article 21

Requirements relating to standardisation

1. The originator, sponsor or original lender shall satisfy the risk-retention requirement in accordance with Article 6.
2. The interest-rate and currency risks arising from the securitisation shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.
3. Any referenced interest payments under the securitisation assets and liabilities 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. Where an enforcement or an acceleration notice has been delivered:
 - (a) no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitisation, unless exceptional circumstances require that an amount be trapped to be used, in the best interests of investors, for expenses in order to avoid the deterioration in the credit quality of the underlying exposures;
 - (b) principal receipts from the underlying exposures shall be passed to investors via sequential amortisation of the securitisation positions, as determined by the seniority of the securitisation position;
 - (c) repayment of the securitisation positions shall not be reversed with regard to their seniority; and
 - (d) no provisions shall require automatic liquidation of the underlying exposures at market value.
5. Transactions which feature non-sequential priority of payments shall include triggers relating to the performance of the underlying exposures resulting in the priority of payments reverting to sequential payments in order of seniority. Such performance-related triggers shall include at least the deterioration in the credit quality of the underlying exposures below a predetermined threshold.
6. The transaction documentation shall include appropriate early amortisation provisions or triggers for termination of the revolving period where the 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) the occurrence of an insolvency-related event with regard to the originator or the servicer;
 - (c) the value of the underlying exposures held by the SSPE falls below a predetermined threshold (early amortisation event); and
 - (d) a failure to generate sufficient new underlying exposures that meet the predetermined credit quality (trigger for termination of the revolving period).
7. The transaction documentation shall clearly specify:
 - (a) the contractual obligations, duties and responsibilities of the servicer and the trustee, if any, and other ancillary service providers;
 - (b) the processes and responsibilities necessary to ensure that a default by or an insolvency of the servicer does not result in a termination of servicing, such as a contractual provision which enables the replacement of the servicer in such cases; and
 - (c) provisions that ensure the replacement of derivative counterparties, liquidity providers and the account bank in the case of their default, insolvency, and other specified events, where applicable.
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.
9. The transaction documentation shall set out in clear and consistent terms definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge offs, recoveries and other asset performance remedies. The transaction documentation shall clearly specify the priorities of payment, events which trigger changes in such priorities of payment as well as the obligation to report such events. Any change in the priorities of payments which will materially adversely affect the repayment of the securitisation position shall be reported to investors without undue delay.
10. The transaction documentation shall include clear provisions that facilitate the timely resolution of conflicts between different classes of investors, 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 22***Requirements relating to transparency**

1. The originator and the sponsor 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 issuance of the securities resulting from the securitisation by an appropriate and independent party, including verification that the data disclosed in respect of the underlying exposures is accurate.
3. The originator or the sponsor 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, sponsor, investors, other third parties and 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 and sponsor shall publish the available information related to the environmental performance of the assets financed by such residential loans or auto loans or leases, as part of the information disclosed pursuant to point (a) of the first subparagraph of Article 7(1).
5. The originator and the sponsor shall be responsible for compliance with Article 7. The information required by point (a) of the first subparagraph of Article 7(1) shall be made available to potential investors before pricing upon request. The information required by points (b) to (d) of the first subparagraph of Article 7(1) shall be made available before pricing at least in draft or initial form. The final documentation shall be made available to investors at the latest 15 days after closing of the transaction.

*SECTION 2****Requirements for simple, transparent and standardised ABCP securitisation****Article 23***Simple, transparent and standardised ABCP securitisation**

1. An ABCP transaction shall be considered STS where it complies with the transaction-level requirements provided for in Article 24.
2. An ABCP programme shall be considered STS where it complies with the requirements provided for in Article 26 and the sponsor of the ABCP programme complies with the requirements provided for in Article 25.

For the purpose of this Section, a 'seller' means 'originator' or 'original lender'.

3. By 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised interpretation and application of the requirements set out in Articles 24 and 26 of this Regulation.

*Article 24***Transaction-level requirements**

1. The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller's insolvency.
2. For the purpose of paragraph 1, any of the following shall constitute severe clawback provisions:
 - (a) provisions which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller's insolvency;

(b) provisions where the SSPE can only prevent the invalidation referred to in point (a) if it can prove that it was not aware of the insolvency of the seller at the time of sale.

3. For the purpose of paragraph 1, clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in the case of fraudulent transfers, unfair prejudice to creditors or transfers intended to improperly favour particular creditors over others shall not constitute severe clawback provisions.

4. Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to the seller, whether that true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in paragraphs 1 to 3.

5. Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection shall include at least the following events:

(a) severe deterioration in the seller credit quality standing;

(b) insolvency of the seller; and

(c) unremedied breaches of contractual obligations by the seller, including the seller's default.

6. The seller shall provide representations and warranties that, to the best of its knowledge, the underlying exposures included in the securitisation are not encumbered or otherwise in a condition that can be foreseen to adversely affect the enforceability of the true sale or assignment or transfer with the same legal effect.

7. The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. For the purpose of this paragraph, substitution of exposures that are in breach of representations and warranties shall not be considered active portfolio management. Exposures transferred to the SSPE after the closing of the transaction shall meet the eligibility criteria applied to the initial underlying exposures.

8. The underlying exposures shall not include any securitisation position.

9. The underlying exposures shall be transferred to the SSPE after selection without undue delay and 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 origination or has undergone a debt restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:

(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 transfer or assignment of the underlying exposures to the SSPE; and

(ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (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 as well as their performance since the date of the restructuring;

(b) was, at the time of origination, 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 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.

10. The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of revolving securitisations 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.

11. The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled over or refinanced.

The repayment of the holders of the securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party shall not be considered to depend on the sale of assets securing those underlying exposures.

12. The interest-rate and currency risks arising from the securitisation shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

13. The transaction documentation shall set out, in clear and consistent terms, definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge-offs, recoveries and other asset-performance remedies. The transaction documentation shall clearly specify the priorities of payment, events which trigger changes in such priorities of payment as well as the obligation to report such events. Any change in the priorities of payments which will materially adversely affect the repayment of the securitisation position shall be reported to investors without undue delay.

14. The originator and the sponsor 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. Where the sponsor does not have access to such data, it shall obtain from the seller access to data, on a static or dynamic basis, on the historical performance, such as delinquency and default data, for exposures substantially similar to those being securitised. All such data shall cover a period no shorter than five years, except for data relating to trade receivables and other short-term receivables, for which the historical period shall be no shorter than three years.

15. ABCP transactions shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the characteristics relating to the cash flows of different asset types including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall only comprise one asset type.

The pool of underlying exposures shall have a remaining weighted average life of not more than one year, and none of the underlying exposures shall have a residual maturity of more than three years.

By way of derogation from the second subparagraph, pools of auto loans, auto leases and equipment lease transactions shall have a remaining weighted average life of not more than three and a half years, and none of the underlying exposures shall have a residual maturity of more than six years.

The underlying exposures shall not include loans secured by residential or commercial mortgages or fully guaranteed residential loans, as referred to in point (e) of the first subparagraph of Article 129(1) of Regulation (EU) No 575/2013. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors with defined payment streams relating to rental, principal, interest, or related to any other right to receive income from assets warranting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets. The underlying exposures shall not include transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU other than corporate bonds, that are not listed on a trading venue.

16. Any referenced interest payments under the ABCP transaction's assets and liabilities shall be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, but shall not reference complex formulae or derivatives. Referenced interest payments under the ABCP transaction's liabilities may be based on interest rates reflective of an ABCP programme's cost of funds.

17. Following the seller's default or an acceleration event:
- (a) no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitisation unless exceptional circumstances require that an amount be trapped to be used, in the best interests of investors, for expenses in order to avoid the deterioration in the credit quality of the underlying exposures;
 - (b) principal receipts from the underlying exposures shall be passed to investors holding a securitisation position via sequential payment of the securitisation positions, as determined by the seniority of the securitisation position; and
 - (c) no provisions shall require automatic liquidation of the underlying exposures at market value.
18. The underlying exposures shall be originated in the ordinary course of the seller's business pursuant to underwriting standards that are no less stringent than those that the seller applies at the time of origination to similar exposures that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to the sponsor and other parties directly exposed to the ABCP transaction without undue delay. The seller shall have expertise in originating exposures of a similar nature to those securitised.
19. Where an ABCP transaction is a revolving securitisation, the transaction documentation shall include triggers for termination of the revolving period, including at least the following:
- (a) a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold; and
 - (b) the occurrence of an insolvency-related event with regard to the seller or the servicer.
20. The transaction documentation shall clearly specify:
- (a) the contractual obligations, duties and responsibilities of the sponsor, the servicer and the trustee, if any, and other ancillary service providers;
 - (b) the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;
 - (c) provisions that ensure the replacement of derivative counterparties and the account bank upon their default, insolvency and other specified events, where applicable; and
 - (d) how the sponsor meets the requirements of Article 25(3).
21. The EBA, in close cooperation with ESMA and EIOPA, shall develop draft regulatory technical standards further specifying which underlying exposures referred to in paragraph 15 are deemed to be homogeneous.

The EBA shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

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

Article 25

Sponsor of an ABCP programme

1. The sponsor of the ABCP programme shall be a credit institution supervised under Directive 2013/36/EU.
2. The sponsor of an ABCP programme shall be a liquidity facility provider and shall support all securitisation positions on an ABCP programme level by covering all liquidity and credit risks and any material dilution risks of the securitised exposures as well as any other transaction- and programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP with such support. The sponsor shall disclose a description of the support provided at transaction level to the investors including a description of the liquidity facilities provided.
3. Before being able to sponsor an STS ABCP programme, the credit institution shall demonstrate to its competent authority that its role under paragraph 2 does not endanger its solvency and liquidity, even in an extreme stress situation in the market.

The requirement referred to in the first subparagraph of this paragraph shall be considered to be fulfilled where the competent authority has determined on the basis of the review and evaluation referred to Article 97(3) of Directive 2013/36/EU that the arrangements, strategies, processes and mechanisms implemented by that credit institution and the own funds and liquidity held by it ensure the sound management and coverage of its risks.

4. The sponsor shall perform its own due diligence and shall verify compliance with the requirements set out in Article 5(1) and (3) of this Regulation, as applicable. It shall also verify that the seller has in place servicing capabilities and collection processes that meet the requirements specified in points (h) to (p) of Article 265(2) of Regulation (EU) No 575/2013 or equivalent requirements in third countries.

5. The seller, at the level of a transaction, or the sponsor, at the level of the ABCP programme, shall satisfy the risk-retention requirement referred to in Article 6.

6. The sponsor shall be responsible for compliance with Article 7 at ABCP programme level and for making available to potential investors before pricing upon their request:

(a) the aggregate information required by point (a) of the first subparagraph of Article 7(1); and

(b) the information required by points (b) to (e) of the first subparagraph of Article 7(1), at least in draft or initial form.

7. In the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry, the liquidity facility shall be drawn down and the maturing securities shall be repaid.

Article 26

Programme-level requirements

1. All ABCP transactions within an ABCP programme shall fulfil the requirements of Article 24(1) to (8) and (12) to (20).

A maximum of 5 % of the aggregate amount of the exposures underlying the ABCP transactions and which are funded by the ABCP programme may temporarily be non-compliant with the requirements of Article 24(9), (10) and (11) without affecting the STS status of the ABCP programme.

For the purpose of the second subparagraph of this paragraph, a sample of the underlying exposures shall regularly be subject to external verification of compliance by an appropriate and independent party.

2. The remaining weighted average life of the underlying exposures of an ABCP programme shall not be more than two years.

3. The ABCP programme shall be fully supported by a sponsor in accordance with Article 25(2).

4. The ABCP programme shall not contain any resecuritisation and the credit enhancement shall not establish a second layer of tranching at the programme level.

5. The securities issued by an ABCP programme shall not include call options, extension clauses or other clauses that have an effect on their final maturity, where such options or clauses may be exercised at the discretion of the seller, sponsor or SSPE.

6. The interest-rate and currency risks arising at ABCP programme level shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

7. The documentation relating to the ABCP programme shall clearly specify:

(a) the responsibilities of the trustee and other entities with fiduciary duties, if any, to investors;

(b) the contractual obligations, duties and responsibilities of the sponsor, who shall have expertise in credit underwriting, the trustee, if any, and other ancillary service providers;

(c) the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;

- (d) the provisions for replacement of derivative counterparties, and the account bank at ABCP programme level upon their default, insolvency and other specified events, where the liquidity facility does not cover such events;
 - (e) that, upon specified events, default or insolvency of the sponsor, remedial steps shall be provided for to achieve, as appropriate, collateralisation of the funding commitment or replacement of the liquidity facility provider; and
 - (f) that the liquidity facility shall be drawn down and the maturing securities shall be repaid in the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry.
8. The servicer shall have expertise in servicing exposures of a similar nature to those securitised and shall have well-documented policies, procedures and risk-management controls relating to the servicing of exposures.

SECTION 3

STS notification

Article 27

STS notification requirements

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

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

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

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

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

3. Where the originator or original lender is not a credit institution or investment firm, as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, established in the Union, the notification pursuant to paragraph 1 of this Article shall be accompanied by the following:

- (a) confirmation by the originator or original lender that its credit-granting is done on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing credits and that the originator or original lender has effective systems in place to apply such processes in accordance with Article 9 of this Regulation; and
- (b) a declaration by the originator or original lender as to whether credit granting referred to in point (a) is subject to supervision.

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

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

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

ESMA shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

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

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

ESMA shall submit those draft implementing technical standards to the Commission by 18 July 2018.

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

Article 28

Third party verifying STS compliance

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

- (a) the third party only charges non-discriminatory and cost-based fees to the originators, sponsors or SSPEs involved in the securitisations which the third party assesses without differentiating fees depending on, or correlated to, the results of its assessment;
- (b) the third party is neither a regulated entity as defined in point (4) of Article 2 of Directive 2002/87/EC nor a credit rating agency as defined in point (b) of Article 3(1) of Regulation (EC) No 1060/2009, and the performance of the third party's other activities does not compromise the independence or integrity of its assessment;
- (c) the third party shall not provide any form of advisory, audit or equivalent service to the originator, sponsor or SSPE involved in the securitisations which the third party assesses;
- (d) the members of the management body of the third party have professional qualifications, knowledge and experience that are adequate for the task of the third party and they are of good repute and integrity;
- (e) the management body of the third party includes at least one third, but no fewer than two, independent directors;
- (f) the third party takes all necessary steps to ensure that the verification of STS compliance is not affected by any existing or potential conflicts of interest or business relationship involving the third party, its shareholders or members, managers, employees or any other natural person whose services are placed at the disposal or under the control of the third party. To that end, the third party shall establish, maintain, enforce and document an effective internal control system governing the implementation of policies and procedures to identify and prevent potential conflicts of interest. Potential or existing conflicts of interest which have been identified shall be eliminated or mitigated and disclosed without delay. The third party shall establish, maintain, enforce and document adequate procedures and processes to ensure the independence of the assessment of STS compliance. The third party shall periodically monitor and review those policies and procedures in order to evaluate their effectiveness and assess whether it is necessary to update them; and
- (g) the third party can demonstrate that it has proper operational safeguards and internal processes that enable it to assess STS compliance.

The competent authority shall withdraw the authorisation when it considers the third party to be materially non-compliant with the first subparagraph.

2. A third party authorised in accordance with paragraph 1 shall notify its competent authority without delay of any material changes to the information provided under that paragraph, or any other changes that could reasonably be considered to affect the assessment of its competent authority.

3. The competent authority may charge cost-based fees to the third party referred to in paragraph 1, in order to cover necessary expenditure relating to the assessment of applications for authorisation and to the subsequent monitoring of compliance with the conditions set out in paragraph 1.

4. ESMA shall develop draft regulatory technical standards specifying the information to be provided to the competent authorities in the application for the authorisation of a third party in accordance with paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

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

CHAPTER 5

SUPERVISION

Article 29

Designation of competent authorities

1. Compliance with the obligations set out in Article 5 of this Regulation shall be supervised by the following competent authorities in accordance with the powers granted by the relevant legal acts:

- (a) for insurance and reinsurance undertakings, the competent authority designated in accordance with point (10) of Article 13 of Directive 2009/138/EC;
- (b) for alternative investment fund managers, the competent authority responsible designated in accordance with Article 44 of Directive 2011/61/EU;
- (c) for UCITS and UCITS management companies, the competent authority designated in accordance with Article 97 of Directive 2009/65/EC;
- (d) for institutions for occupational retirement provision, the competent authority designated in accordance with point (g) of Article 6 of Directive 2003/41/EC of the European Parliament and of the Council ⁽¹⁾;
- (e) for credit institutions or investments firms, the competent authority designated in accordance with Article 4 of Directive 2013/36/EU, including the ECB with regard to specific tasks conferred on it by Regulation (EU) No 1024/2013.

2. Competent authorities responsible for the supervision of sponsors in accordance with Article 4 of Directive 2013/36/EU, including the ECB with regard to specific tasks conferred on it by Regulation (EU) No 1024/2013, shall supervise compliance by sponsors with the obligations set out in Articles 6, 7, 8 and 9 of this Regulation.

3. Where originators, original lenders and SSPs are supervised entities in accordance with Directives 2003/41/EC, 2009/138/EC, 2009/65/EC, 2011/61/EU and 2013/36/EU and Regulation (EU) No 1024/2013, the relevant competent authorities designated according to those acts, including the ECB with regard to specific tasks conferred on it by Regulation (EU) No 1024/2013, shall supervise compliance with the obligations set out in Articles 6, 7, 8 and 9 of this Regulation.

4. For originators, original lenders and SSPs established in the Union and not covered by the Union legislative acts referred to in paragraph 3, Member States shall designate one or more competent authorities to supervise compliance with the obligations set out in Articles 6, 7, 8 and 9. Member States shall inform the Commission and ESMA of the designation of competent authorities pursuant to this paragraph by 1 January 2019. That obligation shall not apply with regard to those entities that are merely selling exposures under an ABCP programme or another securitisation transaction or scheme and are not actively originating exposures for the primary purpose of securitising them on a regular basis.

⁽¹⁾ Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

5. Member States shall designate one or more competent authorities to supervise the compliance of originators, sponsors and SSPEs with Articles 18 to 27, and the compliance of third parties with Article 28. Member States shall inform the Commission and ESMA of the designation of competent authorities pursuant to this paragraph by 18 January 2019.

6. Paragraph 5 of this Article shall not apply with regard to those entities that are merely selling exposures under an ABCP programme or other securitisation transaction or scheme and are not actively originating exposures for the primary purpose of securitising them on a regular basis. In such a case, the originator or sponsor shall verify that those entities fulfil the relevant obligations set out in Articles 18 to 27.

7. ESMA shall ensure the consistent application and enforcement of the obligations set out in Articles 18 to 27 of this Regulation in accordance with the tasks and powers set out in Regulation (EU) No 1095/2010. ESMA shall monitor the Union securitisation market in accordance with Article 39 of Regulation (EU) No 600/2014 of the European Parliament and the Council⁽¹⁾ and apply, where appropriate, its temporary intervention powers in accordance with Article 40 of Regulation (EU) No 600/2014.

8. ESMA shall publish and keep up-to-date on its website a list of the competent authorities referred to in this Article.

Article 30

Powers of the competent authorities

1. Each Member State shall ensure that the competent authority designated in accordance with Article 29(1) to (5) has the supervisory, investigatory and sanctioning powers necessary to fulfil its duties under this Regulation.

2. The competent authority shall regularly review the arrangements, processes and mechanisms that originators, sponsors, SSPEs and original lenders have implemented in order to comply with this Regulation.

The review referred to in the first subparagraph shall include:

- (a) the processes and mechanisms to correctly measure and retain the material net economic interest on an ongoing basis, the gathering and timely disclosure of all information to be made available in accordance with Article 7 and the credit-granting criteria in accordance with Article 9;
- (b) for STS securitisations which are not securitisations within an ABCP programme, the processes and mechanisms to ensure compliance with Article 20(7) to (12), Article 21(7), and Article 22; and
- (c) for STS securitisations which are securitisations within an ABCP programme, the processes and mechanisms to ensure, with regard to ABCP transactions, compliance with Article 24 and, with regard to ABCP programmes, compliance with Article 26(7) and (8).

3. Competent authorities shall require that risks arising from securitisation transactions, including reputational risks, are evaluated and addressed through appropriate policies and procedures of originators, sponsors, SSPEs and original lenders.

4. The competent authority shall monitor, as applicable, the specific effects that the participation in the securitisation market has on the stability of the financial institution that operates as original lender, originator, sponsor or investor as part of its prudential supervision in the field of securitisation, taking into account, without prejudice to stricter sectoral regulation:

- (a) the size of capital buffers;
- (b) the size of the liquidity buffers; and
- (c) the liquidity risk for investors due to a maturity mismatch between their funding and investments.

In cases where the competent authority identifies a material risk to financial stability of a financial institution or the financial system as a whole, irrespective of its obligations under Article 36, it shall take action to mitigate those risks, report its findings to the designated authority competent for macroprudential instruments under Regulation (EU) No 575/2013 and the ESRB.

⁽¹⁾ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

5. The competent authority shall monitor any possible circumvention of the obligations set out in Article 6(2) and ensure that sanctions are applied in accordance with Articles 32 and 33.

Article 31

Macroprudential oversight of the securitisation market

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

Article 32

Administrative sanctions and remedial measures

1. Without prejudice to the right for Member States to provide for and impose criminal sanctions pursuant to Article 34, Member States shall lay down rules establishing appropriate administrative sanctions, in the case of negligence or intentional infringement, and remedial measures, applicable at least to situations where:
 - (a) an originator, sponsor or original lender has failed to meet the requirements provided for in Article 6;
 - (b) an originator, sponsor or SSPE has failed to meet the requirements provided for in Article 7;
 - (c) an originator, sponsor or original lender has failed to meet the criteria provided for in Article 9;
 - (d) an originator, sponsor or SSPE has failed to meet the requirements provided for in Article 18;
 - (e) a securitisation is designated as STS and an originator, sponsor or SSPE of that securitisation has failed to meet the requirements provided for in Articles 19 to 22 or Articles 23 to 26;
 - (f) an originator or sponsor makes a misleading notification pursuant to Article 27(1);
 - (g) an originator or sponsor has failed to meet the requirements provided for in Article 27(4); or
 - (h) a third party authorised pursuant to Article 28 has failed to notify material changes to the information provided in accordance with Article 28(1), or any other changes that could reasonably be considered to affect the assessment of its competent authority.

Member States shall also ensure that administrative sanctions and/or remedial measures are effectively implemented.

Those sanctions and measures shall be effective, proportionate and dissuasive.

2. Member States shall confer on competent authorities the power to apply at least the following sanctions and measures in the event of the infringements referred to in paragraph 1:
 - (a) a public statement which indicates the identity of the natural or legal person and the nature of the infringement in accordance with Article 37;
 - (b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
 - (c) a temporary ban preventing any member of the originator's, sponsor's or SSPE's management body or any other natural person held responsible for the infringement from exercising management functions in such undertakings;

- (d) in the case of an infringement as referred to in point (e) or (f) of the first subparagraph of paragraph 1 of this Article a temporary ban preventing the originator and sponsor from notifying under Article 27(1) that a securitisation meets the requirements set out in Articles 19 to 22 or Articles 23 to 26;
- (e) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 January 2018;
- (f) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 January 2018 or of up to 10 % of the total annual net turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council⁽¹⁾, the relevant total annual net turnover shall be the total net annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;
- (g) maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points (e) and (f);
- (h) in the case of an infringement as referred to in point (h) of the first subparagraph of paragraph 1 of this Article, a temporary withdrawal of the authorisation referred to in Article 28 for the third party authorised to check the compliance of a securitisation with Articles 19 to 22 or Articles 23 to 26.

3. Where the provisions referred to in the first paragraph apply to legal persons, Member States shall confer on competent authorities the power to apply the administrative sanctions and remedial measures set out in paragraph 2, subject to the conditions provided for in national law, to members of the management body, and to other individuals who under national law are responsible for the infringement.

4. Member States shall ensure that any decision imposing administrative sanctions or remedial measures set out in paragraph 2 is properly reasoned and is subject to a right of appeal.

Article 33

Exercise of the power to impose administrative sanctions and remedial measures

1. Competent authorities shall exercise the powers to impose administrative sanctions and remedial measures referred to in Article 32 in accordance with their national legal frameworks, as appropriate:

- (a) directly;
- (b) in collaboration with other authorities;
- (c) under their responsibility by delegation to other authorities;
- (d) by application to the competent judicial authorities.

2. Competent authorities, when determining the type and level of an administrative sanction or remedial measure imposed under Article 32, shall take into account the extent to which the infringement is intentional or results from negligence and all other relevant circumstances, including, where appropriate:

- (a) the materiality, gravity and the duration of the infringement;
- (b) the degree of responsibility of the natural or legal person responsible for the infringement;
- (c) the financial strength of the responsible natural or legal person;
- (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;
- (e) the losses for third parties caused by the infringement, insofar as they can be determined;

⁽¹⁾ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (f) the level of cooperation of the responsible natural or legal person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (g) previous infringements by the responsible natural or legal person.

Article 34

Criminal sanctions

1. Member States may decide not to lay down rules for administrative sanctions or remedial measures for infringements which are subject to criminal sanctions under their national law.
2. Where Member States have chosen, in accordance with paragraph 1 of this Article, to lay down criminal sanctions for the infringement referred to in Article 32(1), they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for the infringements referred to in Article 32(1), and to provide the same information to other competent authorities as well as ESMA, the EBA and EIOPA to fulfil their obligation to cooperate for the purposes of this Regulation.

Article 35

Notification duties

Member States shall notify the laws, regulations and administrative provisions implementing this Chapter, including any relevant criminal law provisions, to the Commission, ESMA, the EBA and EIOPA by 18 January 2019. Member States shall notify the Commission, ESMA, the EBA and EIOPA without undue delay of any subsequent amendments thereto.

Article 36

Cooperation between competent authorities and the ESAs

1. The competent authorities referred to in Article 29 and ESMA, the EBA and EIOPA shall cooperate closely with each other and exchange information to carry out their duties pursuant to Article 30 to 34.
2. Competent authorities shall closely coordinate their supervision in order to identify and remedy infringements of this Regulation, develop and promote best practices, facilitate collaboration, foster consistency of interpretation and provide cross-jurisdictional assessments in the event of any disagreements.
3. A specific securitisation committee shall be established within the framework of the Joint Committee of the European Supervisory Authorities, within which competent authorities shall closely cooperate, in order to carry out their duties pursuant to Articles 30 to 34.
4. Where a competent authority finds that one or more of the requirements under Articles 6 to 27 have been infringed or has reason to believe so, it shall inform the competent authority of the entity or entities suspected of such infringement of its findings in a sufficiently detailed manner. The competent authorities concerned shall closely coordinate their supervision in order to ensure consistent decisions.
5. Where the infringement referred to in paragraph 4 of this Article concerns, in particular, an incorrect or misleading notification pursuant to Article 27(1), the competent authority finding that infringement shall notify without delay, the competent authority of the entity designated as the first contact point under Article 27(1) of its findings. The competent authority of the entity designated as the first contact point under Article 27(1) shall in turn inform ESMA, the EBA and EIOPA and shall follow the procedure provided for in paragraph 6 of this Article.
6. Upon receipt of the information referred to in paragraph 4, the competent authority of the entity suspected of the infringement shall take within 15 working days any necessary action to address the infringement identified and notify the other competent authorities involved, in particular those of the originator, sponsor and SSPE and the competent authorities of the holder of a securitisation position, when known. When a competent authority disagrees with another competent authority regarding the procedure or content of its action or inaction, it shall notify all other competent authorities involved about its disagreement without undue delay. If that disagreement is not resolved within three months of the date on which all competent authorities involved are notified, the matter shall be referred to ESMA in accordance with Article 19 and, where applicable, Article 20 of Regulation (EU) No 1095/2010. The conciliation period referred to in Article 19(2) of Regulation (EU) No 1095/2010 shall be one month.

Where the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in the first subparagraph, ESMA shall take the decision referred to in Article 19(3) of Regulation (EU) No 1095/2010 within one month. During the procedure set out in this Article, a securitisation appearing on the list maintained by ESMA pursuant to Article 27 of this Regulation shall continue to be considered as STS pursuant to Chapter 4 of this Regulation and shall be kept on such list.

Where the competent authorities concerned agree that the infringement is related to non-compliance with Article 18 in good faith, they may decide to grant the originator, sponsor and SSPE a period of up to three months to remedy the identified infringement, starting from the day the originator, sponsor and SSPE were informed of the infringement by the competent authority. During this period, a securitisation appearing on the list maintained by ESMA pursuant to Article 27 shall continue to be considered as STS pursuant to Chapter 4 and shall be kept on such list.

Where one or more of the competent authorities involved is of the opinion that the infringement is not appropriately remedied within the period set out in third subparagraph, first subparagraph shall apply.

7. Three years from the date of application of this Regulation, ESMA shall conduct a peer review in accordance with Article 30 of Regulation (EU) No 1095/2010 on the implementation of the criteria provided for in Articles 19 to 26 of this Regulation.

8. ESMA shall, in close cooperation with the EBA and EIOPA, develop draft regulatory technical standards to specify the general cooperation obligation and the information to be exchanged under paragraph 1 and the notification obligations pursuant to paragraphs 4 and 5.

ESMA shall, in close cooperation with the EBA and EIOPA, submit those draft regulatory technical standards to the Commission by 18 January 2019.

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

Article 37

Publication of administrative sanctions

1. Member States shall ensure that competent authorities publish on their official websites, without undue delay and as a minimum, any decision imposing an administrative sanction against which there is no appeal and which is imposed for infringement of Article 6, 7, 9 or 27(1) after the addressee of the sanction has been notified of that decision.

2. The publication referred to in paragraph 1 shall include information on the type and nature of the infringement and the identity of the persons responsible and the sanctions imposed.

3. Where the publication of the identity, in the case of legal persons, or of the identity and personal data, in the case of natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment, or where the competent authority considers that the publication jeopardises the stability of financial markets or an ongoing criminal investigation, or where the publication would cause, insofar as it can be determined, disproportionate damages to the person involved, Member States shall ensure that competent authorities either:

- (a) defer the publication of the decision imposing the administrative sanction until the moment where the reasons for non-publication cease to exist;
- (b) publish the decision imposing the administrative sanction on an anonymous basis, in accordance with national law;
or
- (c) not publish at all the decision to impose the administrative sanction in the event that the options set out in points (a) and (b) are considered to be insufficient to ensure:
 - (i) that the stability of financial markets would not be put in jeopardy; or
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

4. In the case of a decision to publish a sanction on an anonymous basis, the publication of the relevant data may be postponed. Where a competent authority publishes a decision imposing an administrative sanction against which there is an appeal before the relevant judicial authorities, competent authorities shall also immediately add on their official website that information and any subsequent information on the outcome of such appeal. Any judicial decision annulling a decision imposing an administrative sanction shall also be published.

5. Competent authorities shall ensure that any publication referred to in paragraphs 1 to 4 shall remain on their official website for at least five years after its publication. Personal data contained in the publication shall only be kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.

6. Competent authorities shall inform ESMA of all administrative sanctions imposed, including, where appropriate, any appeal in relation thereto and the outcome thereof.

7. ESMA shall maintain a central database of administrative sanctions communicated to it. That database shall be only accessible to ESMA, the EBA, EIOPA and the competent authorities and shall be updated on the basis of the information provided by the competent authorities in accordance with paragraph 6.

CHAPTER 6

AMENDMENTS

Article 38

Amendment to Directive 2009/65/EC

Article 50a of Directive 2009/65/EC is replaced by the following:

Article 50a

Where UCITS management companies or internally managed UCITS are exposed to a securitisation that no longer meets the requirements provided for in the Regulation (EU) 2017/2402 of the European Parliament and of the Council (*), they shall, in the best interest of the investors in the relevant UCITS, act and take corrective action, if appropriate.

(* 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).'

Article 39

Amendment to Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

(1) in Article 135, paragraphs 2 and 3 are replaced by the following:

'2. The Commission shall adopt delegated acts in accordance with Article 301a of this Directive supplementing this Directive by laying down the specifications for the circumstances under which a proportionate additional capital charge may be imposed when the requirements provided for in Articles 5 or 6 of Regulation (EU) 2017/2402 of the European Parliament and of the Council (*) have been breached, without prejudice to Article 101(3) of this Directive.

3. In order to ensure consistent harmonisation in relation to paragraph 2 of this Article, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the methodologies for the calculation of a proportionate additional capital charge referred to therein.

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

(* 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).'

(2) Article 308b(11) is deleted.

*Article 40***Amendment to Regulation (EC) No 1060/2009**

Regulation (EC) No 1060/2009 is amended as follows:

- (1) in recitals 22 and 41, in Article 8c and in point 1 of Part II of Section D of Annex I, 'structured finance instrument' is replaced by 'securitisation instrument';
- (2) in recitals 34 and 40, in Articles 8(4), 8c, 10(3) and 39(4) as well as in the fifth paragraph of point 2 of Section A of Annex I, point 5 of Section B of Annex I, the title and point 2 of Part II of Section D of Annex I, points 8, 24 and 45 of Part I of Annex III and point 8 of Part III of Annex III, 'structured finance instruments' is replaced by 'securitisation instruments';
- (3) in Article 1, the second subparagraph is replaced by the following:

'This Regulation also lays down obligations for issuers and related third parties established in the Union regarding securitisation instruments.'
- (4) in Article 3(1), point (l) is replaced by the following:

'(l) "securitisation instrument" means a financial instrument or other assets resulting from a securitisation transaction or scheme referred to in Article 2(1) of Regulation (EU) 2017/2402 (Securitisation Regulation);'
- (5) Article 8b is deleted;
- (6) in point (b) of Article 4(3), point (b) of the second subparagraph of Article 5(6) and Article 25a, the reference to Article 8b is deleted.

*Article 41***Amendment to Directive 2011/61/EU**

Article 17 of Directive 2011/61/EU is replaced by the following:

'Article 17

Where AIFMs are exposed to a securitisation that no longer meets the requirements provided for in Regulation (EU) 2017/2402 of the European Parliament and of the Council (*), they shall, in the best interest of the investors in the relevant AIFs, act and take corrective action, if appropriate.

(*) 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).'

*Article 42***Amendment to Regulation (EU) No 648/2012**

Regulation (EU) No 648/2012 is amended as follows:

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

'(30) "covered bond" means a bond meeting the requirements of Article 129 of Regulation (EU) No 575/2013.

(31) "covered bond entity" means the covered bond issuer or cover pool of a covered bond.'
- (2) in Article 4, the following paragraphs are added:

'5. Paragraph 1 of this Article shall not apply with respect to OTC derivative contracts that are concluded by covered bond entities in connection with a covered bond, or by a securitisation special purpose entity in connection with a securitisation, within the meaning of Regulation (EU) 2017/2402 of the European Parliament and of the Council (*) provided that:

 - (a) in the case of securitisation special purpose entities, the securitisation special purpose entity shall solely issue securitisations that meet the requirements of Article 18, and of Articles 19 to 22 or 23 to 26 of Regulation (EU) 2017/2402 (the Securitisation Regulation);

- (b) the OTC derivative contract is used only to hedge interest rate or currency mismatches under the covered bond or securitisation; and
- (c) the arrangements under the covered bond or securitisation adequately mitigate counterparty credit risk with respect to the OTC derivative contracts concluded by the covered bond entity or securitisation special purpose entity in connection with the covered bond or securitisation.

6. In order to ensure consistent application of this Article, and taking into account the need to prevent regulatory arbitrage, the ESAs shall develop draft regulatory technical standards specifying criteria for establishing which arrangements under covered bonds or securitisations adequately mitigate counterparty credit risk, within the meaning of paragraph 5.

The ESAs shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 or (EU) No 1095/2010.

(*) 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).'

(3) in Article 11, paragraph 15 is replaced by the following:

'15. In order to ensure consistent application of this Article, the ESAs shall develop common draft regulatory technical standards specifying:

- (a) the risk-management procedures, including the levels and type of collateral and segregation arrangements, required for compliance with paragraph 3;
- (b) the procedures for the counterparties and the relevant competent authorities to be followed when applying exemptions under paragraphs 6 to 10;
- (c) the applicable criteria referred to in paragraphs 5 to 10 including in particular what is to be considered as a practical or legal impediment to the prompt transfer of own funds and repayment of liabilities between the counterparties.

The level and type of collateral required with respect to OTC derivative contracts that are concluded by covered bond entities in connection with a covered bond, or by a securitisation special purpose entity in connection with a securitisation within the meaning of this Regulation and meeting the conditions of Article 4(5) of this Regulation and the requirements set out in Article 18, and in Articles 19 to 22 or 23 to 26 of Regulation (EU) 2017/2402 (the Securitisation Regulation) shall be determined taking into account any impediments faced in exchanging collateral with respect to existing collateral arrangements under the covered bond or securitisation.

The ESAs shall submit those draft regulatory technical standards to the Commission by 18 July 2018.

Depending on the legal nature of the counterparty, power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 or (EU) No 1095/2010.'

Article 43

Transitional provisions

1. This Regulation shall apply to securitisations the securities of which are issued on or after 1 January 2019, subject to paragraphs 7 and 8.
2. In respect of securitisations the securities of which were issued before 1 January 2019, originators, sponsors and SSPs 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.
3. Securitisations the securities of which were issued before 1 January 2019, other than securitisation positions relating to an ABCP transaction or an ABCP programme, shall be considered 'STS' provided that:
 - (a) they met, at the time of issuance of those securities, the requirements set out in Article 20(1) to (5), (7) to (9) and (11) to (13) and Article 21(1) and (3); and

(b) they meet, as of the time of notification pursuant to Article 27(1), the requirements set out in Article 20(6) and (10), Article 21(2) and (4) to (10) and Article 22(1) to (5).

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

(a) in Article 22(2), 'prior to issuance' shall be deemed to read 'prior to notification under Article 27(1)';

(b) in Article 22(3), 'before the pricing of the securitisation' shall be deemed to read 'prior to notification under Article 27(1)';

(c) in Article 22(5):

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

(ii) '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).

5. In respect of securitisations the securities of which were issued on or after 1 January 2011 but before 1 January 2019 and in respect of securitisations the securities of which were issued before 1 January 2011 where new underlying exposures have been added or substituted after 31 December 2014, the due-diligence requirements as provided for in Regulation (EU) No 575/2013, Delegated Regulation (EU) 2015/35 and Delegated Regulation (EU) No 231/2013 respectively shall continue to apply in the version applicable on 31 December 2018.

6. In respect of securitisations the securities of which were issued before 1 January 2019 credit institutions or investment firms as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, insurance undertakings as defined in point (1) of Article 13 of Directive 2009/138/EC, reinsurance undertakings as defined in point (4) of Article 13 of Directive 2009/138/EC and alternative investment fund managers (AIFMs) as defined in point (b) of Article 4(1) of Directive 2011/61/EU shall continue to apply Article 405 of Regulation (EU) No 575/2013 and Chapters I, II and III and Article 22 of Delegated Regulation (EU) No 625/2014, Articles 254 and 255 of Delegated Regulation (EU) 2015/35 and Article 51 of Delegated Regulation (EU) No 231/2013 respectively as in the version applicable on 31 December 2018.

7. Until the regulatory technical standards to be adopted by the Commission pursuant Article 6(7) of this Regulation apply, originators, sponsors or the original lender shall, for the purposes of the obligations set out in Article 6 of this Regulation, apply Chapters I, II and III and Article 22 of Delegated Regulation (EU) No 625/2014 to securitisations the securities of which are issued on or after 1 January 2019.

8. Until the regulatory technical standards to be adopted by the Commission pursuant to Article 7(3) of this Regulation apply, originators, sponsors and SSPEs shall, for the purposes of the obligations set out in points (a) and (e) of the first subparagraph of Article 7(1) of this Regulation, make the information referred to in Annexes I to VIII of Delegated Regulation (EU) 2015/3 available in accordance with Article 7(2) of this Regulation.

9. For the purpose of this Article, in the case of securitisations which do not involve the issuance of securities, any references to 'securitisations the securities of which were issued' shall be deemed to mean 'securitisations the initial securitisation positions of which are created', provided that this Regulation applies to any securitisations that create new securitisation positions on or after 1 January 2019.

Article 44

Reports

By 1 January 2021 and every three years thereafter, the Joint Committee of the European Supervisory Authorities shall publish a report on:

(a) the implementation of the STS requirements as provided for in Articles 18 to 27;

- (b) an assessment of the actions that competent authorities have undertaken, on material risks and new vulnerabilities that may have materialised and on the actions of market participants to further standardise securitisation documentation;
- (c) the functioning of the due-diligence requirements provided for in Article 5 and the transparency requirements provided for in Article 7 and the level of transparency of the securitisation market in the Union, including on whether the transparency requirements provided for in Article 7 allow the competent authorities to have a sufficient overview of the market to fulfil their respective mandates;
- (d) the requirements provided for in Article 6, including compliance therewith by market participants and the modalities for retaining risk pursuant to Article 6(3).

Article 45

Synthetic securitisations

1. By 2 July 2019, the EBA, in close cooperation with ESMA and EIOPA, shall publish a report on the feasibility of a specific framework for simple, transparent and standardised synthetic securitisation, limited to balance-sheet synthetic securitisation.
2. By 2 January 2020, the Commission shall, on the basis of the EBA report referred to in paragraph 1, submit a report to the European Parliament and the Council on the creation of a specific framework for simple, transparent and standardised synthetic securitisation, limited to balance-sheet synthetic securitisation, together with a legislative proposal, if appropriate.

Article 46

Review

By 1 January 2022, the Commission shall present a report to the European Parliament and the Council on the functioning of this Regulation, accompanied, if appropriate, by a legislative proposal.

That report shall consider in particular the findings of the reports referred to in Article 44, and shall assess:

- (a) the effects of this Regulation, including the introduction of the STS securitisation designation, on the functioning of the market for securitisations in the Union, the contribution of securitisation to the real economy, in particular on access to credit for SMEs and investments, and interconnectedness between financial institutions and the stability of the financial sector;
- (b) the differences in use of the modalities referred to in Article 6(3), based on the data reported pursuant to point (e)(iii) of the first subparagraph of Article 7(1). If the findings show an increase in prudential risks caused by the use of the modalities referred to in points (a), (b), (c) and (e) of Article 6(3), then suitable redress shall be considered;
- (c) whether there has been a disproportionate rise of the number of transactions referred to in the third subparagraph of Article 7(2), since the application of this Regulation and whether market participants structured transactions in a way to circumvent the obligation under Article 7 to make available information through securitisation repositories;
- (d) whether there is a need to extend disclosure requirements under Article 7 to cover transactions referred to in the third subparagraph of Article 7(2) and investor positions;
- (e) whether in the area of STS securitisations an equivalence regime could be introduced for third-country originators, sponsors and SSPEs, taking into consideration international developments in the area of securitisation, in particular initiatives on simple, transparent and comparable securitisations;
- (f) the implementation of the requirements provided for in Article 22(4) and whether they need to be extended to securitisation where the underlying exposures are not residential loans or auto loans or leases, with the view to mainstreaming environmental, social and governance disclosure;
- (g) the appropriateness of the third-party verification regime as provided for in Articles 27 and 28, and whether the authorisation regime for third parties provided for in Article 28 fosters sufficient competition among third parties and whether changes in the supervisory framework need to be introduced in order to ensure financial stability; and

- (h) whether there is a need to complement the framework on securitisation set out in this Regulation by establishing a system of limited licensed banks, performing the functions of SSPEs and having the exclusive right to purchase exposures from originators and sell claims backed by the purchased exposures to investors.

Article 47

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions provided for in this Article.
2. The power to adopt delegated acts referred to in Article 16(2) shall be conferred on the Commission for an indeterminate period of time from 17 January 2018.
3. The delegation of power referred to Article 16(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 16(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 48

Entry into force

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

It shall apply from 1 January 2019.

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

Done at Strasbourg, 12 December 2017.

For the European Parliament

The President

A. TAJANI

For the Council

The President

M. MAASIKAS

REGULATION (EU) 2017/2403 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 December 2017
on the sustainable management of external fishing fleets, and repealing Council Regulation (EC)
No 1006/2008

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 43(2) 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 Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Council Regulation (EC) No 1006/2008 ⁽³⁾ (the 'FAR') established a system concerning authorisations for fishing activities of Union fishing vessels outside Union waters and the access of third-country vessels to Union waters.
- (2) The Union is a contracting party to the United Nations Convention on the Law of the Sea of 10 December 1982 ⁽⁴⁾ (UNCLOS) and has ratified the United Nations Agreement of 4 August 1995 on the implementation of the provisions of the United Nations Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks ⁽⁵⁾. Those international provisions set out the principle that all states have to adopt appropriate measures to ensure the sustainable management and conservation of marine resources and to cooperate with each other to that end.
- (3) The Union has accepted the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas of 24 November 1993 of the Food and Agriculture Organisation of the United Nations ⁽⁶⁾. That Agreement stipulates that a contracting party is to abstain from granting authorisation to use a vessel for fishing on the high seas if certain conditions are not met, as well as implement sanctions if certain reporting obligations are not fulfilled.
- (4) The Union has endorsed the FAO International Plan of Action to prevent, deter and eliminate illegal, unreported and undeclared fishing ('IPOA-IUU') adopted in 2001. The IPOA-IUU and the FAO Voluntary Guidelines for flag state performance endorsed in 2014 underline the responsibility of the flag state to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems. The IPOA-IUU provides that a flag state should issue authorisations to fish in waters outside its sovereignty or jurisdiction to vessels flying its flag. Those Voluntary Guidelines also recommend that an authorisation be given by the flag state and by the coastal state when the fishing activities take place under a fisheries access agreement or even outside such an agreement. They should both be satisfied that such activities will not undermine the sustainability of the stocks in the coastal state's waters.

⁽¹⁾ OJ C 303, 19.8.2016, p. 116.

⁽²⁾ Position of the European Parliament of 2 February 2017 (not yet published in the Official Journal) and position of the Council at first reading of 17 October 2017 (OJ C 390, 17.11.2017, p. 1) Position of the European Parliament of 26 October 2017 (not yet published in the Official Journal).

⁽³⁾ Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94 (OJ L 286, 29.10.2008, p. 33).

⁽⁴⁾ Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating the implementation of Part XI thereof (OJ L 179, 23.6.1998, p. 1).

⁽⁵⁾ Council Decision 98/414/EC of 8 June 1998 on the ratification by the European Community of the Agreement for the implementing of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling stocks and highly migratory fish stocks (OJ L 189, 3.7.1998, p. 14).

⁽⁶⁾ Council Decision 96/428/EC of 25 June 1996 on acceptance by the Community of the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas (OJ L 177, 16.7.1996, p. 24).

- (5) In 2014, all members of the FAO, including the Union and its developing country partners, unanimously adopted the Voluntary Guidelines on Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication. Point 5.7 of those Guidelines highlights that small-scale fisheries should be given due consideration before agreements on resource access are entered into with third countries and third parties. Those Guidelines call for the adoption of measures for the long-term conservation and sustainable use of fisheries resources and for the securing of the ecological foundation for food production, underlining the importance of environmental standards for fishing activities outside Union waters that include an ecosystem-based approach to fisheries management together with the precautionary approach.
- (6) If there is evidence that the conditions on the basis of which a fishing authorisation has been issued are no longer met, the flag Member State should take appropriate action, including amending or withdrawing the authorisation and, if necessary, imposing effective, proportionate and dissuasive sanctions. In fisheries under a regional fisheries management organisation (RFMO) or a Sustainable Fisheries Partnership Agreement (SFPA), if a Union fishing vessel does not comply with the conditions for a fishing authorisation and the Member State fails to take appropriate action to remedy the situation, even after having been required to do so by the Commission, the Commission should conclude that no appropriate action has been taken. Consequently, the Commission should take additional action to make sure that the vessel concerned should no longer fish as long as the conditions are not met.
- (7) The Union committed itself at the United Nations Summit on Sustainable Development on 25 September 2015 to implementing the resolution containing the outcome document entitled 'Transforming our world: the 2030 Agenda for Sustainable Development', including Sustainable Development Goal 14 which is to 'conserve and sustainably use the oceans, seas and marine resources for sustainable development', as well as Sustainable Development Goal 12 which is to 'ensure sustainable consumption and production patterns' and their targets.
- (8) The objective of the common fisheries policy (CFP), as set out in Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁽¹⁾ (the 'Basic Regulation'), is to ensure that fishing activities are environmentally, economically and socially sustainable and are managed consistently with the objectives of achieving economic, social and employment benefits, and of restoring and maintaining fish stocks above levels which can produce maximum sustainable yield and that they are contributing to the availability of food supplies. It is also necessary, in implementing this policy, to take account of development cooperation objectives in accordance with the second subparagraph of Article 208(1) of the Treaty on the Functioning of the European Union (TFEU).
- (9) The Basic Regulation also requires that SFPAs be limited to surplus catches as referred to in Article 62(2) and (3) of UNCLOS.
- (10) The Basic Regulation stresses the need to promote the objectives of the CFP internationally, ensuring that Union fishing activities outside Union waters are based on the same principles and standards as those applicable under Union law, while promoting a level playing field for Union operators and third-country operators.
- (11) The FAR was intended to establish common ground for authorising fishing activities to be carried out by Union vessels outside Union waters with a view to supporting the fight against illegal, unreported and undeclared (IUU) fishing and better control and monitoring of the Union fleet across the globe, as well as conditions for the authorising of third-country vessels fishing in Union waters.
- (12) Council Regulation (EC) No 1005/2008⁽²⁾ (the 'IUU Regulation') was adopted in parallel to the FAR, and Council Regulation (EC) No 1224/2009⁽³⁾ (the 'Control Regulation') was adopted a year later. Those Regulations are the three implementing pillars of the control and enforcement provisions of the CFP.

⁽¹⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

⁽²⁾ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

⁽³⁾ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

- (13) However, the IUU Regulation, the FAR and the Control Regulation were not implemented consistently; in particular there were inconsistencies between the FAR and the Control Regulation. The implementation of the FAR also revealed several loopholes, since some challenges in terms of control, such as chartering, reflagging and the issuance of fishing authorisations issued by a third-country competent authority to a Union fishing vessel outside the framework of an SFPAs ('direct authorisations'), were not covered. Besides, some reporting obligations have proven difficult as has the division of administrative roles between the Member States and the Commission.
- (14) The core principle of this Regulation is that any Union vessel fishing outside Union waters should be authorised by its flag Member State and monitored accordingly, irrespective of where it operates and the framework under which it does so. The issuing of an authorisation should be dependent on a basic set of common eligibility criteria being fulfilled. The information gathered by the Member States and provided to the Commission should allow the Commission to intervene in the monitoring of the fishing operations of all Union fishing vessels in any given area outside Union waters at any time.
- (15) Recent years have seen considerable improvements in the Union's external fisheries policy, in terms of the conditions and terms of SFPAs and the diligence with which the provisions are enforced. Safeguarding the Union's interests in terms of access rights and conditions within the framework of SFPAs should therefore be a priority objective of the Union's external fisheries policy and similar conditions should be applied to Union activities outside the scope of SFPAs.
- (16) Support vessels may have a substantial impact on the way fishing vessels are able to carry out their fishing operations and on the quantity of fish they can retrieve. It is therefore necessary to take them into account in the authorisation and reporting processes set out in this Regulation.
- (17) Reflagging operations become an issue when their objective is to circumvent CFP rules or existing conservation and management measures. The Union should therefore be able to define, detect and hamper such operations. Traceability and proper follow-up of compliance history should be ensured throughout the lifespan of a vessel owned by a Union operator regardless of the flag or flags it operates under. The requirement that a unique vessel number be granted by the International Maritime Organisation (IMO) where required under Union law should also serve that purpose.
- (18) In third-country waters, Union vessels may operate either under the provisions of SFPAs concluded between the Union and third countries or by obtaining direct fishing authorisations from third countries if no SFPAs is in force. In both cases these activities should be carried out in a transparent and sustainable way. Flag Member States may authorise the vessels flying their flag to seek and obtain direct authorisations from third countries which are coastal states, under a defined set of criteria and subject to monitoring. The fishing operation should be authorised once the flag Member State is satisfied that it will not undermine sustainability and where the Commission has no duly justified objection. The operator should be allowed to start its fishing operation only after having been given the authorisation from both the flag Member State and the coastal state.
- (19) Union fishing vessels are not allowed to fish in waters under the jurisdiction or sovereignty of third countries with which the Union has an agreement but no protocol in force. In the case of such an agreement, where no protocol has been in force for at least 3 years, the Commission should examine the reasons for the situation and take appropriate action, which could include proposing to negotiate a new protocol.
- (20) A specific issue pertaining to SFPAs is the reallocation of underutilised fishing opportunities that occurs when fishing opportunities allocated to Member States by the relevant Council Regulations are not fully used. Since the access costs set out in the SFPAs are financed for a large part by the Union general budget, a temporary reallocation and sub-allocation system is important to preserve Union financial interests and ensure that no fishing opportunity which has been paid for is wasted. It is therefore necessary to clarify and improve those allocation systems, which should be a last resort mechanism. Its application should be temporary and it should not affect the initial allocation of fishing opportunities among Member States in accordance with applicable relative stability principles. Reallocation should only occur once the relevant Member States have given up on their rights to exchange fishing opportunities among themselves, and should primarily be addressed in the context of SFPAs giving access to mixed fisheries.

- (21) Where a third country is not party to an RFMO, the Union may endeavour to provide, with the third country with which an SFPA is being considered, for the allocation of a proportion of the sectoral support funding to facilitate the joining of that RFMO by the third country concerned.
- (22) Fishing operations under the auspices of RFMOs and on the high seas should also be authorised by the flag Member State and comply with RFMO-specific rules or Union law governing fishing operations on the high seas.
- (23) In order to implement the Union's international commitments in RFMOs and in accordance with the objectives referred to in Article 28 of the Basic Regulation, the Union should encourage periodic assessments of performance by independent bodies, and should play an active role in setting up and reinforcing implementation committees in all RFMOs to which it is a contracting party. It should in particular ensure that those implementation committees perform general supervision of the implementation of the external fisheries policy and of the measures decided within RFMOs.
- (24) Effective management of chartering arrangements is important to ensure that the effectiveness of conservation and management measures is not undermined, as well as to ensure the sustainable exploitation of living marine resources. It is therefore necessary to set out a legal framework that helps the Union to better monitor the activities of Union fishing vessels chartered by either a third country or by Union operators on the basis of what has been adopted by the relevant RFMO.
- (25) Transshipments at sea escape any proper control by flag or coastal states and therefore constitute a possible way for operators to carry illegal catch. Transshipments by Union vessels on the high sea and under direct authorisations should be subject to prior notification when conducted outside port. Member States should inform the Commission on all transshipment operations carried out by their vessels, once a year.
- (26) Procedures should be transparent and predictable for Union and third-country operators, as well as for their respective competent authorities.
- (27) The exchange of data in electronic form between Member States and the Commission, as provided for by the Control Regulation, should be ensured. Member States should collect all requested data about their fleets and their fishing operations, manage those data and make them available to the Commission. Moreover, they should cooperate with each other, the Commission and third countries where relevant in order to coordinate those data collection activities.
- (28) With a view to improving the transparency and accessibility of information on Union fishing authorisations, the Commission should set up an electronic fishing authorisation database comprising both a public part and a secure part. Information in the Union fishing authorisation database includes personal data. The processing of personal data based on this Regulation should comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾, Directive 95/46/EC of the European Parliament and of the Council ⁽²⁾ and applicable national law.
- (29) With a view to properly addressing access to Union waters of fishing vessels flying the flag of a third country, the relevant rules should be consistent with those applicable to Union fishing vessels, in accordance with the Control Regulation. In particular, Article 33 of that Regulation on the reporting of catch and catch-related data should also apply to third-country vessels fishing in Union waters.
- (30) Fishing vessels from third countries without authorisation under this Regulation should, when navigating in Union waters, be obliged to ensure that their fishing gear is installed in such a manner that it is not readily usable for fishing operations.
- (31) Member States should be responsible for controlling the fishing operations of third-country vessels in Union waters and, in the event of infringements, for recording them in the national register provided for in Article 93 of the Control Regulation.

⁽¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁽²⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

- (32) Third-country fishing vessels fishing under agreements on exchange or joint management should respect the quotas allocated to them by their own flag states in Union waters. When third countries' vessels overfish the quotas allocated to them for stocks in Union waters, the Commission should operate deductions from the quotas allocated to those third countries in subsequent years. In those cases, the deduction of quotas to be operated by the Commission in the case of overfishing is to be understood as the input that the Commission provides in the framework of the consultation with coastal states.
- (33) In order to simplify authorisation procedures, a common system of data exchange and data storage should be used by the Member States and the Commission to provide necessary information and updates while minimising administrative burden.
- (34) In order to take into account technological progress and subsequent possible new international law requirements, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the adoption of modifications to the Annex to this Regulation setting out the list of information to be provided by an operator in order to obtain a fishing authorisation, and in respect of supplementing the conditions for fishing authorisations in Article 10 to the extent necessary to reflect in Union law the outcome of the consultations between the Union and third countries with which the Union has concluded an agreement, or of arrangements with coastal states with which fish stocks are shared. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (35) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of the recording, format and the transmission of data related to fishing authorisations from the Member States to the Commission and to the Union fishing authorisation database, as well as for deciding on the temporary reallocation of unused fishing opportunities under existing protocols to SFPAs as a transitional measure corresponding to the provisions of Article 10 of the FAR. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽²⁾.
- (36) In order to make the Union fishing authorisation database operational and to enable Member States to meet the technical transmission requirements, the Commission should provide technical assistance to the Member States concerned to enable them to transfer data electronically. Member States may also draw on financial aid from the European Maritime and Fisheries Fund pursuant to point (a) of Article 76(2) of Regulation (EU) No 508/2014 of the European Parliament and of the Council ⁽³⁾.
- (37) By reason of the number and importance of the amendments to be made, the FAR should be repealed,

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation sets out rules for issuing and managing fishing authorisations for:

- (a) Union fishing vessels conducting fishing operations in waters under the sovereignty or jurisdiction of a third country, under the auspices of an RFMO to which the Union is a contracting party, in or outside Union waters, or on the high seas; and

⁽¹⁾ OJ L 123, 12.5.2016, p. 1.

⁽²⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁽³⁾ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

- (b) third-country fishing vessels conducting fishing operations in Union waters.

Article 2

Relationship to international and Union law

This Regulation shall apply without prejudice to the provisions:

- (a) in SFPA and other fisheries agreements concluded between the Union and third countries;
- (b) adopted by RFMOs to which the Union is a contracting party;
- (c) in Union law implementing or transposing provisions referred to in points (a) and (b).

Article 3

Definitions

1. For the purpose of this Regulation, the definitions set out in Article 4 of the Basic Regulation and in points 1 to 4, 15, 16 and 22 of Article 2 of the IUU Regulation shall apply, save as otherwise provided for in this Regulation.

2. For the purpose of this Regulation, the following definitions also apply:

- (a) 'support vessel' means a vessel other than a craft carried on board that is not equipped with operational fishing gear designed to catch or attract fish and that facilitates, assists or prepares fishing operations;
- (b) 'fishing authorisation' means, in respect of a Union fishing vessel, an authorisation:
 - within the meaning of point 10 of Article 4 of the Control Regulation,
 - issued by a third country entitling a Union fishing vessel to carry out specific fishing operations in the waters under the sovereignty or jurisdiction of that third country, during a specified period, in a given area or for a given fishery under specific conditions,

and, in respect of a third-country fishing vessel, an authorisation entitling it to carry out in Union waters specific fishing operations during a specified period, in a given area or for a given fishery under specific conditions;

- (c) 'direct authorisation' means a fishing authorisation issued by a third-country competent authority to a Union fishing vessel outside the framework of an SFPA or of an agreement on exchange of fishing opportunities and joint management of species of common interest;
- (d) 'third-country waters' means waters under the sovereignty or jurisdiction of a third country. The waters of a Member State that are not Union waters are considered as third-country waters for the purpose of this Regulation;
- (e) 'observer programme' means a scheme under the auspices of an RFMO, an SFPA, a third country or a Member State that provides observers on board fishing vessels including, where specifically provided for in the applicable observer scheme, to verify the vessel's compliance with the rules adopted by that RFMO or that third country, or under that SFPA;
- (f) 'chartering' means an arrangement by which a fishing vessel flying the flag of a Member State is contracted for a defined period by an operator in either another Member State or a third country without a change of flag;
- (g) 'fishing operation' means all activities in connection with searching for fish, the shooting, towing and hauling of active gears, setting, soaking, removing or resetting of passive gears and the removal of any catch from the gear, keep nets, or from a transport cage to fattening and farming cages.

TITLE II

FISHING OPERATIONS BY UNION FISHING VESSELS OUTSIDE UNION WATERS

CHAPTER I

Common provisions

Article 4

General principle

Without prejudice to the requirement to obtain an authorisation from the competent organisation or third country, a Union fishing vessel shall not carry out fishing operations outside Union waters unless it has been authorised by its flag Member State, and the fishing operations are indicated in a valid fishing authorisation issued in accordance with Chapters II to V, as appropriate.

Article 5

Eligibility criteria

1. A flag Member State may only issue a fishing authorisation for fishing operations outside Union waters if:
 - (a) it has received complete and accurate information, in accordance with the requirements of the Annex or the SFPA concerned or RFMO concerned, about the fishing vessel and the associated support vessel(s), including non-Union support vessels;
 - (b) the fishing vessel has a valid fishing licence under Article 6 of the Control Regulation;
 - (c) the fishing vessel and any associated support vessel apply the relevant IMO ship identification number scheme insofar as is required under Union law;
 - (d) the fishing vessel is not included in an IUU vessel list adopted by an RFMO and/or by the Union pursuant to the IUU Regulation;
 - (e) where applicable, fishing opportunities are available to the flag Member State under the fisheries agreement concerned or the relevant provisions of the RFMO; and
 - (f) where applicable, the fishing vessel complies with the requirements set out in Article 6.
2. The Commission is empowered to adopt delegated acts, in accordance with Article 44, for the purpose of amending the Annex to ensure appropriate monitoring of the activities of fishing vessels under this Regulation, in particular through new data requirements resulting from fisheries agreements or the development of information technologies.

Article 6

Reflagging operations

1. This Article applies to vessels that, during the 5 years preceding the application for a fishing authorisation, have:
 - (a) left the Union fishing fleet register and been reflagged in a third country; and
 - (b) subsequently returned to the Union fishing fleet register.
2. A flag Member State may only issue a fishing authorisation if it has verified that, during the period that the vessel referred to in paragraph 1 operated under a third-country flag, it did not:
 - (a) engage in IUU fishing;

- (b) operate in waters of a third country identified as a country allowing non-sustainable fishing pursuant to point (a) of Article 4(1) of Regulation (EU) No 1026/2012 of the European Parliament and of the Council ⁽¹⁾;
- (c) operate in waters of a third country listed as non-cooperating pursuant to Article 33 of the IUU Regulation; and
- (d) operate in waters of a third country identified as non-cooperating in fighting IUU fishing pursuant to Article 31 of the IUU Regulation after a period of 6 weeks following the adoption of the decision of the Commission identifying that third country as such, except for any operations carried out in the event that the Council has rejected a proposal to designate that third country as non-cooperating pursuant to Article 33 of that Regulation.

3. To that end, an operator shall provide the following information related to the period during which the vessel operated under a third-country flag required by a flag Member State:

- (a) a declaration of catches and fishing effort during the relevant period as required by the third-country flag state;
- (b) a copy of any fishing authorisations permitting fishing operations during the relevant period;
- (c) an official statement by the third country where the vessel was reflagged listing the sanctions the vessel or the operator had been subject to during the relevant period;
- (d) complete flag history during the period when the vessel had left the Union fleet register.

4. A flag Member State shall not issue a fishing authorisation to a vessel that has been reflagged in a third country:

- (a) listed as non-cooperating in fighting IUU fishing pursuant to Article 33 of the IUU Regulation;
- (b) identified as non-cooperating in fighting IUU fishing pursuant to Article 31 of the IUU Regulation after a period of 6 weeks following the adoption of the decision of the Commission identifying that third country as such, except for any operations carried out in the event that the Council has rejected a proposal to designate that third country as non-cooperating pursuant to Article 33 of that Regulation; or
- (c) identified as allowing non-sustainable fishing pursuant to point (a) of Article 4(1) of Regulation (EU) No 1026/2012.

5. Paragraph 4 shall not apply if the flag Member State is satisfied that, as soon as the circumstances described in points (b) to (d) of paragraph 2 or points (a) to (c) of paragraph 4 became applicable, the operator:

- (a) ceased fishing operations; and
- (b) immediately started the relevant administrative procedures to remove the vessel from the fishing fleet register of the third country.

Article 7

Management of fishing authorisations

1. When applying for a fishing authorisation, an operator shall provide the flag Member State with complete and accurate data.
2. An operator shall immediately inform the flag Member State of any change to the related data.
3. A flag Member State shall on a regular basis monitor whether the conditions on the basis of which a fishing authorisation has been issued continue to be met during the period of validity of that authorisation.

⁽¹⁾ Regulation (EU) No 1026/2012 of the European Parliament and of the Council of 25 October 2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing (OJ L 316, 14.11.2012, p. 34).

4. If, as a result of the final outcome of the monitoring activities referred to in paragraph 3, there is evidence that the conditions on the basis of which a fishing authorisation has been issued are no longer met, the flag Member State shall take appropriate action, including amending or withdrawing the authorisation and, if necessary, imposing sanctions. The sanctions applied by the flag Member State in respect of infringements shall be sufficiently stringent to ensure effective compliance with the rules, to prevent infringements and to deprive offenders of the benefits derived from infringements. The flag Member State shall immediately notify the operator and the Commission thereof. Where relevant, the Commission shall notify the secretariat of the RFMO or the third country concerned accordingly.

5. Upon a reasoned request from the Commission, a flag Member State shall take appropriate action as provided for in paragraph 4, in the event of contravention of conservation and management measures of marine biological resources adopted by an RFMO to which the Union is a contracting party, or under SFPAs.

6. Where the Union is a contracting party to an RFMO and a Union fishing vessel does not comply with the conditions set out in point (b) of Article 21 as established in the final inspection report recognised by the RFMO, and where the flag Member State fails to take the appropriate action as provided for in paragraph 4 of this Article, the Commission may by decision require the flag Member State concerned to ensure that the Union fishing vessel concerned fulfils those conditions.

Where the flag Member State concerned has not taken appropriate action to comply with the Commission decision referred to in the first subparagraph within a period of 15 days, the Commission shall send the updated details of the fishing vessels referred to in Article 22 to the Secretariat of the RFMO to address the vessel concerned. The Commission shall inform the flag Member State of its action. The flag Member State shall notify the operator of the action of the Commission.

7. Where the Union has concluded an SFPA with a third country and a Union fishing vessel does not comply with the conditions set out in point (b) of Article 10 as established in the final inspection report recognised by the competent authorities, and where the flag Member State fails to take the appropriate action as provided for in paragraph 4 of this Article, the Commission may by decision require the flag Member State concerned to ensure that the Union fishing vessel concerned fulfils those conditions.

Where the flag Member State concerned has not taken appropriate action to comply with the Commission decision referred to in the first subparagraph within a period of 15 days, the Commission shall send the updated details of the fishing vessels to the third country to address the Union fishing vessel concerned. The Commission shall inform the flag Member State of its action. The flag Member State shall notify the operator of the action of the Commission.

CHAPTER II

Fishing operations by Union fishing vessels in third-country waters

Section 1

Fishing operations under sfpas

Article 8

Scope

This Section shall apply to fishing operations carried out by Union fishing vessels in third-country waters under an SFPA.

Article 9

RFMO membership

A Union fishing vessel may only carry out fishing operations in waters of a third country on stocks managed by an RFMO if that third country is a contracting party to that RFMO.

Article 10

Conditions for fishing authorisations by the flag Member State

A flag Member State may only issue a fishing authorisation for fishing operations carried out in third-country waters under an SFPA if:

- (a) the eligibility criteria set out in Article 5 are fulfilled;

- (b) the conditions set out in the relevant SFPA are complied with;
- (c) the operator has paid all fees due under the relevant agreements, and where applicable, related financial sanctions established by a judicial or administrative decision having final and binding effect; and
- (d) the fishing vessel has a valid fishing authorisation issued by the third country with sovereignty or jurisdiction over the waters where the fishing operations take place.

Article 11

Procedure for obtaining fishing authorisations of the third country

1. For the purpose of point (d) of Article 10, a flag Member State that has verified that the conditions set out in points (a) to (c) of Article 10 are complied with shall send to the Commission the corresponding application for the authorisation of the third country.
2. The application referred to in paragraph 1 shall contain the information required under the SFPA.
3. The flag Member State shall send the application to the Commission at least 10 calendar days before the deadline for the transmission of applications laid down in the SFPA. The Commission may send a duly justified request to the flag Member State for any additional information necessary for verifying the conditions.
4. Upon receipt of the application or any additional information requested pursuant to paragraph 3 of this Article, the Commission shall conduct a preliminary examination to determine whether the conditions set out in points (a) to (c) of Article 10 are met. The Commission shall then:
 - (a) send the application to the third country without delay and, in any event, before the expiry of the deadline for the transmission of applications laid down in the SFPA, provided that the deadline set out in paragraph 3 of this Article has been met; or
 - (b) notify the Member State that the application is refused.
5. If a third country informs the Commission that it has decided to issue, refuse, suspend or withdraw a fishing authorisation for a Union fishing vessel under the agreement, the Commission shall immediately inform the flag Member State accordingly, if possible by electronic means.

Article 12

Temporary reallocation of unused fishing opportunities in the framework of SFPAs

1. During a specific year or any other relevant period of the implementation of a protocol to an SFPA taking into account validity periods of the fishing authorisations and fishing seasons, the Commission may identify unused fishing opportunities and inform Member States benefiting from the corresponding shares of the allocation accordingly.
2. Within 10 calendar days of receipt of this information from the Commission, the Member States referred to in paragraph 1 may:
 - (a) inform the Commission that they will use their fishing opportunities later in the relevant period of implementation by providing a fishing plan with detailed information on the number of fishing authorisations requested, the estimated catches, area and period of fishing; or
 - (b) notify the Commission of the use of their fishing opportunities through exchanges of fishing opportunities, pursuant to Article 16(8) of the Basic Regulation.
3. If certain Member States have not informed the Commission of one of the actions referred to in paragraph 2, or have informed it of a partial use of their fishing opportunities only, and, if as a result, fishing opportunities remain unused, the Commission may launch a call for interest for the available unused fishing opportunities among the other Member States benefiting from a share of the allocation. The Commission shall at the same time inform all Member States of the launch of the call for interest.

4. Within 10 calendar days of receipt of the call for interest referred to in paragraph 3, Member States benefiting from a share of the allocation may communicate their interest in the available unused fishing opportunities to the Commission. In support for their request, they shall provide a fishing plan with detailed information on the number of fishing authorisations requested, the estimated catches, area and period of fishing.

5. If deemed necessary for the assessment of the request, the Commission may ask the Member States concerned for additional information.

6. In the absence of interest in the total amount of the available unused fishing opportunities by the Member States benefiting from a share of the allocation at the end of the 10-day period referred to in paragraph 4, the Commission may extend the call for interest to all Member States. A Member State may communicate its interest in the unused fishing opportunities under the conditions referred to in that paragraph.

7. On the basis of the information provided by Member States in accordance with paragraph 4 or 6 of this Article, the unused fishing opportunities shall be reallocated by the Council in accordance with Article 43(3) TFEU, solely on a temporary basis for the relevant period of time referred to in paragraph 1 of this Article.

The Commission shall inform the Member States of the Member States to which the reallocation has been made and the quantities reallocated.

8. The temporary reallocation of fishing opportunities shall be based on transparent and objective criteria including, where applicable, those of an environmental, social and economic nature. Those criteria may include:

- (a) the fishing opportunities available for reallocation;
- (b) the number of requesting Member States;
- (c) the share assigned to each requesting Member State in the initial allocation of fishing opportunities;
- (d) the historic catch and effort levels of each requesting Member State, where applicable;
- (e) the viability of the fishing plans provided by the requesting Member States, in light of the number, type and characteristics of vessels and gear used.

Article 13

Sub-allocation of a yearly quota broken down into several successive catch limits

1. Where a protocol to an SFPA sets monthly or quarterly catch limits or other subdivisions of the fishing opportunities available for the relevant year, and where the fishing opportunities allocated are not all used during the same monthly, quarterly or otherwise applicable period of time, the corresponding available fishing opportunities shall be sub-allocated by the Council in accordance with Article 43(3) TFEU among the Member States concerned for the relevant periods of time.

2. The sub-allocation of the available fishing opportunities shall be carried out using transparent and objective criteria. It shall be consistent with the annual fishing opportunities allocated to Member States under the relevant Council Regulation.

Section 2

Fishing operations under agreements on exchange or joint management

Article 14

Applicable provisions

1. Articles 8 to 11 shall apply *mutatis mutandis* to Union fishing vessels fishing in third-country waters under an agreement on exchange of fishing opportunities or joint management of fish stocks of common interest.

2. By way of derogation from Article 11, a flag Member State may provide the Commission with the details of Union fishing vessels that are eligible for carrying out fishing operations in third-country waters under the relevant agreement. When it is established that the conditions set out in points (a) to (c) of Article 10 are met, the Commission shall forward the details of the relevant Union fishing vessels to the third country without delay. As soon as the third country informs the Commission that the details of those Union fishing vessels have been approved, the Commission shall inform the flag Member State accordingly. The Union fishing vessels for which the required details have been provided shall be considered to have a valid fishing authorisation for the purpose of point (d) of Article 10. The Commission shall also inform the flag Member State without delay by electronic means of any notification by the third country that a Union fishing vessel is not eligible for carrying out fishing operations in its waters.

Article 15

Consultations with third countries in respect of Union fishing vessels

The Commission is empowered to adopt delegated acts, in accordance with Article 44, in order to supplement Article 10 by implementing in Union law the outcome of the consultations between the Union and third countries with which the Union has concluded an agreement, or of arrangements with coastal states with which fish stocks are shared, as regards the conditions for fishing authorisations.

Section 3

Fishing operations under direct authorisations

Article 16

Scope

This Section shall apply to fishing operations carried out by Union fishing vessels in waters of a third country outside the framework of an agreement referred to in Section 1 or 2.

Article 17

Conditions for fishing authorisations by the flag Member States

1. A flag Member State may only issue a fishing authorisation for fishing operations carried out in third-country waters outside the framework of an agreement referred to in Section 1 or 2 if:

- (a) the eligibility criteria set out in Article 5 are fulfilled;
- (b) no SFPA or agreement on exchange of fishing opportunities or joint management with the third country concerned is in force or provisionally applied;
- (c) the operator has provided each of the following:
 - a copy of or an exact reference to the applicable fisheries legislation as provided to the operator by the third country with sovereignty or jurisdiction over the waters where the activities take place,
 - a scientific evaluation demonstrating the sustainability of the planned fishing operations, including consistency with the provisions of Article 62 of UNCLOS, as applicable,
 - a designated official, public bank account number for the payment of all the fees;
- (d) in the event that the fishing operations are to be carried out on species managed by an RFMO, the third country is a contracting party to that organisation; and
- (e) the operator has provided either:
 - a valid fishing authorisation for the fishing vessel concerned, issued by the third country with sovereignty or jurisdiction over the waters where the fishing operations take place; or

— a written confirmation issued by the third country with sovereignty or jurisdiction over the waters where the fishing operations take place, following the discussions between the operator and that third country, of the terms of the intended direct authorisation to give the operator access to its fishing resources, including the duration, conditions, and fishing opportunities expressed as effort or catch limits.

2. In any event, fishing operations shall not commence until the third country has issued the valid fishing authorisation referred to in point (e) of paragraph 1. The flag Member State shall suspend its authorisation if the third-country authorisation has not been issued by the beginning of the planned fishing operations.

3. The scientific evaluation referred to in the second indent of point (c) of paragraph 1 shall be provided by an RFMO or by a regional fisheries body with scientific competence or shall be provided by, or in cooperation with, the third country. The scientific evaluation emanating from the third country shall be reviewed by a scientific institute or body of a Member State or of the Union.

Article 18

Procedure for obtaining fishing authorisations of the third country

1. A flag Member State that has verified that the conditions set out in points (a) to (e) of Article 17(1) are complied with shall send the Commission the relevant information listed in the Annex, and information related to the fulfilment of the conditions set out in point (c) of Article 17(1).

2. If the Commission considers that the information referred to in paragraph 1 of this Article is insufficient to assess the fulfilment of the conditions set out in Article 17, it shall request further information or justification within 10 working days of the receipt of that information.

3. If, following the request for further information or justification referred to in paragraph 2 of this Article and after discussions with the Member State concerned, the Commission finds that the conditions set out in Article 17 are not met, it may object to the granting of the fishing authorisation within 30 calendar days of receipt of all the required information or justification. If the Commission finds that those conditions are met, it shall inform the Member State concerned without delay of its intention not to object.

4. The flag Member State may issue the fishing authorisation upon expiry of the period referred to in paragraph 2. Where the Commission has requested further information in accordance with that paragraph, the flag Member State may issue the fishing authorisation if no objection has been raised by the Commission within the deadline referred to in paragraph 3 or prior to that deadline, provided that the Commission has informed the Member State of its intention not to raise objections.

5. By way of derogation from paragraphs 1 to 4, in the event of renewal of a fishing authorisation with the same terms and conditions and within 2 years from the granting of the initial fishing authorisation, the flag Member State may issue the fishing authorisation upon verification of the information received in relation to the conditions set out in points (a), (b), (d) and (e) of Article 17(1) and shall inform the Commission thereof without delay.

6. If a third country informs the Commission that it has decided to issue, refuse, suspend or withdraw a direct authorisation to a Union fishing vessel, the Commission shall immediately inform the flag Member State accordingly.

7. If a third country informs the flag Member State that it has decided to issue, refuse, suspend or withdraw a direct authorisation to a Union fishing vessel, the flag Member State shall immediately inform the Commission accordingly.

8. An operator shall provide the flag Member State with a copy of the agreed final conditions between him and the third country, including a copy of the direct authorisation.

CHAPTER III

Fishing operations by Union fishing vessels under the auspices of RFMOs

Article 19

Scope

This Chapter shall apply to fishing operations carried out by Union fishing vessels fishing for stocks under the auspices of an RFMO, in or outside Union waters, insofar as their operations are subject to an authorisation regime put in place by the RFMO.

Article 20

Fishing authorisations

1. A Union fishing vessel the fishing operations of which are subject to an authorisation regime adopted by the RFMO shall not carry out fishing operations under the auspices of the RFMO unless:

- (a) the Union is a contracting party to the RFMO;
- (b) it has been issued with a fishing authorisation by its flag Member State;
- (c) it has been included in the relevant register or list of authorised vessels of the RFMO; and
- (d) where the fishing operations are carried out in third-country waters, it has been issued with a fishing authorisation by the relevant third country in accordance with Chapter II.

2. Point (a) of paragraph 1 of this Article shall not apply in respect of Union fishing vessels fishing exclusively in Union waters that have already been issued with a fishing authorisation in accordance with Article 7 of the Control Regulation.

Article 21

Conditions for fishing authorisations by the flag Member States

A flag Member State may issue a fishing authorisation only if:

- (a) the eligibility criteria set out in Article 5 are fulfilled;
- (b) the rules laid down by the RFMO or the transposing Union law are complied with; and
- (c) where the fishing operations are carried out in third-country waters, the criteria set out in Article 10 or 17 are complied with.

Article 22

Registration by RFMOs

1. A flag Member State shall send the Commission details of vessels it has authorised for fishing operations in accordance with Article 20 of this Regulation or, in the case of Article 20(2) of this Regulation, in accordance with Article 7 of the Control Regulation.

2. The details referred to in paragraph 1 shall be drawn up in accordance with conditions laid down by the RFMO and accompanied by the information required by that organisation.

3. The Commission may request any additional information that it deems necessary from the flag Member State within a period of 10 days after receiving the details referred to in paragraph 1. It shall provide a justification for any such request.

4. When it is satisfied that the conditions set out in Article 21 are met, and within a period of 15 days after receiving the details referred to in paragraph 1 of this Article, the Commission shall send the details of authorised vessels to the RFMO.

5. If the RMFO register or list is not public, the Commission shall circulate the details of authorised vessels to the Member States involved in the relevant fishery.

CHAPTER IV

Fishing operations by Union fishing vessels on the high seas

Article 23

Scope

This Chapter shall apply to fishing operations carried out on the high seas falling outside the scope of Chapter III by Union fishing vessels exceeding 24 metres in overall length.

Article 24

Conditions for fishing authorisations by the flag Member States

A flag Member State may issue a fishing authorisation for fishing operations on the high seas only if:

- (a) the eligibility criteria set out in Article 5 are fulfilled;
- (b) the planned fishing operations are:
 - in accordance with a scientific evaluation, demonstrating the sustainability of the planned fishing operations, provided or validated by a scientific institute in the flag Member State, or
 - part of a research programme, including a scheme for data collection, organised by a scientific body. The scientific protocol of the research, which will be required in any event, shall be validated by a scientific institute in the flag Member State.

Article 25

Procedure for obtaining fishing authorisations

1. A flag Member State that has verified that the conditions set out in Article 24 are complied with, shall send to the Commission the information listed in the Annex, and information related to the fulfilment of the conditions set out in Article 5.
2. If the Commission considers that the information provided in accordance with paragraph 1 of this Article is insufficient to assess the fulfilment of the conditions set out in Article 24, it shall request further information or justification within 10 calendar days of receipt of that information.
3. If, after receiving the requested additional information or justification referred to in paragraph 2 of this Article, the Commission finds that the conditions set out in Article 24 are not met, it may object to the granting of the fishing authorisation within five calendar days of receipt of the additional information or justification. If the Commission finds that the conditions are met, it shall inform the Member State concerned without delay of its intention not to object.
4. The flag Member State may issue the fishing authorisation upon expiry of the period referred to in paragraph 2. Where the Commission has requested further information in accordance with that paragraph, the flag Member State may issue the fishing authorisation if no objection has been raised by the Commission within the deadline referred to in paragraph 3 or prior to that deadline, provided that the Commission informed the Member State of its intention not to raise objections.

CHAPTER V

Chartering of Union fishing vessels

Article 26

Principles

1. A Union fishing vessel shall not carry out fishing operations under chartering arrangements in waters in which an SFPA is in force or is provisionally applied.
2. A Union fishing vessel shall not carry out fishing operations under more than one chartering arrangement at the same time or engage in sub-chartering.

3. Union fishing vessels shall operate under chartering agreements in waters under the auspices of an RFMO only if the State to which the vessel is chartered is a contracting party to that organisation.
4. A chartered Union fishing vessel shall not use the fishing opportunities of its flag Member State during the period of application of the charter. The catches of a chartered Union fishing vessel shall be counted against the fishing opportunities of the chartering State.
5. Nothing in this Regulation shall diminish the responsibilities of the flag Member State with respect to its obligations under international law, the Control Regulation, the IUU Regulation or other provisions of the CFP, including reporting requirements.
6. The holder of the fishing licence of a Union fishing vessel that is to be chartered shall inform the flag Member State of the chartering arrangement before its start. That Member State shall inform the Commission thereof without delay.

Article 27

Management of fishing authorisations under a chartering arrangement

When issuing a fishing authorisation to a vessel in accordance with Article 17, 21 or 24, and when the relevant fishing operations are carried out under a chartering arrangement, the flag Member State shall verify that:

- (a) the chartering State's competent authority has officially confirmed that the arrangement is in line with its national law; and
- (b) the details of the chartering arrangement are specified in the fishing authorisation including time period, fishing opportunities and fishing area.

CHAPTER VI

Transhipment operations

Article 28

Transhipment operations

1. Any transhipment operation conducted by a Union fishing vessel on the high seas or under direct authorisations shall be conducted in accordance with Articles 21 and 22 of the Control Regulation. The flag Member State shall provide the Commission by the end of March each year, for transhipments which took place the previous year, with the information given in the transhipment declaration, the date of transhipment, the geographical position and area where the transhipment took place.
2. Masters of Union fishing vessels fishing under direct authorisations or on the high seas shall notify the competent authorities of their flag Member State, prior to the transhipment, of the following information:
 - (a) the name and external identification number of the receiving vessel;
 - (b) the time and geographical position of the planned transhipment operation; and
 - (c) the estimated quantities of species to be transhipped.
3. This Article shall not apply to transhipments carried out in ports by Union fishing vessels.

CHAPTER VII

Observation and reporting obligations

Article 29

Observer programme data

If data are collected on board a Union fishing vessel under an observer programme, related reports shall be sent, in accordance with the transmission rules specified in the observer programme, without delay to the competent authority of the flag Member State.

*Article 30***Information to third countries**

1. When carrying out fishing operations under this Title the master of a Union fishing vessel or that master's representative shall make the relevant catch declarations and landing declarations available to the third country, and in addition send its flag Member State an electronic copy of those data.
2. A flag Member State shall assess, through cross-checking in accordance with Article 109 of the Control Regulation, the consistency of the data referred to in paragraph 1 of this Article, with the data it has received in accordance with that Regulation and, where applicable, in accordance with relevant provisions of the SFPA.
3. The non-transmission of catch declarations or landing declarations to the third country referred to in paragraph 1 of this Article shall also be considered serious infringements for the purposes of Article 90 of the Control Regulation depending on the gravity of the infringement in question which shall be determined by the competent authority of the flag Member State, taking into account criteria such as the nature of the damage, its value, the economic situation of the offender and the extent of the infringement or its repetition.

TITLE III

FISHING OPERATIONS BY THIRD-COUNTRY FISHING VESSELS IN UNION WATERS*Article 31***RFMO membership requirements**

A third-country fishing vessel may only carry out fishing operations in Union waters on stocks managed by an RFMO if the third country is a contracting party to that RFMO.

*Article 32***General principles**

1. A third-country fishing vessel shall not engage in fishing operations in Union waters unless it has been issued with a fishing authorisation by the Commission. It shall only be issued with such an authorisation if it fulfils the eligibility criteria set out in Article 5.
2. A third-country vessel authorised to fish in Union waters shall comply with the rules governing the fishing operations of Union vessels in the fishing area in which it operates. Should the provisions laid down in the relevant fisheries agreement be different, the provisions shall be stated explicitly either in that agreement or by means of rules agreed with the third country implementing that agreement.
3. If a third-country fishing vessel is sailing through Union waters without an authorisation issued under this Regulation, its fishing gear shall be lashed and stowed in accordance with the conditions laid down in Article 47 of the Control Regulation so that it is not readily usable for fishing operations.

*Article 33***Conditions for fishing authorisations**

1. The Commission may only issue an authorisation to a third-country fishing vessel for fishing operations in Union waters if:
 - (a) there is a surplus of allowable catch that would cover the proposed fishing opportunities as required under Article 62(2) and (3) of UNCLOS;
 - (b) the conditions set out in the relevant fisheries agreement are complied with and the fishing vessel is eligible under the fisheries agreement with the third country concerned and, where relevant, is on the list of vessels under that agreement;
 - (c) the information required under the agreement for the fishing vessel and the associated support vessel(s) is complete and accurate, and the vessel and any associated support vessel(s) have an IMO number when so required under Union law;

- (d) the fishing vessel is not included in an IUU vessel list adopted by an RFMO and/or by the Union pursuant to the IUU Regulation;
 - (e) the third country is not listed as non-cooperating pursuant to the IUU Regulation or as allowing non-sustainable fishing pursuant to Regulation (EU) No 1026/2012.
2. Point (a) of paragraph 1 shall not apply to third-country vessels carrying out fishing operations under an agreement on exchange of fishing opportunities or joint management of fish stocks of common interest.

Article 34

Procedure for obtaining fishing authorisations

1. The third country concerned shall send the Commission the applications for its fishing vessels before the deadline in the agreement concerned or that set by the Commission.
2. The Commission may ask the third country for additional information necessary for verifying that the conditions provided for in Article 33 have been met.
3. When it is established that the conditions referred to in paragraph 2 are met, the Commission shall issue a fishing authorisation and inform the third country and the Member States concerned of this without delay.

Article 35

Management of fishing authorisations

1. If a condition set out in Article 33 is no longer met, the Commission shall take the appropriate action, including amending or withdrawing the authorisation, and inform the third country and the Member States concerned of this.
2. The Commission may refuse, suspend or withdraw the authorisation issued to the third-country fishing vessel in cases where a fundamental change of circumstances has occurred or in cases of a serious threat to the sustainable exploitation, management and conservation of marine biological resources, or where it is essential in order to prevent or suppress IUU fishing, or in cases where the Union has decided to suspend or sever relations with the third country concerned.

The Commission shall immediately inform the third country concerned in the event that it refuses, suspends or withdraws the authorisation in accordance with the first subparagraph.

Article 36

Closure of fishing operations

1. Where fishing opportunities granted to a third country are deemed to have been exhausted, the Commission shall immediately notify it and the competent inspection authorities of the Member States of this. To ensure the continuance of fishing operations of non-exhausted fishing opportunities, which may also affect the exhausted opportunities, the third country shall submit to the Commission technical measures preventing any negative impact on the exhausted fishing opportunities.
2. From the date of the notification referred to in paragraph 1, the fishing authorisations issued to vessels flying the flag of that third country concerned shall be considered to be suspended for the fishing operations concerned and the vessels shall no longer be authorised to engage in those fishing operations.
3. Fishing authorisations shall be considered to be withdrawn where a suspension of fishing authorisations in accordance with paragraph 2 concerns all the operations for which they have been granted.
4. The third country shall ensure that the fishing vessels concerned are informed immediately of the application of this Article and that they cease all fishing operations concerned. The third country shall also inform the Commission without delay when fishing vessels flying its flag have ceased their fishing operations.

*Article 37***Overfishing of quotas in Union waters**

1. When the Commission establishes that a third country has exceeded the quotas it has been allocated for a stock or group of stocks, the Commission shall operate deductions from the quotas allocated to that country for that stock or group of stocks in subsequent years. The Commission shall endeavour to ensure that the amount of the deduction is consistent with deductions imposed on Member States in similar circumstances.
2. If a deduction in accordance with paragraph 1 cannot be made on the quota for a stock or group of stocks that was overfished as such because that quota for a stock or group of stocks is not sufficiently available to the third country concerned, the Commission may, after consultation with the third country concerned, operate from quotas in subsequent years for other stocks or groups of stocks available to that third country in the same geographical area, or to the corresponding commercial value.

*Article 38***Control and enforcement**

1. A third-country vessel authorised to fish in Union waters shall comply with the control rules governing the fishing operations of Union vessels in the fishing area in which it operates.
2. A third-country vessel authorised to fish in Union waters shall provide to the Commission or the body designated by it, and, where relevant, to the coastal Member State, the data which Union vessels are required to send to the flag Member State under the Control Regulation.
3. The Commission, or the body designated by it, shall send the data referred to in paragraph 2 to the coastal Member State.
4. A third-country vessel authorised to fish in Union waters shall provide upon request to the Commission or the body designated by it the observer reports produced under applicable observer programmes.
5. A coastal Member State shall record all infringements committed by third-country fishing vessels, including the related sanctions, in the national register provided for in Article 93 of the Control Regulation.

TITLE IV

DATA AND INFORMATION*Article 39***Union database for fishing authorisations issued under this Regulation**

1. The Commission shall set up and maintain an electronic Union fishing authorisation database containing all fishing authorisations granted in accordance with Titles II and III, made of a public part and a secure part. That database shall:
 - (a) record all information submitted in accordance with the Annex and other information submitted to the Commission for the purpose of issuing fishing authorisations under Titles II and III, including the name, city, country of residence of the owner and of up to five main beneficial owners, and display the status of each authorisation as soon as possible;
 - (b) be used for data and information exchange between the Commission and a Member State; and
 - (c) be used for the purposes of sustainable management of fishing fleets as well as for the purposes of control only.
2. The list of all fishing authorisations issued under Titles II and III in the database shall be publicly accessible and contain all of the following information:
 - (a) the name and flag of the vessel and its CFR and IMO numbers where required under Union law;

- (b) the type of authorisation including target species or species group(s); and
- (c) the authorised time and area of fishing operation (start and end dates; fishing area).

3. A Member State shall use the database to submit applications for fishing authorisations to the Commission and to keep its details updated, as required under Articles 11, 18, 22 and 26, and a third country shall use the database to submit applications for fishing authorisations as required under Article 34.

Article 40

Technical requirements

1. The exchange of information referred to in Titles II and III and in this Title shall be carried out in an electronic format.
2. The Commission may adopt implementing acts, without prejudice to the provisions of Directive 2007/2/EC of the European Parliament and of the Council ⁽¹⁾, establishing technical operational requirements for the recording, formatting and transmission of the information referred to in Titles II and III and in this Title. The technical operational requirements shall become applicable not earlier than 6 months, and not later than 18 months, after their adoption. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 45(2).

Article 41

Access to data

Without prejudice to Article 110 of the Control Regulation, the Member States or the Commission shall grant access to the secure part of the Union database for external fishing fleets' fishing authorisations referred to in Article 39 of this Regulation to the relevant competent administrative services involved in the management of fishing fleets.

Article 42

Data management, protection of personal data and confidentiality

Data obtained under this Regulation shall be handled in accordance with Articles 112 and 113 of the Control Regulation, Regulation (EC) No 45/2001 and Directive 95/46/EC and its national implementing rules.

Article 43

Relations with third countries and RFMOs

1. When a Member State receives information from a third country or an RFMO which is relevant for the effective application of this Regulation, it shall communicate that information to the Commission or the body designated by it, and, where appropriate, to other Member States concerned, provided that it is permitted to do so under bilateral agreements with that third country or the rules of the RFMO concerned.
2. The Commission or the body designated by it may, in the framework of fisheries agreements concluded between the Union and third countries, under the auspices of RFMOs to which the Union is a contracting party, communicate relevant information concerning non-compliance with the rules of this Regulation, or serious infringements, to other parties to those agreements or organisations subject to the consent of the Member State that supplied the information and in accordance with Regulation (EC) No 45/2001.

TITLE V

PROCEDURES, DELEGATION AND IMPLEMENTING MEASURES

Article 44

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 5(2) and Article 15 shall be conferred on the Commission for a period of 5 years from 17 January 2018. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of that 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

⁽¹⁾ Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

3. The delegation of power referred to in Article 5(2) and Article 15 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of that decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 5(2) and Article 15 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Article 45

Committee procedure

1. The Commission shall be assisted by the Committee for Fisheries and Aquaculture established under Article 47 of the Basic Regulation. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

TITLE VI

FINAL PROVISIONS

Article 46

Repeal

1. The FAR is hereby repealed.

2. References to provisions of the repealed Regulation shall be construed as references to this Regulation.

Article 47

Transitional provisions concerning the temporary reallocation of fishing opportunities under existing protocols

1. By way of derogation from Article 12, for those protocols to SFPA that are in force or are provisionally applied on 17 January 2018, the procedure for temporary reallocation of fishing opportunities set out in this Article shall be used until the expiry of the protocol in question.

2. In the context of an SFPA if, on the basis of the requests for transmission of applications referred to in Article 11, it appears that the number of fishing authorisations or the amount of fishing opportunities allocated to the Union under a protocol are not fully utilised, the Commission shall inform the Member States concerned and shall request them to confirm not making use of those fishing opportunities. The absence of a reply within the deadlines, to be set by the Council upon the conclusion of the SFPA, shall be considered as confirmation that the vessels of the Member State concerned are not making full use of their fishing opportunities in the given period.

3. After confirmation by the Member State concerned, the Commission shall assess the total non-utilised fishing opportunities and shall make that assessment available to the Member States.

4. Member States wishing to make use of the non-utilised fishing opportunities referred to in paragraph 3 shall submit to the Commission a list of all vessels for which they intend to request a fishing authorisation, as well as the request for the transmission of applications for each of those vessels, in accordance with Article 11.

5. The Commission shall decide on the reallocation, in close cooperation with the Member States concerned.

If a Member State concerned objects to that reallocation, the Commission shall, by means of implementing acts, decide on the reallocation taking into account the criteria laid down in paragraph 8 of this Article, and shall notify the Member States concerned thereof. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 45(2).

6. The transmission of applications in accordance with this Article shall in no way affect the allocation of fishing opportunities or their exchange amongst Member States, in accordance with Article 16 of the Basic Regulation.

7. The Commission shall not be prevented from applying the mechanism referred to in paragraphs 2 to 5 until the deadlines referred to in paragraph 2 are finalised.

8. For the reallocation of fishing opportunities under this Article, the Commission shall take into account, in particular:

- (a) the date of each of the requests received;
- (b) the fishing opportunities available for reallocation;
- (c) the number of requests received;
- (d) the number of requesting Member States; and
- (e) if fishing opportunities are fully or partly based on amounts of fishing effort or catches, the fishing effort expected to be deployed or the catches expected to be made by each of the vessels concerned.

Article 48

Entry into force

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

Done at Strasbourg, 12 December 2017.

For the European Parliament

The President

A. TAJANI

For the Council

The President

M. MAASIKAS

ANNEX

List of data to be provided

I	APPLICANT
1	Name of the economic operator
2	Email
3	Address
4	Fax
5	Telephone
6	Name of the owner
7	Email
8	Address
9	Fax
10	Telephone
11	Name of association or agent representing the economic operator
12	Email
13	Address
14	Fax
15	Telephone
16	Name(s) of master(s)
17	Email
18	Address
19	Fax
20	Telephone
II	FISHING VESSEL
21	Vessel name
22	Vessel identifier (IMO number, CFR number, etc.)
23	Method of fish preservation on board
24	Vessel type FAO code
25	Gear type FAO code

III	FISHING CATEGORY FOR WHICH AUTHORISATION IS REQUESTED
26	Type of authorisation (direct authorisation; high seas; support)
27	Fisheries area (FAO Area(s), Subarea(s), Division(s), Subdivision(s) as appropriate)
28	Area of operation (high seas; third country — specify)
29	Landing ports
30	Target species FAO code(s) (or fishing category for SFPAs)
31	Authorisation period requested (start and end dates)
32	List of support vessels (vessel name; IMO number; CFR number)
IV	CHARTERING
33	Vessel operating under chartering arrangement (Y/N)
34	Type of chartering arrangement
35	Period of chartering (start and end dates)
36	Fishing opportunities (mt) allocated to vessel under chartering
37	Third country allocating fishing opportunities to the vessel under chartering

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