

EBA/CP/2017/21

15 December 2017

Consultation Paper

Draft Regulatory Technical Standards

On the homogeneity of the underlying exposures in securitisation under Art. 20(14) and 24(21) of [Regulation (EU) XXX/201X ... laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation]

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Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 15 March 2018. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

Executive Summary

1. These proposed draft regulatory technical standards (RTS), developed in accordance with Article 20(14) and 24(21) of [the Regulation (EU) No XXX/201X], further specify which underlying exposures are deemed homogeneous, which is one of the requirements on simplicity of the securitisation transaction. The application of the homogeneity requirement - together with other requirements with respect to simplicity, standardisation and transparency (STS) – is therefore a prerequisite for a more risk sensitive regulatory treatment of the securitisation, as established in the EU securitisation framework.
2. The overarching objective of the homogeneity requirement is, in accordance with the Securitisation Regulation, to simplify and facilitate the assessment of underlying risks by investors, and to enable investors to perform robust due diligence. Building on this objective, the proposed draft RTS establish a set of criteria for the homogeneity of the underlying exposures, according to which the underlying exposures should be able to be assessed by the investors on the basis of common methodologies and parameters, and should comply with all of the following conditions: (i) they have been underwritten according to similar underwriting standards, methods and criteria; (ii) they are serviced according to uniform servicing procedures; (iii) they fall within the same asset category, and (iv) they take into account relevant risk factors.
3. The draft RTS specify a list of asset categories as well as lists of the risk factors that should be considered for each of those asset categories. The asset categories reflect the most common types of underlying exposures securitised in the market practice, which share similar characteristics with respect to the type of obligors, credit facility, collateral, repayment characteristics or other factors. The underlying exposures falling within one asset category should be further differentiated based on the relevant risk factor(s) that significantly affect the similarity of the risk profiles and cash flow characteristics of the underlying exposures in the respective pool of exposures.
4. Given the significance of all criteria on homogeneity for both non-ABCP and ABCP securitisations, with the exception of a few risk factors which may be less relevant for either the former or the latter, the proposed draft RTS establish the same homogeneity criteria for both non-ABCP and ABCP securitisation.

Next steps

5. The proposed draft regulatory technical standards are published for a three months public consultation, from 15 December 2017 to 15 March 2018. Following the public consultation, the draft regulatory technical standards shall be submitted to the Commission for endorsement in the period that runs six months from the date of entry into force of [the Regulation (EU) No XXX/201X], following which they will be subject to scrutiny by the

European Parliament and the Council before being published in the Official Journal of the European Union.

Background and rationale

6. A new EU securitisation framework came into force on [XX] January 2018. This comprises of [the Regulation (EU) No XXX/201X] and of [the Regulation (EU) No XXX/201X amending the CRR] containing targeted amendments to the CRR with regards to securitisation, which together aim at building and reviving a sound and safe securitisation market in the EU. The Securitisation Regulation establishes a set of requirements for identifying simple, transparent and standardised securitisation, while the amended CRR sets out a framework for a more risk-sensitive regulatory treatment of exposures to securitisations complying with such criteria. To reflect the particularities of short-term securitisations in the context of ABCP programmes, two sets of requirements are developed in the Securitisation Regulation for term (i.e. non-ABCP) securitisations and ABCP securitisations, respectively. While the requirements are largely similar, in the case of the ABCP securitisations they are adapted to reflect the different transaction level, programme level and sponsor level characteristics of these types of securitisation.
7. As part of the requirement related to the simplicity of non-ABCP securitisations, the Securitisation Regulation defines the criterion on the homogeneity of the securitised exposures (in Art. 20(8)), according to which *“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.”*
8. A similar requirement is introduced for ABCP securitisations (in Art. 24(15)), as part of the requirements applicable at the ABCP transaction level, according to which *“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.”*
9. The Securitisation Regulation mandates the EBA to develop two sets of draft RTS, one applicable to non-ABCP securitisations, the other one to ABCP securitisations, to specify further which underlying exposures are deemed to be homogeneous. Concretely, Art. 20(14) applicable to non-ABCP securitisation sets out that *“the EBA, in close cooperation with ESMA and EIOPA, shall develop the RTS further specifying which underlying exposures referred to in paragraph 8 are deemed to be homogeneous.”* Art. 24(21) applicable to ABCP securitisation establishes a corresponding mandate for ABCP securitisations. Both sets of RTS shall be submitted to the Commission by six months from the date of entry into force of the Securitisation Regulation.
10. Recital 27 provides additional guidance on the homogeneity of underlying exposures and specifies that *“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 car loans and leases, or pools of credit facilities to individuals for personal, family or household consumption purposes.”

11. These mandates assigned to the EBA are separate from those for developing guidelines and recommendations, in close cooperation with ESMA and EIOPA, on the harmonised interpretation of the criteria on simplicity, transparency and standardisation, for non-ABCP securitisations (Art.19(2)), and ABCP securitisations (Art. 23(3)), within nine months from the date of entry into force of the Securitisation Regulation.

Rationale

Scope of application

12. To fulfil the RTS mandates, and taking into account the base definition of the homogeneity of underlying exposures provided in Arts. 20(8) and 24(15) of the Securitisation Regulation, the EBA is proposing a set of criteria to further define the homogeneity of the underlying exposures, based on the following underlying principles:

- a. **Underlying objective:** The overarching objective of the homogeneity requirement is to simplify and facilitate the assessment of underlying risks with respect to the securitised exposures by investors, and to enable the investors to perform robust due diligence. This translates into an objective that the homogeneous pools should allow the investor to assess the underlying exposures in the pool, the underlying risks (in particular credit risks) and cash flow characteristics, on the basis of common methodologies and parameters. The investor would thus not need to analyse and assess materially different credit risk profiles and cash flow characteristics when carrying out the risk analysis and due diligence. The criteria defined in the RTS should facilitate the assessment which exposures can and cannot be mixed together in one securitised pool, for the purpose of STS securitisation.
- b. **Underwriting:** The underlying exposures should be underwritten based on similar underwriting standards, methods and criteria, leading to underlying exposures exhibiting similar risk profiles and cash flow characteristics. This is because the application of non-uniform underwriting standards results in exposures with materially different risk profiles and cash flow characteristics. This requirement is without prejudice to Art. 20(1) which sets out that the underlying exposures be originated via a high standard of underwriting practices¹.
- c. **Servicing:** The underlying exposures in the pool, at the time of their selection and thereafter, should be serviced according to uniform servicing procedures. Servicing of the securitised exposures, which includes monitoring, collecting, managing and distributing cash receivables and providing related cash and payment services, has a substantial impact on the cash flow expected

¹ Art. 20(10) of the Securitisation Regulation requires that 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 not being securitised.

to be received from the underlying exposures and is therefore one of the core aspects of investors' assessments and due diligence analysis. Irrespective of whether the servicing is administered by the originator or a third party/parties, it should be executed by means of uniform procedures, systems and governance, i.e. it should allow the investor to use the same methodology for the cash flow analysis of the securitised exposures, and prevent that the investor needs to analyse materially different servicing arrangements when undertaking cash flow analysis. This should facilitate the cash flows projections and allow for statistically reliable assumptions by investors about payment and default characteristics.

- d. One asset category: The pool of homogeneous exposures should only contain exposures of the same asset category, and should not mix exposures belonging to different asset categories, in one pool.
 - e. Risk factors: The underlying exposures should be further differentiated based on relevant risk factors which significantly affect the similarity of the risk profiles and cash flow characteristics of the exposures within the respective asset category under which the exposure falls, and hence enable the investor to assess the underlying risks on the basis of common methodologies and parameters. Such differentiation based on the risk factors is intended to broadly reflect the current market practice and, in essence, is not intended to impose additional requirements.
13. The application of the homogeneity criteria should result in a pool of exposures that are homogeneous in terms of asset type, and in particular with respect to their cash flow characteristics, as specified in the definition of the homogeneity in the Securitisation Regulation. The criteria developed take into account the cross-sectoral nature of securitisation.
14. The determination of the homogeneity of a pool of exposures and the application of the individual criteria specified in the proposed draft RTS, would be subject to disclosure (as part of the STS notification or in other disclosures under the new securitisation framework). Given that the disclosure aspects are outside of the mandate of these draft RTS, they are not covered in these RTS.
15. The application of the homogeneity criteria should not prevent the originator from structuring a diversified portfolio, nor should they lead to excessive concentration in the portfolios (for example to exposures to obligors in a specific geographical area, or to a specific type of obligors). Diversification, as an instrument for preventing concentration risk, should be balanced against the need for homogeneity.
16. The proposed draft RTS developed by the EBA address two directly interlinked mandates assigned to the EBA, in order to define the homogeneity of underlying exposures for both non-ABCP and ABCP securitisation. The criteria are the same for both types of securitisation.

Asset categories

17. Art. 1(c) of the proposed draft RTS provides that the underlying exposures in the pool need to belong to the same asset category. On the one hand the proposed draft RTS do not establish an

exhaustive list of which underlying exposures are considered to belong to one asset category. This is in order to avoid unnecessarily limiting the securitisation market practices and providing reverse incentives to originators and original lenders with regard to diversification in the pool. Further, providing an exhaustive list of asset categories, could prove futile in light of financial innovation, hence the need for 'future-proofing' the rules. On the other hand, with the view to providing some clarity and certainty to the market the proposed draft RTS provide, in Art. 2, a list of types of underlying exposures that would always be deemed to constitute one same asset category.

18. In this regard, it should be noted that different categorisations of assets are applied in the regulatory and market practice. The proposed draft RTS do not employ the categorisation of assets that is used in the credit risk regulatory framework, which sets out different types of exposure classes for the purpose of calculation of capital requirements against the credit risk under the Standardised Approach and Internal Ratings Based approach, such as, for example, retail exposures, exposures to corporates, exposures to institutions, exposures secured by mortgages on immovable property, and others.

19. Rather, the asset categorisation in the proposed draft RTS reflects the most common broad categories of underlying exposures that are used in the securitisation practice. The variety of asset categories already reflects some of the differing characteristics of obligors, credit facility, collateral, repayment characteristics or other factors.

20. The assessment of homogeneity of the underlying securitised exposures based on the attachment to an asset category is also relevant in the EU monetary framework. For asset backed securities to be eligible as collateral in the Eurosystem credit operations, assets backing the securitisation must be homogeneous i.e. it must be possible to report them according to one of the existing loan level templates developed for different asset types.²

21. Similarly, the homogeneity of the exposures in the pool in a securitisation, based on their adherence to an asset category, is also one of the requirements applied in the context of the Solvency II and LCR Delegated Acts. While the purpose of these requirements applicable to the asset backed securities are different – in case of the Solvency II it is the eligibility to apply a specific capital treatment, and in case of LCR it is the eligibility to qualify as level 2B securitisations in the liquidity buffer – both frameworks require that the asset backed securities are backed by a pool of homogeneous underlying exposures, falling under one of specified asset categories.³

² According to Art. 73 of the General Documentation applicable to the implementation of the monetary policy framework (Guideline 2014/60/ECB), the asset categories for which the templates have been developed include: residential mortgages, commercial real estate mortgages, loans to SMEs, auto loans, consumer finance loans, leasing receivables, and credit card receivables. The Eurosystem may consider an asset backed security not to be homogeneous upon assessment of the data submitted by the counterparty.

³ The asset categories specified in the Art. 13 of the LCR Delegated Act (Commission Delegated Regulation 2015/61), and in Art. 177 of the Solvency II Delegated Act (Commission Delegated Regulation 2015/35) include: residential loans, fully guaranteed residential loans, commercial loans, leases and credit facilities, auto loans and leases, and loans and credit facilities to individuals. Further requirements and specifications apply for each asset category.

22. Lastly, the disclosure framework for structured finance instruments developed in accordance with Art. 8b of the Regulation on Credit Rating Agencies (to be soon replaced by the draft RTS and ITS on disclosure requirements under the new EU securitisation framework) – which is composed of different templates based on different asset categories – is also indicative of the importance of the differentiation of the securitised exposures based on asset category.⁴

23. The list of asset categories provided in the Article 2 of the proposed draft RTS includes the following:

- a. Residential loans secured with one or several mortgages on residential immovable property (this should include residential loans fully guaranteed by an eligible protection provider referred to in Article 201 of the CRR qualifying for the credit quality step 2 or above as set out in Chapter 2 of Part Three Title II of the CRR);
- b. Commercial loans secured with one or several mortgages on commercial immovable property (this should include loans secured with mortgage on offices, hospitals, care residences, storage facilities, hotels, nursing facilities, industrial properties, multifamily properties and other commercial premises);
- c. Credit facilities to natural persons (this should include loans, leases and other types of credit facilities to individuals for personal, family and household consumption purposes);
- d. Credit facilities to micro-, small- and medium-sized enterprises and corporates (this should include loans, leases and other types of credit facilities to SMEs and corporates including corporate and business property loans);
- e. Auto loans and leases (this should include loans and leases secured by automobile vehicles);
- f. Credit card receivables (this should include receivables from general purpose credit cards, co-branded cards and affinity cards);
- g. Trade receivables (this should include receivables generated by the sale of goods and services).

24. This requirement should not preclude that one underlying exposure could be considered to fall under more than one asset category. For example, an auto loan to a natural person may fall under both 'auto loans and leases' category, as well as under the 'credit facilities to natural persons' category. However, it is crucial that the underlying exposures in the pool all fall within one asset category.

⁴ According to Art. 4 of the disclosure framework for structured finance instruments (Commission Delegated Regulation 2015/3), the asset categories for which the templates have been developed include: residential mortgages, commercial mortgages, loans to SMEs, auto loans and leases, consumer loans, credit card loans, and leases to individuals and/or businesses.

Risk factors

25. Given the broad scope of the asset categories, belonging to one such asset category does not render the underlying exposures sufficiently homogeneous. Additional criteria, largely in line with the current market practice, should therefore be applied, in the form of risk factors, the application of which would result in further differentiation of exposures within the respective asset category.

26. The risk factors specified in the proposed draft RTS are aimed to group all core determinants for assessment of homogeneity, taking into account specific cash flow, credit risk and contractual characteristics of the underlying exposures, irrespective of the asset category. They include the following:

- a. Type of obligor: application of this risk factor should result in differentiation between exposures where the obligor is a natural person, SME borrower, non-SME corporate borrower, financial institution, public sector entity, regional government and local authority;
- b. Collateral provided: application of this risk factor should result in differentiation between credit claims that are collateralised and credit claims that are un-collateralised;
- c. Seniority on the liquidation of the property or collateral in relation to other creditors: application of this risk factor should result in differentiation between credit claims with higher ranking liens on the property or collateral, and credit claims with no higher ranking liens on a different property or a different collateral;
- d. Type of credit facility: application of this risk factor should result in differentiation between loan, lease, purchase, hire and revolving credit;
- e. Object of the financing: application of this risk factor should result in differentiation between automobile vehicles, nautical vehicles, aircraft, railcars, satellites, fleet, equipment, real estate, commodities, financing for general consumption purposes, and financing for business purposes;
- f. Type of immovable property: application of this risk factor should result in differentiation between income producing properties (i.e. properties the repayment of which is materially dependent on the cash flows i.e. rent/sale generated by property), and non-income producing properties (i.e. properties the repayment of which is not materially dependent on cash flows i.e. rent/sale generated by property);
- g. Type of repayment or amortisation: application of this risk factor should result in differentiation between fully amortising exposures, exposures with balloon amortisation (i.e. amortisation with partial principal repayment followed by a larger final principal amount) and exposures with bullet amortisation (i.e. amortisation in which the full principal amount is repaid in the last instalment);
- h. Industrial sector of the seller;

- i. Jurisdiction of the immovable property in case of underlying exposures secured by immovable property, or the jurisdiction of the residency of the obligor in case of other underlying exposures;
- j. Governing law for the contractual arrangements with respect to the origination and transfer to SSPE of the underlying exposures and with respect to the realisation and enforcement of the credit claims.

27. In order to provide more clarity and facilitate the assessment of homogeneity, separate lists of risk factors have been established that contain the risk factors which *need to be considered* with regard to *each asset category*. Such lists include all the potential risk factors which can *generally* determine the homogeneity, for each asset category. Such lists effectively contain all the risk factors specified in paragraph 25 above, while they exclude all those risk factors that are:

- a. Irrelevant or inapplicable for that asset category. For example, the risk factor of type of immovable property is inapplicable for the asset category of auto loans and leases; and the risk factor of industrial sector is irrelevant for the asset category of credit facilities to non-SME corporates;
- b. Already reflected at the asset category level i.e. those risk factors that constitute the basis for the uniform assignment of underlying exposures to the respective asset category. For example, the asset category of residential mortgages already takes into account the risk factors of type of obligor (i.e. it only includes exposures to natural persons), collateral provided (i.e. only includes collateralised claims), type of credit facility (i.e. only includes loans), and object of financing (i.e. only includes real estate).
- c. All the remaining risk factors constitute the list of risk factors that need to be considered with regard to that asset category (mapping of the risk factors that need to be considered for each asset category, is summarised in Figure 1).

28. Nevertheless, when it comes to a *particular* pool of underlying exposures, only one or some of the risk factors that need to be considered with regard to an asset category will significantly affect the similarity of the risk profiles and cash flow characteristics of the exposures. As a result, only those risk factors will be *relevant* for determining the homogeneity of the particular pool of underlying assets, hence only those risk factors should be effectively applied.

29. The approach proposed in the RTS therefore differentiates between the concept of risk factors that need to be 'considered' i.e. assessed for a particular asset category, and the risk factors that are 'relevant' i.e. they need to be applied. The proposed draft RTS do not require that all those risk factors that need to be considered, shall automatically be applied to a particular pool of securitised exposures. The objective of the establishment of lists of risk factors per asset category is merely to narrow down the list of risk factors that should be assessed in the assessment of homogeneity, and thereby to provide more clarity for the stakeholders and facilitate the assessment of homogeneity, by excluding all those risk factors that are objectively and in any case not pertinent for that asset category (by using the logic explained in the paragraph 26).

30. A risk factor should be deemed to be relevant where it results in all of the underlying exposures exhibiting similar risk profiles and cash flow characteristics within the respective asset category, allowing the investor to assess the underlying risks on the basis of common methodologies and parameters. When considering the relevance of the individual risk factors, it should be taken into account that different risk factors, and different number of risk factors, may be relevant for individual pools of exposures. The proposed draft RTS put forward a general requirement that all relevant risk factors should be applied. However, this does not preclude that only one risk factor is considered relevant for a particular pool of exposures, and hence application of one risk factor only is considered sufficient for a pool of exposures to be considered homogeneous.

31. The consideration of relevance of the individual risk factors should in addition take into account the following:

- a. Asset category to which the underlying exposures belong: individual risk factors may be considered more relevant for one asset category and less relevant for another asset category. For example, the risk factor of jurisdiction is generally more relevant for credit facilities addressed to natural persons (i.e. residential mortgages, credit cards or other types of credit facilities), given the existence of substantial differences in terms of consumer protection rights, credit granting, servicing standards, underwriting standards and enforcement rules (e.g. foreclosure of an immovable property) with respect to such consumer-based financing, across jurisdictions. Jurisdiction is less a relevant criterion for credit financing to obligors which are not natural persons, where other criteria are more relevant for assessment of homogeneity. Jurisdiction may also be less relevant where the underlying exposures are differentiated based on the governing laws for the contractual arrangements with respect to the origination and transfer to SSPE of the underlying exposures and with respect to the realisation and enforcement of the associated credit claims.
- b. Type of securitisation (i.e. non-ABCP or ABCP securitisation): individual risk factors may be relevant only for certain asset categories of non-ABCP securitisation or ABCP securitisation or may be particularly relevant for either non-ABCP securitisation or ABCP securitisation. For example, jurisdiction is a less relevant criterion for the ABCP securitisation (and particularly for the securitisation of trade receivables), as sellers may often be unable to generate a sufficiently large pool of receivables that is homogenous in terms of the jurisdiction in which those receivables have been originated. As heterogeneity with regard to the jurisdiction is a common practice with regard to such receivables and is therefore being considered when setting the required credit enhancement levels and other required risk mitigation measures for a transaction, requiring homogeneity in terms of jurisdiction for trade receivables, and ABCP securitisation in general, is not deemed relevant.
- c. Specific characteristics of a particular pool of underlying exposures: consideration of relevance of the risk factors should take into account specific characteristics of a particular pool of exposures, based on a case-by-case assessment. For example, for two pools of exposures of the same asset category and of the same type of securitisation, different risk

factors may be considered relevant, given that specific characteristics of those pools of exposures may differ.

32. It is expected that the justification why the respective risk factor(s) is/are considered relevant or irrelevant for a particular pool of underlying exposures, would be provided and be subject to disclosure (as part of STS notification or other disclosure requirements under the new securitisation framework).

33. Based on the approach in the proposed draft RTS, an example of a homogeneous pool of underlying exposures would include exposures that:

- a. Have been underwritten according to similar underwriting standards and that are serviced according to uniform servicing procedures;
- b. Belong to the asset category of residential mortgages;
- c. Have been differentiated based on the relevant risk factors: for this particular case of securitisation, the risk factors of jurisdiction and the type of immovable property could be considered the most relevant ones. The pool of underlying exposures would thus only contain exposures of non-income producing residential mortgages secured by residential property located in one specific jurisdiction (and could not be mixed with exposures of income-producing loans secured by residential property in that or other jurisdictions).
- d. In the end, this should result in a pool of exposures that have similar risk profiles and cash flow characteristics, enabling the investor to assess the underlying risks on the basis of common methodologies and parameters.



Figure 1: Mapping of risk factors that need to be considered for each asset category

Legend:

‘Irrelevant’ means risk factor that is irrelevant or inapplicable for the asset category

‘Already reflected’ means risk factor that is already reflected at the asset category level i.e. it constitutes the basis for the uniform assignment of underlying exposures to the respective asset category

‘To be considered’ means risk factor that should be considered for the respective asset category in the determination of relevant risk factors for the particular pool of underlying exposures

Risk factor / Asset category	Residential loans secured with mortgages (Art. 2 (a))	Commercial loans secured with mortgages (Art. 2 (b))	Credit facilities to natural persons (Art. 2 (c))	Credit facilities to SMEs and corporates (Art. 2 (d))	Auto loans and leases (Art. 2 (e))	Credit card receivables (Art. 2 (f))	Trade receivables (Art. 2 (g))	Underlying exposures that all do not fall under the asset categories listed in Art. 2
Type of obligor (Art. 3 (a))	Already reflected	To be considered	Already reflected	Already reflected	To be considered	To be considered	Already reflected	To be considered
Collateral provided (Art. 3 (b))	Already reflected	Already reflected	To be considered	To be considered	Already reflected	Irrelevant	Already reflected	To be considered
Seniority on collateral (Art. 3 (c))	To be considered	To be considered	To be considered	To be considered	To be considered	Irrelevant	Already reflected	To be considered
Type of credit facility (Art. 3 (d))	Already reflected	Already reflected	To be considered	To be considered	To be considered	Already reflected	Already reflected	To be considered
Object of financing (Art. 3 (e))	Already reflected	Already reflected	To be considered	To be considered	Already reflected	Irrelevant	Irrelevant	To be considered
Type of immovable property (Art. 3 (f))	To be considered	To be considered	Irrelevant	Irrelevant	Irrelevant	Irrelevant	Irrelevant	To be considered
Type of repayment/amortisation (Art. 3 (g))	To be considered	To be considered	To be considered	To be considered	To be considered	Already reflected	Already reflected	To be considered
Industrial sector of the seller (Art. 3 (h))	Irrelevant	Irrelevant	Irrelevant	Irrelevant	Irrelevant	Irrelevant	To be considered	To be considered
Jurisdiction of property/obligor (Art. 3 (i))	To be considered	To be considered	To be considered	To be considered	To be considered	To be considered	Irrelevant	To be considered
Governing law (Art. 3 (j))	To be considered	To be considered	To be considered	To be considered	To be considered	To be considered	Irrelevant	To be considered

Draft regulatory technical standards

In between the text of the draft RTS that follows, further explanations on specific aspects of the proposed text are occasionally provided, which either offer examples or provide the rationale behind a provision, or set out specific questions for the consultation process. Where this is the case, this explanatory text appears in a framed text box.

COMMISSION DELEGATED REGULATION (EU) No .../..

of XXX

[...]

**supplementing Regulation (..) No xx/XXXX] of the European Parliament
and of the Council with regard to regulatory technical standards for the
homogeneity of the underlying exposures in securitisation**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to [Regulation (EU) No XXX/201X of the European Parliament and of the Council of dd/mm/yyyy ...⁵ 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], and in particular the third subparagraph of Article 20(14) and the third subparagraph of Article 24(21) thereof ,

Whereas:

- (1) The requirement on the homogeneity of underlying exposures is one of the requirements for identifying simple, transparent and standardised (STS) securitisations, the compliance with which is a precondition for a more risk-sensitive regulatory treatment of exposures to such securitisations, as introduced in the new EU securitisation framework consisting of [the Regulation (EU) No XXX/201X] and Regulation (EU) No 575/2013 as revised by Regulation [Regulation revising the CRR on securitisation issues].
- (2) In order to avoid interference with other conditions for the qualification of a securitisation as STS and interference with other general securitisation requirements, as well as to avoid unnecessary limitations of the market, the criteria for assessment of the homogeneity of underlying exposures should be related to the asset type characteristics.
- (3) In the same vein, such requirement of homogeneity for the purposes of STS securitisation should not provide incentives that would prevent the originator from structuring a diversified portfolio, nor should it lead to excessive concentration in the portfolios, for example to exposures to obligors in a specific geographical area, or to a specific type of obligors.

⁵ OJ.....

- (4) Given that the overarching objective of the homogeneity requirement is to simplify and facilitate the assessment of underlying risks with respect to the securitised exposures by the investors, and to enable the investors to perform robust due diligence, as provided in recital 27 of [the Regulation (EU) No XXX/201X], specifying which underlying exposures are deemed homogeneous should be done on the basis of criteria that enable the investor to assess the pool of underlying exposures on the basis of common methodologies and parameters, resulting in a pool of underlying exposures with similar risk profiles and cash flow characteristics.
- (5) The servicing of the underlying exposures in the pool according to uniform servicing procedures should constitute one such criterion establishing the homogeneity of the pool. This is because the servicing of the securitised exposures, which includes monitoring, collecting, managing and distributing cash receivables and providing related cash and payment services, has a substantial impact on the cash flows expected to be received from the underlying exposures and is therefore one of the core aspects of an investor's assessments and due diligence analysis. Irrespective of whether the servicing is administered by the originator or a third party or parties, administering the servicing of the pool of underlying exposures by means of uniform procedures, systems and governance is a necessary condition for recognising the pool of underlying exposures as homogeneous, because it allows the investor to use the same methodology for the cash flow analysis of the securitised exposures, and prevents that the investor needs to analyse materially different servicing arrangements when undertaking cash flow analysis. Servicing through uniform servicing procedures facilitates cash flows projections and allows for statistically reliable assumptions by investors about payment and default characteristics.
- (6) Even where the requirement of Art. 19(10) of [the Regulation (EU) No XXX/201X] is met, so that underlying exposures are originated via a high standard of underwriting practices on behalf of the originator or original lender, it is still necessary to ensure the similarity of the underwriting standards, methods and criteria in order to confirm the homogeneity of the pool of underlying exposures. This is because, on the one hand, the use of similar underwriting should result in a pool of underlying exposures with similar risk profiles and cash flow characteristics, and hence should enable the investor to assess the pool of exposures on the basis of common methodologies and parameters. On the other hand, the use of non-uniform underwriting standards results in exposures with materially different risk profiles and characteristics even if such underwriting standards are all of a high quality.
- (7) The pool of underlying exposures should only contain exposures of one asset category which share similar characteristics with respect to the type of obligor, the credit facility, the collateral, the repayment characteristics or other factors, because such similarities enable the investor to assess the pool of underlying exposures on the basis of common methodologies and parameters.
- (8) Given that, conceptually, there are different ways of classifying asset categories and given that there are varying market practices with regard to securitisation, it is necessary to provide clarity with respect to which of the most common types of securitised exposures constitute one asset category for the purpose of the homogeneity criterion. Therefore, a list of asset categories is provided which lays down types of underlying exposures that would always be deemed to constitute one asset category.
- (9) In order to avoid unnecessarily limiting the existing securitisation market practices and financial innovation, the conditions for homogeneity should not be linked to a finite list of

asset categories for which underlying exposures would be deemed to belong to the same asset category. As a result, it is possible that underlying exposures in a pool form a single asset category even where such category is not explicitly mentioned in Article 2 of this Regulation. In that case, such underlying exposures should also be considered homogeneous, where they are considered to constitute one asset category and they also meet all the other homogeneity criteria.

- (10) Given that the scope of such asset categories is quite wide-ranging, belonging to one such asset category does not render the underlying exposures sufficiently homogeneous to ensure that they reflect similar risk profiles and specific cash flow characteristics. Therefore it is necessary to also require the application of additional criteria, in the form of risk factors which would result in further differentiation of exposures within the respective asset category. Hence also the need to apply at least one such risk factor for each asset category.
- (11) In order to provide more clarity and facilitate the assessment of homogeneity, separate lists should be established containing all the risk factors which need to be considered with regard to each asset category. Such lists should include all the potential factors which can *generally* determine homogeneity for each asset category and which are not already reflected at the level of asset category.
- (12) Nevertheless, when it comes to a *particular* pool of underlying exposures, only one or some of the risk factors that need to be considered with regard to an asset category will significantly affect the similarity of the risk profiles and cash flow characteristics of the exposures, and hence enable the investor to assess the underlying risks on the basis of common methodologies and parameters. As a result, only those risk factors will be relevant for determining the homogeneity of the particular pool of underlying exposures, hence only those risk factors should be applied. When considering the relevance of the individual risk factors for a particular pool of underlying exposures, the asset category, the type of securitisation and specific characteristics of the pool of underlying exposures, should be taken into account.
- (13) It is necessary to ensure that such lists of risk factors are exhaustive because while it is possible to conceive of infinite risk factors, not all of them can adequately reflect the further differentiation of exposures with regard to the asset characteristics and therefore their use would not lead to required homogeneity of a pool of exposures. Also, provision of exhaustive lists of the risk factors that should be considered for each asset category should lead to the application of a uniform approach with regard to the assessment of the STS criterion on homogeneity.
- (14) Given that, with regard to ABCP securitisations, the requirement on homogeneity is relevant only for the transaction level, by virtue of Article 24(15) of the [the Regulation (EU) No XXX/201X], and given that the criteria on the homogeneity are also relevant for ABCP securitisations, the same approach for determining the homogeneity of underlying exposures should be applied to non-ABCP securitisations and to ABCP securitisations. Individual risk factors may however be relevant only for certain asset categories of non-ABCP securitisation or ABCP securitisation or may be particularly relevant for either non-ABCP securitisation or ABCP securitisation.
- (15) The provisions in this Regulation are closely linked, since they deal with homogeneity for both non-ABCP and ABCP securitisation. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations,

it is desirable to include both regulatory technical standards on homogeneity required by [the Regulation (EU) No XXX/201X] in a single Regulation. This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.

- (16) The European Banking Authority has worked in close cooperation with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) before submitting the draft technical standards on which this Regulation is based. It has also conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010⁶,

HAS ADOPTED THIS REGULATION:

⁶ 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).

Article 1

Homogeneity of the underlying exposures in non-ABCP and ABCP STS securitisation

The underlying exposures in both a non-ABCP STS securitisation referred to in Article 20(8) of [the Regulation (EU) No XXX/201X] and an ABCP STS securitisation referred to in Article 24(15) of that Regulation shall be deemed to be homogeneous where they have similar risk profiles and cash flow characteristics, enabling the investor to assess the underlying risks on the basis of common methodologies and parameters, and more in particular where all of the following conditions are met:

- (a) the underlying exposures have been underwritten according to similar underwriting standards, methods and criteria;
- (b) the underlying exposures are serviced according to uniform servicing procedures with respect to monitoring, collection, administration and allocation of cash receivables, which enable the investor to assess the cash flows generated by the underlying exposures on the basis of a common methodology;
- (c) the underlying exposures all fall within the same asset category;
- (d) the underlying exposures take into account the relevant risk factors from among those that need to be considered for each asset category in accordance with Article 3, and at least one.

A risk factor shall be deemed to be relevant where, taking into account the asset category, the type of securitisation and the specific characteristics of the particular pool of underlying exposures, it results in all of the underlying exposures exhibiting similar risk profiles and cash flow characteristics within the respective asset category, enabling the investor to assess the underlying risks on the basis of common methodologies and parameters.

Explanatory text for consultation purposes

Q1: Do you agree with the focus of the RTS, general approach and underlying assumptions on which the RTS are based? Does the proposed approach provide sufficient clarity and certainty on the interpretation and application of the criterion of homogeneity?

Q2: Do you agree with the assessment of the homogeneity of underlying exposures based on criteria specified under (a) to (d)? Should other criteria be added or should any of the criteria be disregarded?

Q3: Are there any impediments or practical implications of the criteria as defined? Are there any important and severe unintended consequences of the application of the criteria?

Q4: Do you agree that when considering the relevance of the risk factors, the asset category, type of securitisation (non-ABPC or ABCP), and specific characteristics of the pool of exposures, should be taken into account? Should other elements be considered as important determinants of the relevance of the individual risk factors?

Q5: Do you agree that the same set of criteria should be applied to non-ABCP and ABCP securitisation? Or do you instead consider that additional differentiation should be made between criteria applicable to non-ABCP and ABCP securitisation, and if so, which criteria?

Article 2
Asset categories

For the purposes of Article 1 (c), each of the following shall be deemed to constitute one asset category:

- (a) residential loans secured with one or several mortgages on residential immovable property, as well as residential loans fully guaranteed by an eligible protection provider among those referred to in Article 201(1) of Regulation (EU) No 575/2013 qualifying for the credit quality step 2 or above as set out in Part Three, Title II, Chapter 2 of that Regulation;
- (b) commercial loans secured with one or several mortgages on commercial immovable property, including offices and other commercial premises;
- (c) credit facilities provided to natural persons including loans and leases;
- (d) credit facilities provided to micro-, small- and medium-sized enterprises and corporates, including loans and leases;
- (e) auto loans and leases;
- (f) credit card receivables;
- (g) trade receivables.

Explanatory text for consultation purposes

Q6: Do you agree with providing a list of asset categories in the RTS? Do you agree with the asset categories listed? Should other asset categories be included or some categories be merged? For example, should separate asset categories of project finance, object finance, commodities finance, leasing receivables, dealer floor plan finance, corporate trade receivables, retail trade receivables, credit facilities to SMEs and credit facilities to corporates, be included? Please substantiate your reasoning.

Q7: Do you agree with the definitions of the asset categories provided? For example, do you consider that the asset category of credit facilities to SMEs and corporates should be further specified and for the SMEs should refer to the definition provided in the Commission Recommendation 2003/361/EC, or should other reference be used (for example to Art. 501 of the CRR)? Please substantiate your reasoning.

Article 3
Risk factors

1. The list of risk factors that need to be considered for each asset category shall be:
 - (a) for the asset category referred to in point (a) of Article 2, the risk factors referred to in points (c), (f), (g), (i) and (j) of paragraph 2;
 - (b) for the asset category referred to in point (b) of Article 2, the risk factors referred to in points (a), (c), (f), (g), (i) and (j) of paragraph 2;
 - (c) for the asset category referred to in point (c) of Article 2, the risk factors referred to in points (b), (c), (d), (e), (g), (i) and (j) of paragraph 2;
 - (d) for the asset category referred to in point (d) of Article 2, the risk factors referred to in points (b), (c), (d), (e), (g), (i) and (j) of paragraph 2;
 - (e) for the asset category referred to in point (f) of Article 2, the risk factors referred to in points (a), (c), (d), (g), (i) and (j) of paragraph 2;
 - (f) for the asset category referred to in point (g) of Article 2, the risk factors as defined in points (a), (i) and (j) of paragraph 2;
 - (g) for the asset category referred to in point (h) of Article 2, the risk factors as referred to in point (h) of paragraph 2;
 - (h) for underlying exposures which all do not fall under any of the asset categories referred to in Article 2, the risk factors referred to in points (a) to (j) of paragraph 2.

2. The risk factors referred to in paragraph 1 shall be:
 - (a) type of obligor, including the distinction between natural person, SME borrower, non-SME corporate borrower, financial institution, and public sector entity, regional government and local authority;
 - (b) collateral provided, including the distinction between collateralised and un-collateralised claims;
 - (c) seniority on the liquidation of the property or collateral in relation to other creditors, including the distinction between credit claims with higher ranking liens on the property or collateral, and credit claims with no higher ranking liens on a different property or a different collateral;
 - (d) type of credit facility, including the distinction between loan, lease, purchase, hire and revolving credit;
 - (e) object of the financing, including the distinction between automobile vehicles, nautical vehicles, aircraft, railcars, satellites, fleet, equipment, real estate, commodities, financing for general consumption purposes, and financing for business purposes;
 - (f) type of immovable property, including the distinction between income-producing and non-income producing properties;
 - (g) type of repayment or amortisation, including the distinction between fully amortising exposures, exposures with balloon amortisation and exposures with bullet amortisation;
 - (h) industrial sector of the seller;
 - (i) jurisdiction of the immovable property in case of underlying exposures secured by immovable property, or the jurisdiction of the residency of the obligor in case of other underlying exposures;

- (j) governing law for the origination and transfer to SSPE of the underlying exposures and realisation and enforcement of the credit claims.

Explanatory text for consultation purposes

Q8: Do you agree with the approach to determination of the homogeneity based on the risk factors, and the distinction between the concept of risk factors to be considered for each asset category, and relevant risk factors to be applied for a particular pool of underlying exposures, as proposed? Are there any impediments or practical implications of the risk factors as defined? Are there any important and severe unintended consequences of the application of the risk factors?

Q9: Do you agree with the distribution of the risk factors that need to be considered for each asset category, as proposed? What other risk factors should be included for consideration for which asset category?

Q10: Do you agree with the definition of the risk factor related to the governing law, which refers to the contractual arrangements with respect to the origination and transfer to SSPE of the underlying exposures, and with respect to the realisation and enforcement of the credit claims? Do you consider that the risk factor of the governing law should be further specified, or further limited (e.g. to the realisation and enforcement of the financial collateral arrangements securing the repayment of the credit claims)?

Q11: Do you consider prepayment characteristics as a relevant risk factor for determining the homogeneity? If yes, based on which concrete aspect of the prepayment characteristics of the underlying exposures should the distinction be made, and for which asset categories this risk factor should be considered and should be most relevant?

Q12: Do you consider seniority on the liquidation of the property or collateral a relevant risk factor for determining the homogeneity? If yes, do you consider the distinction between the credit claims with higher ranking liens on the property or collateral, and credit claims with no higher ranking liens on a different property or different collateral, as appropriate for the purpose of determination of homogeneity?

Q13: Do you agree with the approach to determining the homogeneity for the underlying exposures that all do not fall under any of the asset categories specified in the Article 3?

Q14: Do you believe that materiality thresholds should be introduced with respect to the risk factors i.e. that it should be possible to consider as homogeneous also those pools which, while fully compliant with requirements under Article 1 (a), (b) and (c), are composed to a significant percentage (e.g. min 95% of the nominal value of the underlying exposures at origination), by underlying exposures which share the relevant risk factors (e.g. by 95% of general residential mortgages with properties located in one jurisdiction and 5% of income producing residential mortgages located in that and other jurisdictions)? Please provide the reasoning for possible introduction of such materiality thresholds.

Q15: Alternatively, do you see merit in introducing synergies with IRB modelling, enabling the IRB banks to rely on risk management factors validated for modelling purposes, when assessing the similarity of the underwriting standards, or assessing relevant risk factors? Please provide the reasoning and examples for possible introduction of such synergies.

Alternative option with respect to the determination of homogeneity and application of the risk factors

As an alternative to the approach for determination of homogeneity and application of the risk factors as presented in this consultation document, an alternative approach could be considered that would link two separate homogeneity criteria (one with respect to the similarity of the underwriting standards and another one on with respect to application of the risk factors), into a single criterion.

According to this approach, the underlying exposures would be deemed to be homogeneous where they have similar risk profiles and cash flow characteristics, enabling the investor to assess the underlying risks on the basis of common methodologies and parameters, and more in particular where all of the following conditions are met:

- (a) the underlying exposures have been underwritten according to similar underwriting standards, methods and criteria, which duly take into account the risk factors. All the risk factors shall be taken into account, unless adequate justification is provided that taking into account that risk factor is not necessary in order for the underlying exposures to have similar risk profiles and cash flow characteristics and to enable the investor to assess the underlying risks on the basis of common methodologies and parameters;
- (b) the underlying exposures are serviced according to uniform servicing procedures with respect to monitoring, collection, administration and allocation of cash receivables, which enable the investor to assess the cash flows generated by the underlying exposures on the basis of a common methodology;
- (c) the underlying exposures all fall within the same asset category.

According to this approach, there would be one criterion, instead of two, to require that all the risk factors specified in the RTS, should be appropriately taken into account and reflected in the underwriting standards, methods and criteria (which, similarly as under the existing proposal, would need to meet the requirements of the Securitisation Regulation Article 9 and Article 20(10)).

This change would possibly reduce the complexity of the framework, as it would reduce the number of criteria for the determination of homogeneity.

It would also change the dynamics of the assessment of homogeneity, compared to the existing proposal. The risk factors would not need to be taken into account in addition to and on the top of the requirement on the similarity of the underwriting, as it is the case under the existing proposal, but would need to be considered as part of the assessment of the underwriting.

Similarly as under the existing proposal, whatever decisions would be taken by the originator when assessing the homogeneity, would be fully disclosed (under the STS notification or other disclosure requirements under the new securitisation framework).

On the one hand, generally, this could provide more flexibility and therefore less certainty in the assessment of the homogeneity. More flexibility would be attributed to the originator with respect to the way and method how to take into account the risk factors in the

underwriting. This could possibly provide less certainty for the investors, as it would make the assessment of the pool and of the reflection of the risk factors in the underwriting, as part of the due diligence, more complex for the investor.

On the other hand, it could also make the homogeneity requirement stricter, because all the risk factors would have to be taken into account in the underwriting, in one way or another.

Stakeholders' views are sought with respect to this alternative option for the determination of homogeneity, and in particular with respect to the following:

Q16. Which option from the two (the existing proposal as described in this consultation paper, and the alternative option as described in this box) is considered more appropriate and provides more clarity and certainty on the determination of homogeneity? Please substantiate your reasoning.

Q17: Please provide an assessment of the impact of the two proposed options, on your existing securitisation practices and if possible, provide examples of impact on existing transactions.

Q18. Alternatively, do you believe that a hybrid option, combining the existing proposal and the alternative proposal, would be most appropriate? The hybrid option could envisage that all the risk factors would need to be taken into account in the underwriting, and for those risk factors that are not taken into account in the underwriting, (i) either adequate justification would need to be provided that it is not required for the purpose of the homogeneity, (ii) or if the justification cannot be provided, the risk factor would still need to be taken into account when determining the exposures in the pool (on the top of the requirements related to underwriting, servicing, and asset category). Or, should other hybrid option be envisaged? Please substantiate your reasoning.

Q19. What are the advantages, disadvantages and unintended consequences of this alternative option, in particular compared to the existing proposal?

Q20. Are there any impediments or practical implications of this alternative option as defined? Are there any important and severe unintended consequences of the application of this option?

Article 4

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

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

Done at Brussels,

For the Commission

The President

*[For the Commission
On behalf of the President*

[Position]

Accompanying documents

Draft cost-benefit analysis / impact assessment

A. Problem identification

The new EU securitisation framework aims to revive a sound securitisation market in the EU, by establishing a concept of ‘qualifying’ securitisations which comply with the criteria related to the simplicity, transparency and standardisation (STS), and by recognising such qualifying securitisation within regulatory capital framework through a more risk sensitive capital treatment. The requirement on the homogeneity of underlying exposures, definition of which is subject of these RTS, is one of the criteria related to the simplicity of such qualifying securitisation.

B. Policy objectives

The STS requirements, including the homogeneity requirement, aim to capture the major risks and drivers of risk of a securitisation that are not related to the credit risk of the underlying exposures.

By defining the concept of qualifying securitisation and related capital treatment, the new EU securitisation framework aims to foster resilience and integration of the EU financial system. As one of the building blocks of the Capital Markets Union project, it also aims to contribute to the Commission’s priority objective to diversify the funding sources, unlock capital in the EU, and connect financing with supporting the real economy in the EU.

The requirements on simplicity altogether aim to ensure that the securitisation process is simple and straightforward and does not add excessive additional risk and complexity on top of the credit risk of the underlying exposures.

The main objective of the requirement on the homogeneity is to facilitate the assessment of underlying risks for investors and hence facilitate the investor’s due diligence. This should prevent structuring securitisations where the pool of exposures is composed or overly heterogeneous exposures in terms of risk profiles and cash flow characteristics, making the modelling assumptions for the investors too complex.

Structuring homogeneous pools of securitised exposures should improve the ability of investors to analyse the underlying risks based on common methodology as well as to predict their performance. This should enable the investors to model risk with confidence as risks of securitisation can be more consistently and predictably understood, and make due diligence more straightforward as uncertainty and model risk are lower. In the end, this should contribute to the



re-establishment of investors' confidence in the securitisation instrument (potentially also contribute to broadening the investors' base for securitisation), and provide originators with incentives to behave responsibly.

D. Options considered

The EBA has considered two policy options on how to address the mandate to further define the homogeneity of underlying exposures:

Under the Option 1, the homogeneity would be defined through a set of clear criteria, specifically focused on addressing the homogeneity in terms of asset type. While the pool of exposures would need to comply with all the criteria, some flexibility would be allowed with respect to the application of the risk factors, as different risk factors could be applied to different pools of exposures, taking into account their relevance for the overall homogeneity of the pool.

Under the Option 2, the homogeneity would be defined by means of compliance with a set of detailed criteria, capturing a wide spectrum of potential sources of heterogeneity of the underlying exposures linked to their various cash flow, contractual, credit risk, prepayment and other characteristics (including, for example, with respect to the currency, maturity, or minimum credit quality).

E. Cost-Benefit Analysis

It is considered that the Option 1 would enable to achieve sufficient level of homogeneity in the securitised pool, consistent with the main policy objective to enable a straightforward assessment of the underlying pool by the investor. At the same time, the Option 1 would reflect the principles for assessment of homogeneity, and categorisation of asset types, as applied in the securitisation origination practice and as widely accepted by the investors.

Option 1 should not lead to substantial increase in costs for the originator. It should produce several benefits for the investors, as it would facilitate the modelling of the pool and decrease the costs of implementing due diligence and credit analysis.

Option 2 would imply that originators would need to consider a number of detailed criteria, directly or less directly linked to the main policy objective, when structuring the securitisation. Application of a large number of criteria would potentially make the assessment and generation of the homogeneous pools extremely complex, leading to high operational costs and legal risks for the originators. For some specific types of exposures, this could lead to impossibility to generate a pool of exposures that would be fully compliant with detailed homogeneity requirements.

The approach under Option 2 would also be inconsistent with the treatment of other exposure classes such as covered bonds where, based on the prevalent market practices in the EU, the assessment of the homogeneity of the assets in the cover pool is done at the level of asset



category (i.e. it is a common market practice that the cover pool assets are composed of one primary asset class, such as, for example, residential loans).

Consequently, Option 1 is the preferred option as it would enable to achieve the homogeneity of the exposures in the pool consistently with the principal policy objectives.

Overview of questions for consultation

Q1: Do you agree with the focus of the RTS, general approach and underlying assumptions on which the RTS are based? Does the proposed approach provide sufficient clarity and certainty on the interpretation and application of the criterion of homogeneity?

Q2: Do you agree with the assessment of the homogeneity of underlying exposures based on criteria specified under (a) to (d)? Should other criteria be added or should any of the criteria be disregarded?

Q3: Are there any impediments or practical implications of the criteria as defined? Are there any important and severe unintended consequences of the application of the criteria?

Q4: Do you agree that when considering the relevance of the risk factors, the asset category, type of securitisation (non-ABPC or ABCP), and specific characteristics of the pool of exposures, should be taken into account? Should other elements be considered as important determinants of the relevance of the individual risk factors?

Q5: Do you agree that the same set of criteria should be applied to non-ABCP and ABCP securitisation? Or do you instead consider that additional differentiation should be made between criteria applicable to non-ABCP and ABCP securitisation, and if so, which criteria?

Q6: Do you agree with providing a list of asset categories in the RTS? Do you agree with the asset categories listed? Should other asset categories be included or some categories be merged? For example, should separate asset categories of project finance, object finance, commodities finance, leasing receivables, dealer floor plan finance, corporate trade receivables, retail trade receivables, credit facilities to SMEs and credit facilities to corporates, be included? Please substantiate your reasoning.

Q7: Do you agree with the definitions of the asset categories provided? For example, do you consider that the asset category of credit facilities to SMEs and corporates should be further specified and for the SMEs should refer to the definition provided in the Commission Recommendation 2003/361/EC, or should other reference be used (for example to Art. 501 of the CRR)? Please substantiate your reasoning.

Q8: Do you agree with the approach to determination of the homogeneity based on the risk factors, and the distinction between the concept of risk factors to be considered for each asset category, and relevant risk factors to be applied for a particular pool of underlying exposures, as proposed? Are there any impediments or practical implications of the risk factors as defined? Are there any important and severe unintended consequences of the application of the risk factors?



Q9: Do you agree with the distribution of the risk factors that need to be considered for each asset category, as proposed? What other risk factors should be included for consideration for which asset category?

Q10: Do you agree with the definition of the risk factor related to the governing law, which refers to the governing law for the contractual arrangements with respect to the origination and transfer to SSPE of the underlying exposures, and with respect to the realisation and enforcement of the credit claims? Do you consider the risk factor of the governing law should be further specified, or further limited (e.g. to the realisation and enforcement of the financial collateral arrangements securing the repayment of the credit claims)?

Q11: Do you consider prepayment characteristics as a relevant risk factor for determining the homogeneity? If yes, based on which concrete aspect of the prepayment characteristics of the underlying exposures should the distinction be made, and for which asset categories this risk factor should be considered and should be most relevant?

Q12: Do you consider seniority on the liquidation of the property or collateral a relevant risk factor for determining the homogeneity? If yes, do you consider the distinction between the credit claims with higher ranking liens on the property or collateral, and credit claims with no higher ranking liens on a different property or different collateral, as appropriate for the purpose of determination of homogeneity?

Q13: Do you agree with the approach to determining the homogeneity for the underlying exposures that all do not fall under any of the asset categories specified in the Article 3?

Q14: Do you believe that materiality thresholds should be introduced with respect to the risk factors i.e. that it should be possible to consider as homogeneous also those pools which, while fully compliant with requirements under Article 1 (a), (b) and (c), are composed to a significant percentage (e.g. min 95% of the nominal value of the underlying exposures at origination), by underlying exposures which share the relevant risk factors (e.g. by 95% of general residential mortgages with properties located in one jurisdiction and 5% of income producing residential mortgages located in that and other jurisdictions)? Please provide the reasoning for possible introduction of such materiality thresholds.

Q15: Alternatively, do you see merit in introducing synergies with IRB modelling, enabling the IRB banks to rely on risk management factors validated for modelling purposes, when assessing the similarity of the underwriting standards, or assessing relevant risk factors? Please provide the reasoning and examples for possible introduction of such synergies.

Q16. Which option from the two (the existing proposal as described in this consultation paper, and the alternative option as described in this box) is considered more appropriate and provides more clarity and certainty on the determination of homogeneity? Please substantiate your reasoning.



Q17: Please provide an assessment of the impact of the two proposed options, on your existing securitisation practices and if possible, provide examples of impact on existing transactions.

Q18. Alternatively, do you believe that a hybrid option, combining the existing proposal and the alternative proposal, would be most appropriate? The hybrid option could envisage that all the risk factors would need to be taken into account in the underwriting, and for those risk factors that are not taken into account in the underwriting, (i) either adequate justification would need to be provided that it is not required for the purpose of the homogeneity, (ii) or if the justification cannot be provided, the risk factor would still need to be taken into account when determining the exposures in the pool (on the top of the requirements related to underwriting, servicing, and asset category). Or, should other hybrid option be envisaged? Please substantiate your reasoning.

Q19. What are the advantages, disadvantages and unintended consequences of this alternative option, in particular compared to the existing proposal?

Q20. Are there any impediments or practical implications of this alternative option as defined? Are there any important and severe unintended consequences of the application of this option?