

EBA/RTS/2023/02

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24 April 2023

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## Final Report

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Draft Regulatory Technical Standards specifying the determination by originator institutions of the exposure value of synthetic excess spread pursuant to Article 248(4) of Regulation (EU) No 575/2013

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# 1. Executive Summary

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Regulation (EU) No 575/2013, as amended by Regulation (EU) 2021/558, which was published in the Official Journal of the European Union on the 6th of April 2021, sets out that synthetic excess spread (SES) shall be considered a securitisation position by the originator institution with regard to a synthetic securitisation, and requires the EBA to submit draft RTS specifying the determination of the exposure value to the Commission.

## Main features of these RTS

These draft RTS specify the calculation of the components that should be included in the exposure value of SES, taking into account the relevant losses expected to be covered by SES.

These components include (i) any income from the securitised exposures recognised by the originator institution in its income statement under the applicable accounting framework that the originator institution has contractually designated to the transaction as SES that is still available to absorb losses, (ii) any SES contractually designated by the originator institution in any previous periods that is still available to absorb losses (iii) or for the current period that is still available to absorb losses, (iv) and any SES contractually designated by the originator institution for future periods.

## Next steps

These final draft RTS will be submitted to the Commission for adoption. Following the submission, these RTS will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union.

## 2. Background and rationale

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1. These draft regulatory technical standards (draft RTS) have been developed in accordance with Article 248(4) of Regulation (EU) No 575/2013 (the Capital Requirements Regulation - CRR) as amended by the Regulation (EU) 2021/558 of 31 March 2021<sup>1</sup> (as part of the Capital Markets Recovery Package - CMRP), which mandates the EBA to develop draft regulatory technical standards to specify how originator institutions are to determine the exposure value referred to in Article 248(1)(e) of the CRR, taking into account the relevant losses expected to be covered by the synthetic excess spread. The EBA is requested to submit the draft RTS to the Commission.
2. The CMRP amends Regulation (EU) 2017/2402 (the Securitisation Regulation) and the CRR in several aspects, including creating a specific framework for simple, transparent and standardised (STS) on-balance-sheet securitisations and a preferential capital treatment for the senior tranches retained by the originator institutions in those securitisations, to ensure that the Union securitisation framework provides for an additional tool to foster economic recovery in the aftermath of the COVID-19 crisis, while at the same time addressing prudential concerns regarding the use of SES in synthetic securitisations.
3. In accordance with Article 2, point (29), of the Securitisation Regulation, as amended by Regulation (EU) 2021/557<sup>2</sup>, SES ‘means the amount that, according to the documentation of a synthetic securitisation, is contractually designated by the originator to absorb losses of the securitised exposures that might occur before the maturity date of the transaction’.
4. SES is considered a securitisation position subject to capital requirements under the CRR, because of concerns regarding the regulatory arbitrage that the use of SES may imply. In this regard, Recital 11 of Regulation (EU) 2021/558 explains that the regulatory arbitrage ‘occurs when an originator institution provides credit enhancement to the securitisation positions held by protection providers by contractually designating certain amounts to cover losses of the securitised exposures during the life of the transaction, and such amounts, which encumber the originator institution’s income statement in a manner similar to an unfunded guarantee, are not risk-weighted’.
5. As a result, the CMRP has introduced several amendments to the CRR that set out that SES shall be considered a securitisation position by originator institutions and describe which components should be included in the exposure value of the SES. These components include (i) any income from the securitised exposures recognised by the originator institution in its income statement under the applicable accounting framework that the originator institution has contractually designated to the transaction as SES and that is still available to absorb losses, (ii) any SES contractually

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<sup>1</sup> [Regulation \(EU\) 2021/558 of the European Parliament and of the Council of 31 March 2021 amending Regulation \(EU\) No 575/2013 as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis](#)

<sup>2</sup> [Regulation \(EU\) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation \(EU\) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis](#)

designated by the originator institution in any previous periods and that is still available to absorb losses (iii) or for the current period that is still available to absorb losses, (iv) and any SES contractually designated by the originator institution for future periods.

6. The draft RTS mandate specifically mentions that the exposure value of SES should be determined taking into account the relevant losses expected to be covered by the SES.
7. These draft RTS specify that, for the purpose of the calculation of the exposure value of SES based on any income from the securitised exposures already recognised by the originator institution in its income statement and for the SES contractually designated in “previous” and “current” periods”, as provided for in Article 248(1)(e), points (i) to (iii), of the CRR, the amount designated by the originator institution to absorb losses and that is still available for this purpose should be considered in full for the determination of the exposure value of SES.
8. Regarding the exposure value of SES of future periods according to Article 248(1)(e), point (iv), of the CRR, these RTS specify the following
  - (i) Basis for the calculation of the exposure value. These draft RTS specify that the calculation of the exposure value of SES should be based on the losses expected to be covered by the SES in those future periods.
  - (ii) Trapped mechanisms. In trapped mechanisms, the amount designated by the originator institution to absorb losses is periodically offset with the amount of losses realised at each period; the amount not used for loss absorption in that period cumulates in a separate account and is still available for loss absorption in future periods. Because of that, these draft RTS specify that its exposure value should be the total losses expected to be covered during the entire life of the transaction. To calculate those losses, originating institutions only need to model the remaining weighted average life (WAL) of the underlying portfolio and the SES designated for the next period .
  - (iii) Use-It-Or-Lose-It (UIOLI) mechanisms. UIOLI mechanisms imply that the amount designated to absorb losses is periodically offset with the amount of losses realised at each period, and that the amount that is not used for loss absorption in a particular period is no longer available for loss compensation in future periods. Because of the lower loss absorbing capacity of UIOLI mechanisms in comparison with trapped mechanisms, and the circumstance that this lower loss absorbing capacity also depends on the distribution of the losses throughout the life of the transaction<sup>3</sup> a scalar of 0.6 is applied to the result of the multiplication of the WAL and the SES designated for the next period for UIOLI mechanisms.

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<sup>3</sup> Although in a front-loaded loss scenario the absorption of losses would be similar in both the trapped and the UIOLI mechanisms, in a back-loaded loss scenario the part of the UIOLI SES designated in previous periods will not be available to cover the losses concentrated in the last periods of the maturity of a transaction; in an evenly-loss scenario, the excess spread not used is minimised throughout the life of the deal and, therefore, the UIOLI SES loss absorbing capacity is maximised.

9. These RTS include a derogation from the calculation of the element of the exposure value of the UIOLI SES of future periods, where the commitment made by the originator at the beginning of each period is subject to the contractual condition that the securitised exposures generate sufficient cash flows (ex-post SES) to cover the SES commitment of the originator institution for the respective period. This derogation aligns the treatment of SES with the lack of a requirement to determine an exposure value for excess spread in traditional securitisations, where excess spread is generated by the securitised exposures transferred to the SSPE without additional commitments made by the originator. However, because this derogation from the exposure value could create an incentive to commit excessive UIOLI SES, the commitment should be limited to the 1-year expected loss calculated for the underlying exposures of a synthetic securitisation.
10. That contractual provision, which limits the realised losses covered by the UIOLI SES at the end of the year, is compatible, and does not conflict, with the STS criteria for on-balance-sheet securitisations, as the STS criteria only require a specific ex-ante commitment: (i) to commit a fixed percentage of the total outstanding portfolio balance at the start of the relevant payment period and (ii) that the total committed amount per year shall not be higher than the one-year regulatory expected loss amounts on all underlying exposures for that year.
11. Finally, in order not to disrupt the market and avoid the unwinding of existing transactions, these RTS include a grandfathering provision, up to the maturity of the transaction, for transactions featuring synthetic excess spread, where the originating institution fulfilled the requirements of Article 248(1)(e), points (i) to (iv) of Regulation (EU) No 575/2013 in accordance with the supervisory practice adopted by the relevant competent authority.

## 3. Draft regulatory technical standards/

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### COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

**on supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the determination by originator institutions of the exposure value of synthetic excess spread pursuant to Article 248(4) of that Regulation**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to 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<sup>4</sup>, and in particular the third subparagraph of Article 248(4) thereof,

Whereas:

- (1) For the purpose of calculating the exposure value of a securitisation position, Article 248(1), points (e), of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2021/558 of the European Parliament and of the Council<sup>5</sup> lays down the components that the exposure value of a synthetic excess spread has to include. Among those, the components referred to in points (e)(i), (e)(ii) and (e)(iii) include either an amount calculated on the basis of the income from the securitised exposures and recognised by the originator institution in its income statement, or any other amounts, which have been contractually designated by the originator institution in any previous period or for the current period to cover losses on the securitised exposures, and those amounts are still available to absorb losses that might occur before the maturity date of the transaction. Given that those amounts, which are providing credit enhancement to the actual tranches of the securitisation, are known and certain at the moment of the calculation of the exposure value of synthetic excess spread, they should count in full in the calculation of the exposure value of synthetic excess spread without the need of further specification.

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<sup>4</sup> OJ L 176 27.6.2013, p. 1.

<sup>5</sup> Regulation (EU) 2021/558 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) No 575/2013 as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis (OJ L 116, 6.4.2021, p. 25).

- (2) However, it is necessary to specify how originator institutions are to determine the exposure value of the synthetic excess spread contractually designated by the originator institution for future periods in accordance with Article 248(1), point (e)(iv), of Regulation (EU) No 575/2013, taking into account the relevant losses expected to be covered by it.
- (3) The synthetic excess spread contractually designated by the originator institution for future periods can take different modalities: it can be a fixed amount or a variable amount, depending, in the latter case, either on the income of the securitised exposures or on the outstanding amount of them, in each of the future periods. Therefore, in order to ensure a uniform approach with regard to the calculation of the exposure value of a synthetic excess spread, it is necessary to specify how originator institutions should determine the expected maturity of the transaction, and thereby the future periods relevant for such calculation, and to set out a model approach for calculating either the future payments of the securitised exposures or the outstanding amount of them, in each of the future periods until the end of the expected maturity of the transaction. The originator institution should then apply the methodology for the calculation of the variable synthetic excess spread to determine its amount in the next future period.
- (4) It is necessary to specify that, in order to calculate the future payments from the securitised exposures, the model approach should also estimate the expected losses of each of the future periods but not the unexpected losses, as the synthetic excess spread is expected to cover the former and not the latter. For that purpose, the originator institution should use: (i) in the case of securitised exposures to which the originator institution applies the IRB Approach in accordance with Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013, the expected loss amounts resulting from the use of the IRB Approach risk parameters; and (ii) in the case of securitised exposures to which the originator institution applies the Standardised Approach in accordance with Part Three, Title II, Chapter 2 of that Regulation, specific credit risk adjustments that would result from the application of the relevant accounting standards, including the expected credit loss provisioning. Where an originator institution cannot demonstrate to the competent authority that the use of specific credit risk adjustments that would result from the application of the relevant accounting standards leads to a loss coverage sufficiently representative of the portfolio's future expected losses, the originator institution should model expected loss amounts based on other internal risk parameters, such as those used in the internal capital adequacy assessment process of the originator institution, justifying its prudence. For these purposes, the originator's loss coverage should be considered sufficiently representative of the portfolio's future expected losses where it comprises indicators of forward-looking default probabilities that are relevant to adequately reflect the expected development in the quality of the securitised exposures.
- (5) Originator institutions should calculate the exposure value of synthetic excess spread of future periods based on the synthetic excess spread committed for the subsequent period measured at the calculation date of the exposure value of the synthetic excess spread, multiplied by the weighted average life of the securitised exposures at the calculation date and by a scalar.
- (6) The weighted average life of the pool of underlying exposures should be calculated by time-weighting the repayments of principal amounts only, and should not take into account any prepayment assumptions or any payments relating to fees or interest to be paid by the obligors of the underlying exposures, in order to ensure a uniform

calculation of the weighted average life across originator institutions that is not affected by influencing factors such as different prepayment assumptions or differences in interest rates resulting from divergent funding costs of individual originator institutions. This method of determining the weighted average of the pool of underlying exposures is also consistent with the calculation of the weighted average life referred to in Article 24(15) of Regulation (EU) 2017/2402 of the European Parliament and of the Council<sup>6</sup> and with the EBA guidelines on the STS criteria for ABCP securitisation (EBA/GL/2018/08) further specifying that Article. It is also necessary to specify a scalar that reduces the exposure value of ‘use-it-or-lose-it’ synthetic excess spread in comparison with the exposure value of ‘trapped’ synthetic excess spread, in order to account for the lower loss absorption capacity of ‘use-it-or-lose-it’ synthetic excess spread.

- (7) Following the rationale of Recital 11 of Regulation (EU) 2021/558, where synthetic excess spread does not encumber the originator institution’s income statement in a manner similar to an unfunded guarantee, the synthetic excess spread should not be risk-weighted. Therefore, this Regulation should exclude from the requirement to determine the component of the exposure value of the synthetic excess spread of future periods, those commitments made by the originator institution at the beginning of each period that are subject to the contractual condition that the securitised exposures generate sufficient cash flows to cover the synthetic excess spread designated by the originator institution for the corresponding period, in a similar manner as in traditional securitisations, where excess spread is generated by the securitised exposures transferred to the SSPE without additional commitments made by the originator institution.
- (8) This derogation would however create an incentive for originator institutions to designate excessive amounts of synthetic excess spread in synthetic securitisations, thereby undermining the actual transfer of credit risk to protection providers under the credit protection agreement. The derogation should therefore only apply to cases where ‘use-it-or-lose-it’ excess spread is used and where, irrespective of the actual length of the individual periods for which the originator institution designates the synthetic excess spread, the total annual amount designated by the originator institution as synthetic excess spread does not exceed the amount equivalent to the 1-year expected loss amount of the securitised exposures. Furthermore, that limitation is compatible and does not conflict with the STS criteria for on-balance-sheet securitisations, as the STS criteria only require a specific ex-ante commitment: (i) to commit a fixed percentage of the total outstanding portfolio balance at the start of the relevant payment period and (ii) that the total committed amount per year shall not be higher than the one-year regulatory expected loss amounts on all underlying exposures for that year.
- (9) In order not to disrupt the market and avoid the unwinding of existing transactions, it is appropriate to provide a grandfathering provision for transactions featuring synthetic excess spread, up to the maturity of each transaction, where the originating institution fulfilled the requirements of Article 248(1), points (e)(i) to (e)(iv), of Regulation (EU) No 575/2013 in accordance with the supervisory practice thus far adopted by their relevant competent authority.

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<sup>6</sup> 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).

- (10) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (11) The European Banking Authority has 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 1093/2010 of the European Parliament and of the Council<sup>7</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Definitions*

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

- (1) ‘SES exposure value’ means the exposure value of a synthetic excess spread referred to in Article 248(1), point (e), of Regulation (EU) No 575/2013;
- (2) ‘Use-it-or-lose-it (UIOLI) mechanism’ means a mechanism whereby, after periodically offsetting the amount designated as synthetic excess spread by the originator institution to absorb losses for each period within the maturity of a transaction with the amount of losses realised or estimated due to the credit events occurred in that period, the synthetic excess spread amount that is not used for loss absorption in that period is no longer available for loss compensation in future periods until the expected maturity of the transaction;
- (3) ‘Expected maturity of the transaction’ means the contractual maturity of the credit protection agreement or, where, in accordance with the credit protection agreement, the originator institution has an option to terminate the protection, or where there is a clean-up call compliant with Article 245(4), point (f), of Regulation (EU) No 575/2013 that allows early termination of the protection agreement before its contractual maturity, the earliest expected date at which those options may be exercised in accordance with Article 3. The expected maturity of the transaction shall be subject to a maximum of 5 years.
- (4) ‘SES period’ means the period in which the synthetic excess spread is designated in accordance with the transaction documentation.

*Article 2*

*Determination of the amounts of the four components of the SES exposure value*

1. Originator institutions shall determine the SES exposure value as the sum of the components referred to in Article 248(1), points (e)(i) to (e)(iv), of Regulation

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<sup>7</sup> 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).

- (EU) No 575/2013. For that purpose, the SES exposure value shall include the entire amounts of the components referred to in Article 248(1), points (e)(i) to (e)(iii), of that Regulation.
2. In relation to the component referred to in Article 248(1), point (e)(iii), of that Regulation, current period shall be the SES period that comprises the calculation date of the SES exposure value.
  3. In order to determine the amount of the component of the SES exposure value referred to in Article 248(1), point (e)(iv), of Regulation (EU) No 575/2013, originator institutions shall apply the approach referred to in Article 6.

Where the current period referred to in paragraph 1, second subparagraph, ends at the date of or after the expected maturity of the transaction, the amount of the component of the SES exposure value referred to in Article 248(1), point (e)(iv), of Regulation (EU) No 575/2013 shall be zero.

### Article 3

#### *Determination of the payments on the securitised exposures*

1. Originator institutions shall determine the expected principal and interest payments for all securitised exposures occurring in any of the future periods within the expected maturity of the transaction for each securitised exposure.  

In relation to the component referred to in Article 248(1), point (e)(iv), of Regulation (EU) No 575/2013, future periods shall be the SES periods that follow the current period as referred to in Article 2(1), second subparagraph, until the end of the transaction maturity.
2. By way of derogation from the first subparagraph, in case of pools of underlying exposures with high granularity, originator institutions may determine the expected principal and interest payments for the securitised exposures on the basis of homogeneous sub-pools of the securitised exposures.
3. Where principal and interest payments are calculated according to paragraph 1, first subparagraph, originator institutions shall take into account the terms and conditions agreed with the borrower, or by the original lender and the borrower, in order to accurately reflect the contractual schedule of the payments, the expected amount of principal repayment and the related interest charges that shall be collected for each period within the expected maturity of the transaction.
4. Originator institutions shall assume that the amortisation method and the interest rates applicable on the calculation date remain constant until the maturity of the securitised exposure where the contract sets out conditions not yet realised or non-exercised options. Where the contract envisages that the amortisation method or the interest rates applicable for future SES periods within the expected maturity of a transaction will change in a predetermined manner, so that the exact value of the amortisation or interest rate applicable in a future SES period can already be determined on the calculation date, originator institutions shall take those future changes into account when determining the payments on the securitised exposures.

5. In the case of revolving securitised exposures, originator institutions shall assume that the drawing of the committed amount in the coming revolving periods and until the scheduled maturity of the securitised exposure equals to the amount drawn at the calculation date.
6. For the purposes of determining principal and interest payments in the case of revolving securitisations defined in Article 2, point (16), of Regulation (EU) 2017/2402, originator institutions shall apply the following steps:
  - (a) they shall determine the scheduled maturity of each securitised exposure as of the calculation date;
  - (b) for each securitised exposure maturing before the end of the replenishment or the revolving period, they shall adjust the scheduled maturity to equal the sum of its current maturity and of the longest permitted maturity of an exposure that is eligible to be added to the securitised portfolio during the replenishment or revolving period;
  - (c) where securitised exposures are scheduled to mature after the end of the replenishment or revolving period, the final maturity of those securitised exposures shall not be adjusted.

For the purposes of the first subparagraph, point (b), the adjustments to the schedule maturity of the securitised exposures shall be made as many times as necessary, as long as the term of the adjusted maturity of any securitised exposure is shorter than the term of the replenishment period or the term of the revolving period.

7. For the purposes of determining the payments on the securitised exposures, originator institutions shall not take into account the expected future prepayments for the securitised exposures.
8. Originator institutions shall assume future defaults that are coherent with the method used for the calculation of the relevant losses of future SES periods set out in Article 5. Those relevant losses shall be assumed to occur in the same SES period, within the expected maturity of the transaction, where the defaults are expected to take place.

#### *Article 4*

##### *Synthetic excess spread amount contractually designated by the originator institution for the next future SES period*

Originator institutions shall determine the amount of the component of the SES exposure value contractually designated for the next future SES period as follows:

- (a) where the synthetic excess spread is contractually designated as a fixed amount, as the fixed amount available for the absorption of losses in the SES period immediately following the SES period in which the synthetic excess spread amount is being determined;
- (b) where the synthetic excess spread is contractually designated as a variable amount, either based on the expected income of the securitised exposures or on the outstanding amount of those securitised exposures, or on any other reference in the contractual agreement, as the

amounts that originator institutions estimate to be available for the absorption of losses in the SES period immediately following the SES period in which the synthetic excess spread amount is being determined.

For the purposes of the first subparagraph, point (b), where the variable amount relates to the payments, performance or the outstanding amounts of the securitised exposures, the amount of the component of the SES exposure value contractually designated for the next future SES period shall be calculated based on the payments on securitised exposures determined in accordance with Article 3.

*Article 5*  
*Relevant losses of future SES periods*

1. Originator institutions shall determine the relevant losses for each of the future SES periods within the expected maturity of the transaction as follows:
  - (a) where the originator institution estimates the expected loss amounts for the securitised exposures in accordance with the requirements of Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013, the relevant losses shall be calculated as the sum of the expected loss amounts determined for the respective individual securitised exposures for the corresponding future SES periods;
  - (b) in all other cases, the relevant losses shall be calculated as one of the following:
    - (i) the sum of the new specific credit risk adjustments on the securitised exposures that the originator institution estimates it would record in its financial statements in accordance with the applicable accounting framework on the assumption that the conditions for risk provisioning under the applicable accounting framework remain constant;
    - (ii) where originator institution assesses that the approach referred to in point (b)(i)] results in a loss coverage that is not sufficiently representative of the expected future losses on the securitised exposures, the originator institution shall model expected loss amounts based on other internal risk parameters, such as those considered in its internal capital adequacy assessment process, and shall provide, to the satisfaction of its competent authority, an adequate justification of the prudence of the method used as an alternative to that referred to in point (b)(i).

For the purposes of the first subparagraph, point (a), the originator institution shall assume for all future SES periods beyond a time horizon of one year, measured from the calculation date, that the relevant risk parameters used for calculating the expected loss amounts remain constant over the expected maturity of the transaction.

2. Where different methods from among those referred to in paragraph 1 are applied, for the calculation of the relevant losses expected in each of the future SES periods, to different parts of the pool of underlying securitised exposures, the relevant losses for each of the future SES periods shall be determined as the sum of the relevant losses

for each of the future SES periods calculated for the different parts of the pool of underlying exposures in accordance with each of the corresponding methods referred to in that paragraph.

### Article 6

#### *Approach to calculate the amount of the component of the SES exposure value for future periods*

1. The amount of the component of the SES exposure value referred to in Article 248(1), point (e)(iv), of Regulation (EU) No 575/2013 shall be determined in accordance with the following formula:

$$\text{Exposure value of SES for future periods}_t = SES_{t+1} \cdot WAL_t \cdot \text{Scalar}$$

where:

- $t$  is the calculation date;
  - $SES_{t+1}$  is the contractual amount of the synthetic excess spread designated for the next future SES period, as determined according to Article 4;
  - $WAL_t$  is the remaining weighted average life of the reference portfolio measured from the starting date of the next future SES period and expressed in the same time unit used for the SES period.  $WAL_t$  shall be calculated, in accordance with the determination set out in Article 3, by time-weighting, until the expected maturity of the transaction, only the repayments of principal amounts from the securitised exposures, without taking into account any prepayment assumptions or any payments relating to fees or interest to be paid by the obligors of the securitised exposures. In case of a transaction with a replenishment period,  $WAL_t$  shall be the sum of the remaining replenishment period measured from the starting date of the next future SES period plus the remaining weighted average life of the reference portfolio measured from the end of that replenishment period.  $WAL_t$  shall be no greater than a number of SES periods equivalent to 5 years;
  - *Scalar* is equal to 0.6 for UIOLI mechanisms and equal to 1 for any other mechanisms.
2. By way of derogation from paragraph 1, the amount of the component of the SES exposure value referred to in Article 248(1), point (e)(iv), of Regulation (EU) No 575/2013 in the case of the use of UIOLI mechanisms shall be set at zero if all the following conditions are fulfilled:
    - (a) the total amount of the synthetic excess spread designated by the originator institution for a number of SES periods equivalent to one year is equal to or lower than the one-year expected loss amounts on all securitised exposures for that year as determined in accordance with Article 5;

- (b) there is a provision in the credit protection agreement that ensures that the realised loss amounts on all securitised exposures to be covered by the designated synthetic excess spread for each year are not higher than the realised net income of the securitised exposures, calculated as the finance charge collections and other fee income received in respect of the securitised exposures net of costs and expenses attributable to the securitised exposures for that year, as recorded in the income statement of the originator institution.
3. For the purposes of the first subparagraph, point (b), the cost and expenses attributable to the securitised exposures shall be determined as the sum of:
- (a) the amount that results from the multiplication of the proportion that represents the securitised exposures in the total assets of the balance sheet of the originator institution for that year by the total costs and expenses recorded in the income statement of the originator institution for that year, net of the direct costs of the securitisation; and
  - (b) the direct costs of the securitisation for that year, which shall comprise the premia, in accordance with the credit protection agreement and all other costs of the transaction borne by the originator institution.

#### *Article 7*

##### *Grandfathering*

Originator institutions of transactions originated before the date of entry into force of this Regulation and that feature a synthetic excess spread may continue to use, until the end of the maturity of the transaction, the methodology that they have been using for the calculation of the SES exposure value before that date in order to comply with Article 248(1), point (e), of Regulation (EU) No 575/2013 in accordance with the supervisory practice adopted by the relevant competent authority, without applying the additional specifications set out in this Regulation.

#### *Article 8*

##### *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*.

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

Done at Brussels,

The President

*For the Commission*

## 4. Accompanying documents

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### 4.1 Draft cost-benefit analysis / impact assessment

#### A. Problem identification

The EBA in the 2020 Report on Significant Risk Transfer (SRT)<sup>8</sup> first, and the co-legislators afterwards, raised concerns regarding the regulatory arbitrage that synthetic excess spread (SES) may imply. Recital 11 of Regulation (EU) 2021/558 explains that the regulatory arbitrage ‘occurs when an originator institution provides credit enhancement to the securitisation positions held by protection providers by contractually designating certain amounts to cover losses of the securitised exposures during the life of the transaction, and such amounts, which encumber the originator institution’s income statement in a manner similar to an unfunded guarantee, are not risk-weighted’.

As a result, Regulation (EU) 2021/558 introduced several amendments to the CRR that set out that SES shall be considered a securitisation position by originator institutions and describe which elements should be included in the exposure value of the SES. These elements include (i) any income from the securitised exposures recognised by the originator institution in its income statement under the applicable accounting framework that the originator institution has contractually designated to the transaction as SES and that is still available to absorb losses, (ii) any SES contractually designated by the originator institution in any previous periods and that is still available to absorb losses or (iii) for the current period that is still available to absorb losses, and (iv) any SES contractually designated by the originator institution for future periods.

#### B. Objectives of the RTS

These draft RTS have been developed in accordance with Article 248(4) of the CRR as amended by Regulation (EU) 2021/558 (as part of the Capital Markets Recovery Package), which mandates the EBA to develop draft regulatory technical standards to specify how originator institutions are to determine the exposure value of SES, taking into account the relevant losses expected to be covered by the SES.

#### C. Cost-benefit analysis

Taking into account the foregoing, the proposed technical standards are expected to provide clarity on the determination of the exposure value of SES, thus helping to address the prudential concern that the potential regulatory arbitrage raises, and a common implementation among institutions and competent authorities, as only one competent authority had implemented a specific supervisory practice to determine an exposure value for SES to account for this potential arbitrage prior to the applicability of the new requirements introduced by Regulation (EU) 2021/558.

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<sup>8</sup> Paragraph 216 Section 6 on Recommended amendments to the CRR [EBA/Rep/2020/32](#)

An additional benefit is that the capital charge for the SES can be considered in the calculation of the commensurateness of the transfer of risk in the SRT assessment to be made at inception, making that assessment more realistic, as the capital charge on the exposure value of SES can be considered in the calculation of the capital relief achieved by the originator institution through the synthetic securitisation, and the exposure value of SES could also be considered as a retained position in the calculation of the transfer of risk to third parties.

#### D. Impact assessment

As the calculation of an exposure value of SES implies a reduction in the capital relief achieved by the originator institution in a synthetic securitisation, this impact assessment shows which exposure value of the SES of future periods and which reduction in the capital relief would result from an application of the approach set out in the draft RTS, making a comparison with: (i) the supervisory practice adopted by one competent authority prior to the applicability of the amended regulation; and (ii) the situation where no exposure value of SES is considered. For that purpose, the EBA has worked with a sample of 15 SME transactions featuring UIOLI SES, the majority of which is not eligible for the preferential treatment of senior tranches under Article 270 CRR.

The supervisory practice adopted by one competent authority prior to the applicability of the amended regulation focuses on the UIOLI SES, which was the prevalent SES mechanism they observed, and requires the originator to capitalise during the life of the transaction against the periodic SES net of realised losses and specific credit risk adjustments (SCRAs) observed in the previous period. This supervisory practice is simple, as it avoids modelling, but has the drawback, in EBA's views, that it implies that there is no exposure value of UIOLI SES at inception, which is the one that should be used for the SRT assessment. Additionally, the exposure value refers to the part that is not covering for the losses of the period, while according to the amended regulation the exposure value of SES shall be calculated 'taking into account the relevant losses expected to be covered by the SES'.

With regard to the sample of the 15 transactions featuring UIOLI SES, in which the originator obtained credit protection on the mezzanine tranche, the exposure value of UIOLI SES of future periods at inception has been calculated. It is relevant to mention that originator institutions were committing the 1-year UIOLI SES at the level of the 1-year expected loss (EL) of the portfolio (0.49% of the outstanding amount of the securitised exposures, on average), and that it is expected that the corresponding SCRAs for the underlying exposures are also at the level of the 1-year EL. The average WAL of the 15 transactions, calculated in accordance with this Regulation, is 3.91 years.

The analysis not only focused on the calculation of the exposure value of UIOLI SES of future periods, but also on the impact on the capital relief achieved in the transactions reported. In this regard, it is important to highlight the effect of the exposure value of SES which shall be treated by the originator institution as an additional tranche, subordinated to the first loss tranche and that is 1250% risk-weighted. In particular, this additional tranche should be, in most cases in the sample, offset with the SCRAs in accordance with Article 248(1)(d) of the CRR and not the actual first loss tranche retained by the originator institution, as it has been the case prior to the CRR amendment. This implies that the first loss tranche retained by the originator institution, which was not subject 'de facto' to capital

requirements prior to the CRR amendment, will start to be subject to them after the consideration of SES in accordance with the CRR amendment, thus reducing the capital relief achieved.

As mentioned above under the supervisory practice adopted by one competent authority prior to the applicability of the amended regulation there is no exposure value of SES at inception in the sample, and the exposure value would be zero in the following periods as long as the SES not covering for the losses of the period does not exceed the accrued SCRAs each future period. Prior to the implementation of that supervisory practice, the exposure value would have been zero in all cases in the sample, no matter the level of SES committed. However, the average exposure value of SES under the model approach with a 0.6 scalar reaches 1.17% of the outstanding amount of the securitised exposures in the sample, which goes down to 0.57% after offsetting SCRAs.

Regarding the corresponding capital relief, the average 58.7% capital relief achieved by the originator institutions in these transactions, before the CRR amendment or the current supervisory practice, goes down to 37.16% under the approach adopted in these draft RTS, with a 0.6 scalar.

However, should these transactions had featured a contractual provision by which the derogation in Article 6(2) of this Regulation applied, thus additionally limiting the commitment made by the originator institution to the cash flows generated by the securitised exposures every year, then the exposure value of SES would have been zero and the capital relief would not have been reduced through the application of the requirements of the RTS.

## 4.2 Feedback on the public consultation

The EBA publicly consulted on the draft proposal for these RTS. The consultation lasted for three months, from 9 August 2022 to 14 October 2022. The EBA has received fourteen responses altogether (twelve non-confidential responses from financial and banking associations, one non-confidential response from an STS certifier, and one confidential response from a public institution).

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments, or the same body repeated its comments in the response to different questions. In such cases, the comments, and the EBA analysis are included in the section of this paper where the EBA considers them most appropriate. Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

### **Summary of key issues and the EBA's response**

The feedback from the public consultation showed: (i) disagreement with the introduction of the lifetime approaches proposed in the draft RTS for the calculation of the exposure value of SES of the future periods (full model approach and simplified model approach); (ii) disagreement with the scalar under the simplified model approach; (iii) disagreement with the interpretation of 'future periods' in the EBA mandate for the RTS, in particular term 'as applicable' and 'relevant losses'; (iv) impact on the

activity of the European Investment Fund through synthetic securitisations; (v) support for the rolling window approach, or true sale mirror approach for the calculation of the exposure value of SES; (vi) request for grandfathering and phase-in.

The EBA has received a significant number of comments on the lifetime approaches proposed in the draft RTS, for the calculation of the exposure value of SES for the future periods. A high number of respondents expressed disagreement with both lifetime approaches (the full model approach as well as the simplified model approach with a scalar of 0.8) proposed by EBA, arguing that application of these approaches would render the use of SES uneconomic for capital release and redeployment into new lending, including in the case of securitisations sponsored by EIF. According to the responses, these approaches conflict with the 1-year approaches within Basel, CRR and IFRS 9, by creating an inconsistency between the proposed exposure value of SES – calculated on a multi-year horizon, and Basel/CRR, calibrated on a 1-year approach and the offsetting accounting provisions in IFRS 9 which, for a performing portfolio (Stage 1), are calculated on one-year expected losses, deducted from earnings and available capital. It was also noted that the proposed approaches do not seem to address the risk of regulatory arbitrage. They have also been considered overly conservative and not recognising the performance of the synthetic securitisation market in the EU. The respondents proposed that the method for determining the exposure value of SES should take into account the following points: (i) firstly, the regulatory framework should adopt a consistent approach to traditional and synthetic securitisation, and (ii) secondly, the treatment of SES should be considered against the backdrop of the overall capital framework set out in the CRR which is based on a one-year time horizon.

With respect to the simplified model approach, in addition to general disagreement with the lifetime aspect on which this approach is based, several respondents consider the scalar of 0.8 for the UIOLI mechanism in the simplified model approach as excessive.

Most respondents challenge the interpretation of ‘future periods’ in the Article 248(1)(e)(iv) of the CRR and consider that the inclusion of the terms ‘as applicable’ and ‘relevant losses’ gives enough room to consider that ‘future periods’ should be limited to the ‘next period’.

In addition, the industry and the European Investment Fund (EIF) comments expressed their concerns on how imposing a capital requirement on the UIOLI SES based on the losses expected to be covered by it would hinder the viability of the synthetic market and, in the case of the EIF, their programme for increasing credit institutions’ funding to the real economy.

A number of stakeholders showed support for the existing supervisory approach by one competent authority, which requires the originator to capitalise during the life of the transaction against the periodic SES not covering for the losses of the period net of realised losses and specific credit risk adjustments observed in the previous period, either keeping it or adapting it, taking into account the SES committed for the next period instead of the SES committed in the previous one (so called ‘rolling-window approach’). As an alternative, some respondents propose a ‘fallback approach’ or a ‘true sale mirror approach”, which mirrors the calculation of excess spread in a traditional securitisation (ex-post SES in the terminology adopted in the draft RTS). However, the capital charge would be imposed

on the excess spread that returns to the originator, not on the one covering the losses, which is a future income for it.

In addition, the stakeholders: (i) favour further specifying the definition of UIOLI SES in Article 1; (ii) favour only one approach and possibility of choosing the approach in the case of two; (iii) disagree with the use of regulatory risk parameters for the calculation of losses; (iv) and consider that it is not clear how the use of "new specific credit risk adjustment" referred to in Article 5(1)(b)(i) is supposed to be used for this purpose for originators applying the Standardised Approach; (v) call for both grandfathering of existing securitisations, and a phase-in period before the new rules apply to new securitisations.

In the case of the full model approach, the stakeholders: (i) disagree with the exclusion of prepayments and the treatment of revolving exposures in the full model approach; and (ii) consider that the use of three equally weighted scenarios (evenly loaded, front loaded and back loaded) is overly simplistic in determining appropriate values for the exposure value of UIOLI SES and over-states the capital requirements versus calibration against fluctuation of realised losses taking account of the implied magnitude of unexpected losses consistent with standardised risk weights.

In the case of the simplified model approach, the stakeholders (i) disagree with the exclusion of prepayments and with the treatment of replenishment periods for the calculation of WAL in the simplified model approach; (ii) consider that, in the case of the simplified model approach, there is little benefit to be gained from running the calculations in Article 3 for a single period, and require the consequential review of those calculations under Article 2(4); (iii) do not agree that it would be appropriate to replace the WAL with a scalar applied to the maturity of the credit protection in the simplified model approach; (iv) in line with their criticism that the full model approach overstates losses, consider that the Scalar of 0.8 for the UIOLI mechanism is unjustifiably high (as it has been calibrated to the full model approach).

Having considered the comments received, as well as all the implications in relation to the implementation of the RTS, the final draft RTS put forward the simplified model approach, with a scalar of 0.6, in combination with (i) the derogation for UIOLI transactions featuring a cap based on ex-post SES and (ii) a grandfathering provision for existing transactions.

In light of the comments received by the stakeholders, the EBA has also duly considered the introduction of the rolling window approach, instead of the lifetime approaches. While acknowledging that there are also several arguments in favour of the introduction of the rolling window approach, after considering the pros and cons of both approaches the EBA is in favour of the simplified model approach.

Whereas the compatibility of the current EIF business model in terms of the use of synthetic securitisations with the requirements of the RTS should be considered an important side condition, the major focus of the final draft RTS has been to ensure that any proposal is sufficiently prudent and is consistent with the explanation of the co-legislators for introducing own funds requirements for the SES in accordance with Recital 11 of Regulation (EU) 2021/558. Having said that, the simplified model approach with the scalar of 0.6 is understood to have considerably less negative impact on the activities of the EIF compared to the scalar of 0.8 or compared to the full model approach.

Following the feedback from the industry to allow the treatment of the SES in line with the treatment of ES in the traditional securitisation, the EBA has introduced a provision in the final draft RTS with a derogation by which the exposure value of the UIOLI SES of future periods would be considered zero where certain conditions apply. The application of this derogation is expected to have a high potential impact on the future EIF activity as it seems to be unlikely that the portfolios in their transactions would not generate enough cash flows to cover the SES committed by a credit institution and an application of the derogation may therefore be beneficial to the economic efficiency of future EIF transactions.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>General comments</b>			
Calculation of the exposure value of SES of the past and current periods	There has been a clear support on the treatment for the calculation of the exposure value of SES under points (i), (ii) and (iii) of Article 248(1)(e) of the CRR, that is, for the treatment of income of the securitised exposures registered in the P&L account, and the SES committed in the past and current periods that is still available to cover the future losses of the securitised portfolio.	The EBA takes note of the support for the approach where the amounts that are still available to absorb losses that might occur before the maturity date of the transaction (situations where either an amount calculated on the income from the securitised exposures and recognised by the originator institution in its income statement, or any other amount, has been contractually designated by the originator institution in any previous period or for the current period to cover for the losses of the securitised exposures) should count in full in the calculation of the exposure value of synthetic excess spread without the need of further specification.	No change
Calculation of the exposure value of the SES committed for future periods under a trapped mechanism	There has been a clear support on the treatment for the calculation of the exposure value of SES under point (iv) of Article 248(1)(e) for the specific case of trapped SES i.e. that all future periods should be taken into account until the expected maturity of the transaction.	The EBA also takes note of the support for the approach where all future periods should be considered in case of trapped SES mechanisms. For trapped SES mechanisms, the simplified model approach leads to a more forward-looking and more stable SES exposure value than the rolling window approach. At origination, the latter only includes a SES exposure value determined for the next year. As time progresses, the rolling window approach still includes a SES exposure value determined for the next year, but now also includes the unused SES of previous periods, in the case of a trapped mechanism. Therefore, the SES exposure value will regularly increase over time, thereby underestimating today the future SES exposure value and resulting in future additional capital requirements needed to cover the SES exposure value of future periods. The simplified model approach, on the other hand, provides a more forward-looking and more stable SES exposure value. While it is true that the remaining WAL will decrease as time progresses (and therefore the component of SES for future periods will decrease), there is regularly an inclusion of the SES amounts trapped under previous periods, and hence the SES exposure value is more stable over time.	No change
Lifetime approaches proposed in the draft	A high number of respondents expressed disagreement with both lifetime approaches (full model approach as well as the simplified	Having considered the comments received, as well as all the implications in relation to the implementation of the RTS, the	New Article 6

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
RTS (full model approach and simplified model approach)	<p>model approach with the scalar of 0.8) proposed by EBA, arguing that an application of these approaches would render the use of SES uneconomic for capital release and redeployment into new lending, including in the case of securitisations sponsored by EIF. According to the responses, these approaches conflict with the 1-year approaches within Basel, CRR and IFRS 9, by creating an inconsistency between the proposed exposure value of SES – calculated on a multi-year horizon, and Basel/CRR, calibrated on a 1-year approach and the offsetting accounting provisions in IFRS 9 which, for a performing portfolio (Stage 1), are calculated on one-year expected losses, deducted from earnings and available capital. It was also noted that the proposed approaches do not seem to address the risk of regulatory arbitrage. They have also been considered overly conservative and not recognising the performance of the synthetic securitisation market in the EU. The respondents proposed that the method for determining the exposure value of SES should take into account the following points: (i) firstly, the regulatory framework should adopt a consistent approach to traditional and synthetic securitisation, and (ii) secondly, the treatment of SES should be considered against the backdrop of the overall capital framework set out in the CRR which is based on a one-year time horizon.</p>	<p>final draft RTS put forward the simplified model approach, with a 0.6 scalar, in combination with (i) the derogation for UIOLI transactions featuring a cap based on ex-post SES and (ii) a grandfathering provision for existing transactions. Similar to the treatment of a contractual guarantee agreement that does not only provide for a commitment of an institution for the following year but also for additional (new) guarantee commitments for subsequent years, the SES exposure value determined in accordance with the simplified model approach takes into account also the commitments of an originator institution for a time horizon beyond one year. By using a cap of 5 years and taking into account certain call options in the determination of the expected maturity, the simplified model approach is consistent with common maturity assumptions under the CRR and does not make use of unrealistic maturity assumptions.</p> <p>From a prudential perspective, the simplified model approach appears preferable, taking into account that the major focus for the EBA has been that a proposal in the final draft RTS is sufficiently prudent and is consistent with the explanation of the co-legislators for introducing own funds requirements for the SES in accordance with Recital 11 of Regulation (EU) 2021/558. The scalar under the simplified model approach has been adjusted to take into account the concerns from the stakeholders.</p> <p>The EBA also does not fully support the arguments raised by stakeholders on the lifetime approaches, in particular as the time horizon in the securitisation framework is generally not based on the 1-year horizon, as it takes into account the maturity of the tranches for the calculation of their risk weights under both the SEC-IRBA and the SEC-ERBA approaches.</p>	<p>Articles on the full model approach have been deleted</p>
Full model approach – methodology	<p>In addition to general disagreement with the lifetime aspect on which this approach is based (as mentioned in the comment above), a number of respondents criticise the methodology of the full model approach. The use of three equally weighted scenarios (evenly, front</p>	<p>The final draft RTS disregard the full model approach, and are based on a simplified model approach (see the explanation above).</p>	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Simplified model approach – scalar of 0.8	<p>loaded and back loaded) was considered to be simplistic in determining appropriate values for the exposure value of UIOLI SES and is deemed to over-state the capital requirements versus a calibration against the fluctuation of realised losses.</p> <p>In addition to general disagreement with the lifetime aspect on which this approach is based (as mentioned in the comment above), several respondents consider the scalar of 0.8 for the UIOLI mechanism in the simplified model approach as excessive.</p>	<p>In order to address comments by the stakeholders, the final draft RTS adjust the scalar under the simplified model approach, to 0.6. This should strike a right balance between, on the one hand, addressing the concerns of the industry, while on the other hand, still proposing a prudential solution.</p>	Adjustment to Article 6
Number of approaches to be used for exposure value of SES of future periods	<p>There has been a general agreement that only one approach should remain for the calculation of exposure value of SES of future periods. In case two approaches remain in the final draft RTS, there has been a preference for the possibility of choosing the approach on an individual transaction basis.</p>	<p>The comments have been taken on board. The final draft RTS set out one approach only.</p>	Articles on the full model approach have been deleted
Interpretation of ‘future periods’ – term ‘as applicable’	<p>Most respondents challenge the interpretation of ‘future periods’ and consider that the inclusion of terms ‘as applicable’ and ‘relevant losses’ gives enough room to consider that ‘future periods’ should be limited to the ‘next period’. The respondents argue that Article 248(1)(e)(iv) of the CRR does not specify which future periods should be taken into account. In particular, it does not state that this should be a reference to all future periods. In addition, the introductory text of Article 248(1)(e) refers to the exposure value as including the amounts referred to in limbs (i) to (iv) ‘as applicable’. In the case of limb (iv), this reference to ‘as applicable’ should be read as a cross-reference to those periods which the EBA has determined to be relevant for the purposes of the RTS under Article 248(4).</p>	<p>The EBA considers that ‘as applicable’ should refer to points (i) to (iv) of Article 248(1)(e). That is, for instance, as there may exist different types of SES, point (i) referring to the income of the securitised exposures already registered in the P&amp;L account is not applicable if SES is in the form of a fixed percentage on the outstanding portfolio or a fixed amount, and (ii) and (iii) would apply instead. Conversely, if SES were mimicking the ES in a traditional securitisation, taking into account the income of the securitised exposures, (ii) and (iii) would not apply and (i) would apply instead. Finally, (iv) applies for all types of SES. Additionally, the RTS consider that future periods under point (iv) should be considered as the future periods within the expected maturity of the transaction. This view adopted in the RTS is consistent with the EBA’s understanding of Recital 11 of Regulation (EU) 2021/558 and with the calculation of the value of an unfunded guarantee provided by an institution in the CRR, which uses a conversion factor in second step of the calculation of the exposure value (of 100%, as Annex 1 includes financial guarantees as full risk items).</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Interpretation of 'future periods' – term 'relevant losses'	The stakeholders consider that the intention of the word 'relevant' is to ensure sufficient flexibility in the Level 1 text to allow the EBA to develop RTS which are appropriate in the context of the broader regulatory treatment of synthetic securitisation. In combination with the interpretation of Recital 11 of Regulation (EU) 2021/558, the 'relevant losses' to be considered for the future periods should be the ones that exceed the 1-year expected loss of the next period or the realised losses of the previous period (used as a proxy of the losses of the next period).	The EBA considers that the term 'relevant losses' should be understood in line with the Recital 4 of the CP and should follow a literal reading of Article 248(1)(e)(iv) i.e. the calculation of the exposure value should include all the future periods until the end of the expected maturity of the transaction. In line with the Recital 4 of the CP, the term 'relevant' should only be limited to EL only and not to the UL.	No change
Impact on the activity of the European Investment Fund with regard to its synthetic securitisations	The industry and the European Investment Fund (EIF) comments expressed their concerns on how imposing a capital requirement on the UIOLI SES based on the losses expected to be covered by it would hinder the viability of the synthetic securitisation market and, in the case of the EIF, their programme for increasing credit institutions' funding to the real economy.	Whereas the compatibility of the current EIF business model in terms of the use of synthetic securitisations with the requirements of the RTS should be considered an important side condition, the major focus of the final draft RTS should be to ensure that any proposal is sufficiently prudent and is consistent with the explanation of the co-legislators for introducing own funds requirements for the SES in accordance with Recital 11 of Regulation (EU) 2021/558. Having said that, the application of the simplified model approach with the scalar of 0.6 is understood to have considerably less negative impact on the activities of the EIF compared to the application of that approach with a scalar of 0.8 or compared to the full model approach. In addition, the final draft RTS include a new provision that introduces a derogation for transactions featuring a UIOLI SES with a cap based on ex-post SES. A potential application of this derogation is expected to result in a low impact of the final draft RTS on the future EIF activity as it seems to be unlikely that the portfolios in their transactions would not generate enough cash-flows to cover the SES committed by the respective institutions.	Introduction of simplified model approach with scalar 0.6, and the derogation for transactions featuring a cap based on ex-post SES
Rolling window approach (i.e. alternative approach)	A number of stakeholders showed support for the existing supervisory approach by the SSM, which requires the originator to capitalise during the life of the transaction against the periodic SES net of realised losses and specific credit risk adjustments (SCRAs) observed in the previous period, either keeping it or adapting it, taking into account the SES committed for the next period instead of the SES	In light of the comments received by the stakeholders, the EBA has also duly considered the introduction of the rolling window approach, instead of the lifetime approaches. While acknowledging that there are several arguments in favour of the introduction of the rolling window approach, overall the EBA considers the simplified model approach with the adjusted	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Fall back approach / true sale mirror approach	<p>committed in the previous one (so called ‘rolling-window approach’). The stakeholders argue that this approach better preserves the viability of the synthetic securitisation segment and that it is more consistent with the general credit risk framework, which generally requires for capital and specific credit risk adjustments (SCRA) on a one-year horizon.</p> <p>As an alternative, some respondents propose a ‘fallback approach’ or a ‘true sale mirror approach”, which are essentially the same and are based on calculating the exposure value based on the part of the UIOLI SES that goes back to the originator in the future periods. Under these approaches, the exposure value for the SES for those future periods would therefore be the sum of the amount by which the amount of SES for each future period during the expected maturity of the transaction exceeds the amount of excess spread which would have been available in a traditional securitisation of the securitised portfolio having the same capital structure. Where the amount of SES designated for future periods is less than the remaining portfolio income, the exposure value of the SES for that future period would be zero.</p> <p>These two approaches are supposed to mirror the calculation of excess spread in a traditional securitisation (ex-post SES in the terminology adopted in the draft RTS). However, the capital charge would be imposed on the excess spread that returns to the originator, not on the one covering the losses, which is a future income for it.</p>	<p>scalar, in combination with (i) the derogation for UIOLI transactions featuring a cap based on ex-post SES and (ii) a grandfathering provision for existing transactions, as prudent and consistent with the explanation of the co-legislators for introducing own funds requirements for the SES in accordance with Recital 11 of Regulation (EU) 2021/558.</p> <p>Following the feedback from the industry to allow treatment of the SES in line with the treatment of ES in the traditional securitisation, the EBA has introduced a provision in the final draft RTS with a derogation according to which the exposure value of the UIOLI SES of future periods would be considered zero where certain conditions apply. This exclusion will happen automatically by the mere fact of having a contractual clause in the protection contract including certain conditions: that the ex-ante commitment is not higher than the 1-year expected loss and that the final commitment is not higher than the ex-post SES generated by the securitised exposures in the period. A recital has been included in the final draft RTS explaining that this contractual provision should be compatible with the STS criteria. This provision is aligned with the exclusion of an exposure value for excess spread in traditional securitisations, where excess spread is generated by the securitised exposures without additional commitments made by the originator institution. The provision in the contract which includes a limit to the realised losses covered by the SES at the end of the year (ex-post cap on the commitment) would be in addition to the STS criterion, which imposes an ex-ante requirement. Therefore, that provision would be compatible with the STS criteria. A recital of the RTS should mention the relevance of this derogation also for STS on-balance-sheet securitisations as such clarification in a Level 2 instrument may facilitate the application of the derogation to STS on-balance-sheet securitisations.</p>	<p>Article 6 includes a new paragraph 2 with a derogation</p>
Arbitrage concerns mentioned in Recital 11	<p>Respondents challenge the arbitrage concern mentioned in Recital 11 of Regulation (EU) 2021/558. In particular, they consider that applying too much SES, when measured against the other relevant metrics for</p>	<p>The EBA does not share the interpretation by the stakeholders and considers that the arbitrage also takes place when the SES provided by the originator covers the expected loss, thus</p>	<p>No change</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
of Regulation (EU) 2021/558	the securitisation (such as the level of expected losses, the cost of the protection and the expected amortisation profile, etc.), is the actual regulatory arbitrage. Stakeholders note that the full model approach exacerbates this arbitrage risk, as it would only capitalise the amount of SES that the originator estimates to be used over time, irrespective of the committed amount. The committed excess spread could thereby be inflated to an unreasonably high amount, while the capital charge would still remain unchanged (This is only an issue for non-STS deals, because in STS deals the SES is limited to the 1-year EL). In essence, the stakeholders argue that arbitrage does not happen when the credit enhancement provided by SES (even if it still working as an unfunded guarantee to investors) is limited to the expected losses of the underlying portfolio.	providing a credit enhancement to the investors, and that credit enhancement is not risk-weighted. A similar treatment to a financial guarantee covering the losses of the securitised exposures during the life of the transaction should therefore be taken. The EBA takes note of the point that the full model approach disregards the excess spread that goes back to the originator (as it happens in a traditional securitisation, where it is not risk-weighted either) and that it could incentivise originators to provide too much SES. However, this is not the case in the simplified model approach, and the SRT assessment will also prevent this behaviour, as the LTEL and most of the UL would be allocated to the SES and the transfer of risks to third parties would be reduced, thus preventing the SRT tests from being passed.	
<b>Responses to questions in Consultation Paper EBA/CP/2022/11</b>			
<b>Q1. Do respondents find the provisions clear enough or would any additional clarification be needed on any aspect?</b>			
Definition of UIOLI	Some respondents noted that the definition of the UIOLI is overly restrictive and does not capture all possible approaches of the calculation of SES. In particular, the definition of UIOLI does not reflect the existence of two mechanisms: one where the SES is applied in the period where the payment is required under the securitisation, the other where it is applied in the period where a default has occurred. In the latter case, it is applied before the work-out and therefore on an estimate of the loss with a potential adjustment at the end of the work-out.	EBA agrees that a more precise wording is required in order to explicitly consider the situation where the losses are estimated because a credit event occurred in the respective period and there may be a potential adjustment afterwards at the end of the work-out.	Definition of UIOLI SES has been adjusted accordingly
Length of 'each period'	One respondent proposed to clarify what is meant by the length of 'each period' in the definition of UIOLI and Trapped SES (i.e. whether is it on an annual or quarterly basis, or at the SES reset date). It was proposed that the two definitions of synthetic securitisations should be extended to include SES reset dates.	Periods have to be understood as those reflected in the protection agreement. To note that WAL shall be calculated taking into account the length of each of those periods until the expected maturity of the transaction	No change
<b>Q2. Do you agree with the possibility of choosing between the full and the simplified model approaches in a consistent manner?</b>			
Choosing between the full model and the	A number of respondents does not agree that an originator institution should be required to apply either the full model Approach or the simplified model approach to all of its securitisations at the	The final draft RTS only introduce one approach for the calculation of the exposure value of the synthetic excess spread of the future periods (simplified model approach).	Articles on the full model

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simplified model approach	same time. They consider that originator institutions should be permitted to choose which approach to apply depending on the specific characteristics of the asset class and the transaction, rather than being obliged to make a binding decision for all securitisations for a given period. The stakeholders also do not agree that the originator institution should only be able to change its approach on an annual basis with effect from 1 January in each year.	As the articles on the full model approach have been deleted, this requirement has been dropped as well, as the simplified model approach requires a simpler calculation.	approach have been deleted
Requirement for an annual independent review	Several respondents noted that the annual independent review (as described in Article 2(4) of the CP) seems unduly onerous in particular where the originator institution applies the simplified model approach. It is proposed that the simplified model approach is carved out from the application of paragraph 4 and that no independent review is required in such case. One respondent wished to clarify that when the RTS provides an annual option, this choice only affects future transactions and does not require the protection buyer to recalculate past transactions' capital.	As the articles on the full model approach have been deleted, this requirement has been dropped as well, as the simplified model approach requires a simpler calculation.	Requirement deleted
<b>Q3. Instead, would you favour that the RTS consider only one method (i.e. the full model approach or the simplified model approach) for the calculation of the exposure value of the synthetic excess spread of the future periods?</b>			
One method for calculation of the exposure value of SES of future periods	Most of the respondents reiterated their position on the lifetime approaches (see responses to Q1) and noted that both approaches are excessively penalising and make SES economically unviable. Many respondents expressed preference for the 'alternative approach' referred to in the RTS (i.e. 'rolling window approach', which is an adaptation of the current supervisory practice used by one competent authority).	The final draft RTS only introduce one approach for the calculation of the exposure value of the synthetic excess spread of the future periods (simplified model approach).	Articles on the full model approach have been deleted
<b>Q4. Do you agree with the specifications of the asset model made in Article 3?</b>			
Determination of payments (Art. 3)	A number of respondents reiterated their disagreement with both the full and the simplified model approach for calculating the exposure value of SES of future periods (see responses to Q1). Some respondents noted that determination of payments under Art. 3 is a cumulation of conservative assumptions (unchanged drawing until maturity under revolvers, no amortisation of replenished exposure, expected prepayments not to be taken into account), resulting in an unrealistic and uneconomic outcome. As alternatives they suggest: use of credit conversion factors for drawings under revolvers,	Article 3 ensures consistency with the calculation of the weighted average maturity of a tranche under Article 257 of the CRR, as specified in the respective EBA Guidelines (EBA/GL/2020/04). It would not be coherent to apply different assumptions for determining the exposure value of the SES under the securitisation framework.	No change

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	replenished exposures amortising in line with initial exposures, and expected prepayments to be taken into account.		
Determination of payments in case of revolving securitisations (Article 3(5)(b))	Some respondents consider that the provision on the determination of payments for revolving securitisations under Article 3(5)(b) is not a sound basis for determining the originator institution's capital requirements in connection with the securitised portfolio, as although appearing logical (i.e. adjusting the actual amortisation profile to reflect potential replenishment) it overestimates the exposure amount of SES over the lifetime of the transaction and can in many cases produce an outcome not reflective of the likely actual amortisation of the securitised portfolio.	See EBA response on the previous comment	No change
Determination of principal and interest payments (Art. 3(5))	One respondent asked to clarify why the calculation in Article 3 includes both principal and interest payments on the securitised exposures, given that most synthetic securitisations do not actually provide protection in respect of interest amounts and, by definition, interest payments will not affect the maturity of the securitised exposures.	The interest payments contribute to the calculation of the amortisation of the securitised exposures of each period, and the calculation should therefore include the interest payments as well.	No change
Prepayments (Art.3(6))	Some respondents noted that the requirement in paragraph 6 of Article 3 that prepayments are not taken into account is overly conservative in circumstances where there is robust historical evidence on prepayment rates. One of the solutions proposed was to adopt the approach taken in paragraph 32 of the EBA Guidelines on Weighted Average Maturity (EBA/GL/2020/04), which permits some prepayments to be taken into account in the presence of 5-year historical data.	Paragraph 32 of the EBA Guidelines on Weighted Average Maturity applies to traditional securitisations only. The guidelines do not allow prepayments in the case of synthetic deals. It would not be coherent to apply different assumptions under the securitisation framework.	No change
<b>Q5. Do you agree with the specifications for the determination of the relevant losses made in Article 5?</b>			
Effect of inflating the expected losses relative to the likely actual realised losses	Some respondents noted that the method for determining the relevant losses in Article 5 is not fully appropriate, as IRB models tend to generally overstate the actual expected losses and the actual risks, given they sometimes require regulatory add-ons and are generally based on a margin of conservatism. While this is logical when applied over a one-year time horizon, it is not considered appropriate when applied to the lifetime of the portfolio.	The securitisation framework builds on the risk parameters as calculated under the credit risk framework. Therefore the outcome of the IRB models have to be taken into account necessarily.	No change

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The use of 'new specific credit risk adjustment' by originators applying the Standardised Approach	Some respondents asked for clarification how the use of 'new specific credit risk adjustment' referred to in Article 5(1)(b)(i) should be used for originator institutions applying the Standardised Approach, considering that under IFRS 9, for assets in Stage 1, institutions are required to calculate impairments on a one-year basis, and they only move to lifetime impairments for exposures that are classified as being in Stage 2.	Originator institutions should estimate the portion of exposures that would migrate to Stage 2 or 3 in accordance with their experience.	No change
Request for clarification on 'not sufficiently representative' loss coverage	One respondent asked for clarification how an originator should decide that the use of new specific credit risk adjustments results in a loss coverage that is 'not sufficiently representative', such that it should model the expected loss amounts using other internal risk parameters in accordance with Article 5(1)(b)(ii).	This should be up to the originator institution and the competent authority to be decided on a case by case basis.	No change
<b>Q6. Do you agree with the calculation of the exposure value of synthetic excess spread for future periods made in Article 6?</b>			
Incentivisation of regulatory arbitrage, by the method of allocating losses for a given period	One respondent considers that the method of allocating losses for a given period incentivises regulatory arbitrage in some circumstances (as by counting only that portion of the SES which corresponds to the losses determined pursuant to Article 5, there is no exposure value associated to SES in excess of those expected losses). If an originator institution wanted to engage in regulatory arbitrage, it could do so by increasing the SES in a non-STS synthetic securitisation to be significantly in excess of the expected losses, without that having any impact on the exposure value of the SES under the full model approach (though it would increase the exposure value under the simplified model approach).	The EBA takes this argument against the full model approach into account. The EBA understands that the commensurate risk transfer test, and the mechanistic tests, under Article 245(2) of the CRR would act as a counterweight to avoid such behaviour. The risk transferred to third parties would be lower as SES would be absorbing not only the LTEL but most of the UL and the PBA and commensurate risk transfer tests would not be passed. As noted above, the final draft RTS only contain the simplified model approach.	Articles on the full model approach have been deleted
Shortcomings in the underlying methodology	Several respondents consider that the use of three specific scenarios applied with equal weight (front-loaded, back-loaded and evenly-loaded) is simplistic in determining appropriate values for the exposure value of UIOLI SES and over-states the capital requirements versus a calibration against fluctuation of realised losses, taking account of the implied magnitude of unexpected losses consistent with standardised risk weights. The respondents point out several shortcomings of the approach and note it is overly conservative, particularly in the context of UIOLI SES.	The final draft RTS disregard the full model approach.	Articles on the full model approach have been deleted
<b>Q7. Shall the average of the scenarios be made in a different way for UIOLI and trapped mechanisms (e.g. back-loaded and evenly-loaded only for UIOLI mechanisms, and front-loaded and evenly-loaded for trapped mechanisms)?</b>			

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Alternative proposals	<p>Respondents proposed several alternative proposals to the scenarios proposed in the RTS under the full model approach, including, but not limited to:</p> <ul style="list-style-type: none"> <li>- distinction to be made between UIOLI and trapped mechanisms: consistently with one-year horizon approach, for trapped mechanisms, all unused SES available to meet losses in later years should attract a capital requirement. Unused SES available for later periods should be treated as unfunded guarantee.</li> <li>- omission of the evenly-loaded scenarios from the proposed methodology, as evenly distributed loss scenarios are considered in contrast with historically observed loss distribution and therefore they tend to distort the measurement.</li> <li>- alternative approach that would be based on the average of the three scenarios in both models.</li> </ul>	The final draft RTS disregard the full model approach.	Articles on the full model approach have been deleted
<b>Q8. Do you agree with the specification of the simplified model approach made in Article 7?</b>			
Proposal to base the calculation on the actual amount of SES already calculated for the current period	<p>One respondent noted that the formula currently refers to the contractual amount of SES designed for the next period, to be determined in accordance with the previous Article 4. By implication, where the amount of SES is determined by reference to the size of the securitised portfolio, this also means that the originator institution needs to undertake the calculations in the previous Article 3 for the next period. The respondent sees little benefit in undertaking the calculations in Article 3 for a single period, and requiring the consequential review of those calculations under Article 2(4). They rather propose to base the calculation on the actual amount of SES already calculated for the current period.</p>	<p>This proposal has been disregarded from a policy perspective, as the implication is that there would be no exposure value at inception, the moment of the SRT assessment.</p> <p>However, the EBA notes that when the calculation date of the own funds requirements and the starting date of the period are consecutive days (e.g. 31 December and 1 January) there is no need of modelling the SES of the next period in most cases. For instance, if the SES is set as a fixed percentage of the outstanding amount of the securitised exposures, that outstanding amount is known on 31 December, and the SES committed for the next period starting on 1 January is known as well, in consequence. Therefore, only WAL should be calculated in such a case in order to apply the formula for the calculation of the exposure value of SES.</p>	No change
Comments on WAL	<p>Two respondents commented on the treatment of WAL and noted that WAL calculated based on conservative assumptions with regards to drawings, amortisation and prepayments is not realistic.</p>	<p>See EBA response above about consistency with the EBA Guidelines on the calculation of the WAM of a tranche (EBA/GL/2020/04)</p>	No change
Scalar	<p>Some respondents suggested to reduce the scalar factor of 0.8 to a lower value.</p>	<p>The scalar under the simplified model approach has been adjusted to 0.6.</p>	Adjustments to Article 6

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>Q9. Do you consider that the formula can be further simplified (e.g. by using the maturity of the credit protection multiplied by a conservative scalar instead of WAL)?</b>			
Disagreement with further simplification of the formula	<p>There was a disagreement by a number of respondents with further simplification of the formula, as those respondents do not agree that it would be appropriate to replace the WAL with a scalar applied to the maturity of the credit protection.</p> <p>Arguments provided:</p> <ul style="list-style-type: none"> <li>- The actual amortisation of a securitised portfolio will vary greatly depending on the nature of the securitised exposures and the portfolio make-up. The WAL calculation, while imperfect, at least attempts to take this into account in a way a conservative scalar applied to the scheduled maturity of the credit protection is simply unable to do.</li> <li>- Further simplification would present a substantial risk that, due to the heterogeneity of potential amortisation profiles, no single treatment could be expected to be appropriate for the range of transactions in scope.</li> </ul>	The stakeholders comments have been taken on board. The formula has not been further simplified.	No change
<b>Q10. Do you agree with the scalar assigned for UIOLI mechanisms? If not, please provide empirical evidence that justifies a different scalar based on the different loss absorbing capacity of UIOLI vs trapped mechanisms.</b>			
Excessively high level of scalar	<p>Several respondents consider that the scalar of 0.8 for the UIOLI mechanism is unjustifiably high and that an application of such a scalar will result in a disproportionate impact on transactions, is inconsistent with the calibration of unexpected loss implied by standardised risk weights, will make the SES feature uneconomical, and can in certain cases lead to materially different exposure values between the two models. The respondents have proposed to recalibrate the scalar to a level of 0.6 or 0.4 (some respondents argued that a scalar of 0.6 would be consistent with risk weights and would reflect the standard deviation of fluctuations in annual losses being approximately equal to expected losses; other respondents commented that a scalar of 0.4 is commensurate with the amount of losses historically observed on SRT synthetic securitisations).</p>	In response to the comments from the stakeholders, the scalar has been adjusted to the level of 0.6.	Adjustments to the Article 6
<b>Q11. Regarding the current supervisory practices on SES, described in paragraph 9 of the background section, the question is whether these practices could be adapted while keeping them aligned with the amended regulation, and the relative impact they would imply in comparison with the approaches included in the draft RTS. One way to try to further adapt the current supervisory practices on UIOLI SES to the provisions of the amended regulation could be by taking into account the part that is expected to cover for losses in the next period instead of the part that it is not, including at issuance of the transaction, keeping the rolling-window approach. Would you favour that approach? If so,</b>			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>how do you think that this rolling-window approach for calculating UIOLI SES will affect the efficiency and viability of synthetic transactions in comparison with the current supervisory practices? Please justify your response with specific illustrative examples or data.</b>			
Current supervisory practices of one competent authority	A number of stakeholders showed support for the existing supervisory approach by the SSM, which requires the originator institution to capitalise during the life of the transaction against the periodic SES net of realised losses and specific credit risk adjustments (SCRAs) observed in the previous period, either keeping it or adapting it, taking into account the SES committed for the next period instead of the SES committed in the previous one (so called 'rolling-window approach'). The stakeholders argue that this approach better preserves the viability of the synthetic securitisation segment and that it is more consistent with the general credit risk framework, which generally requires that capital and specific credit risk adjustments (SCRA) are determined on the basis of a one-year horizon.	In light of the comments received by the stakeholders, the EBA has also duly considered the introduction of the rolling window approach, instead of the lifetime approaches. While acknowledging that there are several arguments in favour of the introduction of the rolling window approach, overall the EBA considers the simplified model approach with the adjusted scalar, in combination with (i) the derogation for UIOLI transactions featuring a cap based on ex-post SES and (ii) a grandfathering provision for existing transactions, as prudent and consistent with the explanation of the co-legislators for introducing own funds requirements for the SES in accordance with Recital 11 of Regulation (EU) 2021/558.	No change
<b>Q12. Do you agree with the treatment of the ex-post SES of future periods in the RTS? If not, please provide rationale and data supporting your views</b>			
Treatment of the ex-post SES of future periods	Most of the respondents do not agree with the treatment of the ex-post SES of future periods, for arguments stated above. Most of the respondents support either the alternative approach (i.e. current supervisory approach), or the rolling window approach.	See EBA response to the question 1 above.	No change
<b>Q13. Do you have any other comments on these draft RTS?</b>			
Grandfathering and phase in	A number of respondents consider that both grandfathering of existing securitisations, and a phase-in period before the new rules apply to new securitisations is appropriate for the following reasons: (i) the approach outlined in the RTS is substantially different from the approach that has been applied by the ECB for several years; (ii) the approach outlined in the RTS will have impact on the capital treatment of the transactions; (iii) a number of existing transactions structured with excess spread would become uneconomic which could trigger a high number of regulatory calls.	In order not to disrupt the market and avoid the unwinding of existing transactions, these RTS include a grandfathering provision, up to the maturity of the transactions, for transactions featuring synthetic excess spread, where the originator institution fulfilled the requirements of Article 248(1)(e), points (i) to (iv), of Regulation (EU) No 575/2013 in accordance with the supervisory practice adopted by a relevant competent authority.	Introduction of a new Article 7
Use of both approaches to calculate the exposure value of the SES for the current period	One respondent asked to clarify why the approaches (full model or simplified model approach) are not also to be used to calculate the value of the SES for the current period. While they note the different wording used in limbs (iii) and (iv) of Article 248(1)(e) (limb (iii) refers to the amount of SES contractually designated for the current period "that is still available to absorb losses", while limb (iv) simply refers to	The EBA disagrees with the comment. The amount of SES that is still available to absorb losses in the current period is already known on the calculation date and therefore does not need to be determined by means of a model.	No change

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Deduction of specific credit risk adjustments	<p>the amount of SES contractually designated "for future periods"), they do not believe that there is a real difference in the meaning of the two limbs.</p> <p>The EBA makes the observation in several parts of the RTS that one effect of the requirement to treat the exposure value of SES as a tranche in the securitisation is that the originator institution would be permitted to deduct the specific credit risk adjustments (SCRAs) for the underlying exposures from the exposure value of the SES under Article 248(1)(d), rather than from the exposure value of the first loss tranche as was previously the case. While this is correct, it should be clarified that where the amount of those SCRAs is greater than the exposure value of the SES, the originator institution would still be permitted to deduct that excess from the exposure value of the first loss tranche.</p>	<p>EBA considers that this is already implicit in the wording of Article 248(1)(d) CRR. EBA also notes that any clarification along these lines would go beyond the mandate under which these RTS are developed.</p>	No change
Relationship between RTS and EBA Report on SRT	<p>One respondent asked for clarification on the relationship between the exposure value of SES for the purposes of Article 248(1)(e) CRR and the EEVES for the purpose of the SRT/CRT tests set out in the EBA Report on Significant Risk Transfer, as well as for the clarification on how synthetic excess spread should be treated for the purposes of those tests.</p>	<p>The capital requirements on SES should be considered for the calculation on the capital relief in synthetic securitisations now, if the EBA Report on Significant Risk Transfer were to be applied. The concept of EEVES is different and also applies to traditional securitisations, and it is used in the Report for the purposes of the allocation of LTEL and UL to the tranches.</p>	No change
Penalising treatment of SES	<p>Several respondents noted that the EBA proposals adversely impact the economics of outstanding transactions and will probably result in an economic decision to exercise regulatory calls. It was also noted that the EBA proposals disproportionately penalise potential transactions for asset classes and in jurisdictions with higher expected losses, and hence put originator institutions holding such assets at a disadvantage.</p>	<p>In light of the comments received, the EBA has introduced a grandfathering provision. See EBA response above.</p>	Introduction of a new Article 7