

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 7 January 2015

To all originator credit institutions and investment firms of a traditional securitisation¹ or a synthetic securitisation² (“**originator institution**”)

CIRCULAR CSSF 15/600

Re: Transposition of the Guidelines of the European Banking Authority (EBA) on significant credit risk transfer for traditional and synthetic securitisations relating to Articles 243 and 244 of Regulation 575/2013³

Ladies and Gentlemen,

On 7 July 2014, the EBA published guidelines in accordance with Articles 243 and 244 of Regulation 575/2013 concerning significant credit risk transfer for traditional and synthetic securitisations (hereinafter “**Guidelines**”).⁴

Articles 243 and 244 of Regulation 575/2013 introduce the principle that significant credit risk transfer should be taken into account for traditional securitisations and synthetic securitisations.

The purpose of the Guidelines is to further specify the assessment of significant credit risk transfer in accordance with Articles 243 and 244 of Regulation 575/2013.

Originator institutions of traditional securitisations shall comply with (i) the general requirements set out in the Guidelines for all traditional securitisations claiming significant credit risk transfer under Article 243 of Regulation 575/2013 and (ii) the specific requirements set out in the Guidelines to achieve significant credit risk transfer to third parties, in accordance with Article 243(4) of Regulation 575/2013.

¹ ‘traditional securitisation’ within the meaning of Article 242(10) of Regulation 575/2013.

² ‘synthetic securitisation’ within the meaning of Article 242(11) of Regulation 575/2013.

³ 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 (**Regulation 575/2013**).

⁴ See Annex.

Originator institutions of synthetic securitisations shall comply with (i) the general requirements set out in the Guidelines for all synthetic securitisations claiming significant credit risk transfer under Article 244 of Regulation 575/2013 and (ii) the specific requirements set out in the Guidelines to achieve significant credit risk transfer to third parties, in accordance with Article 244(4) of Regulation 575/2013.

It should be noted that originator institutions of traditional or synthetic securitisations shall provide the competent authority⁵ with all requested information of the traditional and synthetic securitisations on which they intend to demonstrate significant credit risk transfer, so that the competent authority can conduct the assessment of significant credit risk transfer to third parties as specified in Titles I to III of the Guidelines. To this end, after the origination of the securitisation, originator institutions of traditional or synthetic securitisations shall return, without delay, the Excel file “Reporting template for originator institutions on significant credit risk transfer” to the competent authority.⁶

An originator institution of traditional or synthetic securitisations shall at least notify to the competent authority any traditional or synthetic securitisation on which it intends to demonstrate significant credit risk transfer which is not similar in structure and portfolio composition to previous transactions notified by the institution.

The Guidelines shall enter into force on 7 January 2015 at the latest. The Guidelines are annexed to this circular. They are also available on the EBA's website at:

<http://www.eba.europa.eu/documents/10180/749215/EBA-GL-2014-05+Guidelines+on+Significant+Risk+Transfer.pdf>

This circular shall enter into force on 7 January 2015.

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Claude SIMON
Director

Andrée BILLON
Director

Jean GUILL
Director General

Annexe:

- EBA Guidelines on Significant Credit Risk Transfer relating to Articles 243 and 244 of Regulation 575/2013.

⁵ Competent authority: the CSSF or the European Central Bank according to the attribution of competences provided for or by virtue of Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

⁶ The Excel file is available on the CSSF's website on the page “Supervision of Banks”, section “Specific topics” or on the page “Supervision of investment firms”, section “Specific topics”.



EBA/GL/2014/05

7 July 2014

Guidelines

on Significant Credit Risk Transfer relating to Articles 243 and
Article 244 of Regulation 575/2013

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1. Executive Summary

In Article 243(2) and Article 244(2), Regulation (EU) No 575/2013 ('the CRR') includes the possibility for competent authorities to decide on a case-by-case basis 'that the significant risk transfer shall not be considered to have been transferred to third parties' because the reduction in risk-weighted exposure amounts achieved by the securitisation transaction is not justified by a commensurate transfer of credit risk to third parties. Furthermore Article 243(4) and Article 244(4) provide the possibility for competent authorities to grant permission to originator institutions to consider significant credit risk as having been transferred, via an alternative manner to Article 243(2) and Article 244(2), where the originator institution is able to demonstrate, that the reduction of own funds requirements which the originator achieves by the securitisation is justified by a commensurate transfer of credit risk to third parties. In addition the institution must meet the conditions according to points (a) and (b) of paragraph 4 of Article 243 or 244.

The CRR (Article 243(6) and Article 244(6)) requires competent authorities to keep EBA informed about the specific cases, referred to Article 243(2) and Article 244(2), where the possible reduction in risk-weighted exposure amounts is not justified by a commensurate transfer of credit risk to third parties, and the use institutions make of Article 243(4) and Article 244(4). Furthermore it requires that the EBA shall monitor the range of practices in this area and shall, in accordance with Article 16 of Regulation (EU) No 1093/2010 issue guidelines. It also requires the EBA to review Member States' implementation of those guidelines and provide advice to the Commission by 31 December 2017 on whether a binding technical standard is required in this area.

Scope and content of the Guidelines on Significant Risk Transfer

The Guidelines have been drafted to provide more guidance on the assessment of the significant transfer of credit risk ('SRT') in accordance with Article 243 or Article 244 of the CRR. The Guidelines apply to both originator institutions and competent authorities and include i) requirements for originator institutions when engaging in securitisation transactions for SRT, ii) requirements for competent authorities to assess transactions that claim SRT using Articles 243(2) or 244(2) of the CRR and iii) requirements for competent authorities when assessing whether commensurate credit risk has been transferred to third parties in accordance with Article 243(4) or 244(4) of the CRR. In addition to this, the scope of the Guidelines covers SRT more broadly than the three requirements listed above, where this is considered necessary by the EBA.

Originator institutions should apply the (i) general requirements of the Guidelines for all transactions claiming SRT under Article 243 or 244 of the CRR and (ii) the specific requirements of the Guidelines to achieve SRT to third parties in accordance with Article 243(4) or 244(4) of the CRR.

Competent authorities should apply these Guidelines in the following situations:

- a. when identifying securitisation transactions where the credit risk is not considered to have been transferred even though the transactions meet one of the conditions under Article 243(2) or 244(2) of the CRR;
- b. when assessing an originator institution's compliance with the requirements under Articles 243(4) and 244(4) of the CRR;
- c. when collecting data to be provided to the EBA in accordance with Articles 243(6) and 244(6) of the CRR and when assessing an originator institution's compliance with (i) the general requirements of the Guidelines for all transactions claiming SRT under Article 243 or 244 of the CRR and (ii) the specific requirements of the Guidelines to achieve SRT to third parties in accordance with Article 243(4) or 244(4) of the CRR.

The EBA believes that all EU Member States should assess and treat significant credit risk transfer in the same way in view of the establishment of the single rule book, and believes these Guidelines will encourage this objective.

2. Background and rationale

The Basel II capital framework recognises that credit risk transfer techniques can significantly reduce credit risk to which institutions are exposed and recognises that the credit risk transfer can be an effective risk management tool. The framework establishes that where credit risk transfers are direct, explicit, irrevocable and unconditional, and supervisors are satisfied that banks fulfil certain minimum operational conditions relating to risk management processes, banks may take account of such credit risk transfer in calculating own funds requirements.

Nevertheless, the Basel Committee of Banking Supervisors (BCBS) notes that there exists potential for capital arbitrage within the credit risk mitigation framework, including use of credit risk mitigation for securitisation exposures, particularly when (i) there is a delay in recognising the cost of protection in earnings while (ii) the bank receives an immediate regulatory capital benefit in the form of a lower risk weight on an exposure on which it is nominally transferring risk. In such instances, there may be no meaningful transfer of credit risk.

While the arbitrage opportunities exist more generally under the credit risk mitigation framework, the arbitrage opportunities are more likely to occur when credit risk transfer techniques are used for securitisation transactions, where the difference in the risk weight before and after transferring credit risk can be very large.

In the EU, the CRR sets out the rules for the recognition of SRT for traditional and synthetic securitisation transactions for originator institutions in Article 243 and in Article 244. In case the SRT requirements have been met, originator institutions of a traditional securitisation may exclude securitised exposures from the calculation of risk-weighted exposure amounts and, as relevant, expected loss amounts, and originator institutions of a synthetic securitisation may calculate the risk-weighted exposure amounts, and, as relevant, expected loss amounts, for the securitised exposures in accordance with Article 249 of Regulation (EU) 575/2013.

Importance of assessment of Significant Credit Risk Transfer

When an originator institution undertakes a securitisation, if it has transferred a significant portion of the credit risk of its exposures to a third party, it is permitted to reduce its own funds requirements accordingly, i.e. the originator institution has achieved SRT. In practice, originator institutions can technically satisfy the rules for the recognition of SRT, without actually achieving commensurate risk transfer, which necessitates closer analysis by competent authorities.

It is important that competent authorities and originator institutions consider a range of factors when assessing whether commensurate credit risk has been transferred in a given transaction to a third party.

Not all factors referred to in this guidance will be relevant in all transactions, but equally it should not be considered an exhaustive list, and there may be other issues which competent authorities and/or originator institutions could consider in determining if commensurate credit risk transfer has been achieved.

Additional CRR requirements related to the application of the securitisation framework

Article 243(5) and Article 244(5) of the CRR set out conditions that should be met, in addition to the requirements set out in paragraphs 1 to 4, in order to apply the securitisation framework. For traditional securitisations Article 243(5) of the CRR specifically requires the following conditions to be met:

- a. the securitisation documentation reflects the economic substance of the transaction;
- b. the securitised exposures are put beyond the reach of the originator institution and its creditors, including in bankruptcy and receivership. This shall be supported by the opinion of qualified legal counsel;
- c. the securities issued do not represent payment obligations of the originator institution;
- d. the originator institution does not maintain effective or indirect control over the transferred exposures. An originator shall be considered to have maintained effective control over the transferred exposures if it has the right to repurchase from the transferee the previously transferred exposures in order to realise their benefits or if it is obligated to re-assume transferred risk. The originator institution's retention of servicing rights or obligations in respect of the exposures shall not of itself constitute indirect control of the exposures;
- e. the securitisation documentation meets all the following conditions:
 - it does not contain clauses that other than in the case of early amortisation provisions, require positions in the securitisation to be improved by the originator institution including but not limited to altering the underlying credit exposures or increasing the yield payable to investors in response to a deterioration in the credit quality of the securitised exposures;
 - it does not contain clauses that increase the yield payable to holders of positions in the securitisation in response to a deterioration in the credit quality of the underlying pool;
 - it makes it clear, where applicable, that any purchase or repurchase of securitisation positions by the originator or sponsor

beyond its contractual obligations is exceptional and may only be made at arms' lengths conditions;

- f. where there is a clean-up call option, that option shall also meet the following conditions:
- it is exercisable at the discretion of the originator institution;
 - it may only be exercised when 10 % or less of the original value of the exposures securitised remains unamortised;
 - it is not structured to avoid allocating losses to credit enhancement positions or other positions held by investors and is not otherwise structured to provide credit enhancement.

For synthetic securitisations Article 244(5) of the CRR requires the following conditions to be met:

- a. the securitisation documentation reflects the economic substance of the transaction;
- b. the credit protection by which the credit risk is transferred complies with Article 247(2);
- c. the instruments used to transfer credit risk do not contain terms or conditions that:
 - impose significant materiality thresholds below which credit protection is deemed not to be triggered if a credit event occurs;
 - allow for the termination of the protection due to deterioration of the credit quality of the underlying exposures;
 - other than in the case of early amortisation provisions, require positions in the securitisation to be improved by the originator institution;
 - increase the institution's cost of credit protection or the yield payable to holders of positions in the securitisation in response to a deterioration in the credit quality of the underlying pool;
- d. an opinion is obtained from qualified legal counsel confirming the enforceability of the credit protection in all relevant jurisdictions;
- e. the securitisation documentation shall make clear, where applicable, that any purchase or repurchase of securitisation positions by the originator or sponsor beyond its contractual obligations may only be made at arms' lengths conditions;

- f. where there is a clean-up call option, that option meets all the following conditions:
- it is exercisable at the discretion of the originator institution;
 - it may only be exercised when 10 % or less of the original value of the exposures securitised remains unamortised;
 - it is not structured to avoid allocating losses to credit enhancement positions or other positions held by investors and is not otherwise structured to provide credit enhancement.

Criteria for credit granting (Article 408)

Furthermore, in order to apply the securitisation framework originator institutions shall apply the same sound and well-defined criteria for credit-granting in accordance with the requirements of Article 79 of Directive 2013/36/EU to exposures to be securitised as they apply to exposures to be held in their own non-trading book. To this end the same processes for approving and, where relevant, amending, renewing and re-financing credits shall be applied by the originator and sponsor institutions.

Where the requirements referred to in the first subparagraph of Article 408 of the CRR are not met, Article 245(1) of the CRR shall not be applied by an originator institution and that originator institution shall not be allowed to exclude the securitised exposures from the calculation of its capital requirements under the CRR.

3. EBA Guidelines on significant risk transfer for securitisation transactions

Status of these Guidelines

This document contains guidelines issued pursuant to Article 16 of 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 (*the EBA Regulation*). In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions must make every effort to comply with the guidelines.

Guidelines set out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities and financial institutions to whom guidelines are addressed to comply with these guidelines. Competent authorities to whom guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting Requirements

In accordance with Article 16(3) of the EBA Regulation, competent authorities must notify the EBA as to whether they already comply or intend to comply with these Guidelines, or notify the EBA of their reasons for non-compliance, by 07.09.2014. If no notification is received by this deadline, the EBA will consider competent authorities to be non-compliant. Notifications should be submitted by sending the form provided in Section 5 to compliance@eba.europa.eu quoting the reference 'EBA/GL/2014/05'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

Notifications will be published on the EBA website, in line with Article 16(3) of the EBA Regulation.

Title I – Scope of application and general principles

1. Scope of application

1. These Guidelines apply to:

- a. originator institutions subject to Article 243 and 244 of Regulation (EU) No 575/2013.
- b. competent authorities;

2. Originator institutions should apply (i) the general requirements set out in these Guidelines for all transactions claiming significant risk transfer ('SRT') under Article 243 or 244 of Regulation (EU) No 575/2013 and (ii) the specific requirements set out in these Guidelines to achieve SRT to third parties, in accordance with Article 243(4) or 244(4) of Regulation (EU) No 575/2013.

3. Competent authorities should apply these Guidelines in the following situations:

- a. when identifying those securitisation transactions where the credit risk is not considered to have been transferred even though these transactions are meeting either of the conditions under Articles 243(2) or 244(2) of Regulation (EU) No 575/2013;
- b. when assessing an originator institution's compliance with the general requirements of the Guidelines for all transactions claiming SRT under Article 243 or 244 of Regulation (EU) No 575/2013;
- c. when assessing an originator institution's compliance with the requirements under Articles 243(4) and 244(4) of Regulation (EU) No 575/2013.

4. In addition to the data to be provided to the EBA in accordance with Articles 243(6) and 244(6) of Regulation (EU) No 575/2013, competent authorities should provide data to the EBA, on a yearly basis, on the transactions reviewed under paragraph 3(1) of these Guidelines using the template in Annex 1.

2. General Principles

1. Fulfilment of the conditions laid down in points (a) or (b) of either of the Articles 243(2) or 244(2) of Regulation (EU) No 575/2013 entitles the originator institution of a traditional securitisation to exclude the respective securitised exposures from the calculation of risk-weighted exposure amounts and, as relevant, expected loss amounts, and entitles the originator institution of a synthetic securitisation to calculate the risk-weighted exposure amounts, and, as relevant, expected loss amounts, for the securitised exposures in

accordance with Article 249 of Regulation (EU) No 575/2013, unless the competent authority decides on case-by-case basis that significant credit risk shall not be considered to have been transferred to third parties or any of the conditions according to Articles 243(5) or 244(5) of Regulation (EU) No 575/2013 are not satisfied with regard to this securitisation.

2. Competent authorities should ensure that procedures exist for the identification of such securitisation transactions which should, notwithstanding compliance with points (a) or (b) of Articles 243(2) or 244(2) of Regulation (EU) No 575/2013, be subject to further review by the competent authority in accordance with Title III of these Guidelines in order to assess whether a commensurate transfer of credit risk to third parties has indeed been achieved by the transaction.
3. The conditions for achieving SRT to third parties should be satisfied on a continuous basis.
4. Originator institutions should assess the reliance placed on external credit assessments in their analyses of transactions claiming SRT and the relationship between such external credit assessments and internal credit assessments.

Title II- Criteria for competent authorities in case of application of Article 243(2) or Article 244(2) of Regulation (EU) No 575/2013

3. **Criteria to determine when competent authorities should conduct a comprehensive review of SRT in case of application of Article 243(2) or Article 244(2) of Regulation (EU) 575/2013**
 1. With regard to those securitisation transactions meeting the conditions for achieving SRT in accordance with points (a) or (b) of Article 243(2) or Article 244(2) of Regulation (EU) No 575/2013, competent authorities should conduct a comprehensive review of SRT in accordance with Title III, paragraphs 4 to 10 of these Guidelines, where any of the following circumstances contained in the non-exhaustive list below applies:
 - a. Particular information indicates that the thickness of a securitisation's tranches which are used as relevant tranches to demonstrate SRT under Articles 243(2) or 244(2) of the Regulation (EU) No 575/2013 may not be sufficient to assume a commensurate SRT to third parties with regard to (i) the special credit risk profile and (ii) the corresponding risk-weighted exposure amounts of the securitised exposures of this securitisation.
 - b. Doubts regarding the appropriateness of a particular credit assessment of an ECAI.

- c. Losses incurred on the securitised exposures in previous periods or other information indicate that:
 - i. An institution's reasoned estimate of the expected loss on the securitised exposures until the maturity of the transaction in accordance with point (b) of Articles 243(2) or 244(2) of Regulation (EU) No 575/2013 may be too low to consider significant credit risk as having been transferred to third parties. The total maturity of the transaction should be taken into account, including the potential existence of excess spread.
 - ii. The margin by which the securitisation positions that would be subject to deduction from Common Equity Tier 1 or a 1250% risk weight exceed the reasoned estimate of the expected loss until the maturity of the transaction may be too low to consider significant credit risk as having been transferred to third parties.
- d. The high costs incurred by the originator institution to transfer credit risk to third parties through a particular securitisation indicate that the SRT formally achieved under points (a) or (b) of either of the Articles 243(2) or 244(2) of Regulation (EU) No 575/2013 may actually be undermined by the high cost of this transfer of credit risk.
- e. An originator institution intends to demonstrate the SRT to third parties in accordance with points (a) or (b) of either of the Articles 243(2) or 244(2) of Regulation (EU) No 575/2013 in the absence of an ECAI rating for the relevant tranches.
- f. Securitisation transactions of trading book portfolios.
- g. Securitisation transactions with call and put options other than those options considered not to hinder effective transfer of credit risk in accordance with paragraphs 5(2), 5(3) and 5(4) of these Guidelines.

Title III - Requirements for competent authorities in case of application of Article 243 (4) or Article 244 (4) of Regulation (EU) No 575/2013 and in case of application of Article 243(2) or Article 244(2) of Regulation (EU) No 575/2013 where any of the circumstances in accordance with Title II applies

4. Assessment of the significance of the credit risk transfer

1. Competent authorities should assess the documentation and evidence provided by the originator institution relating to the securitisation in order to determine whether commensurate credit risk has been transferred to third parties and require additional information, where this is needed to conduct the assessment. Competent authorities should pay particular attention to amongst others, the following factors, as applicable:
 - a. the risk-weighted exposure amounts and, as relevant, expected loss amounts calculated for the securitised exposures before securitisation and the corresponding amounts for the tranches transferred and retained by the originator institution after securitisation;
 - b. with respect to originator institutions demonstrating SRT in accordance with Articles 243(4) or 244(4) of Regulation (EU) No 575/2013, the methods used to demonstrate that the credit risk which has been transferred is commensurate with the possible reduction in own funds requirements;
 - c. where the originator institution has used internal models to demonstrate that significant credit risk has been transferred, whether these models are appropriately robust and where external models have been used whether these models have been integrated into the originator institution's regular processes, and whether the originator institution has an appropriate understanding of how the model operates and its underlying assumptions;
 - d. where the originator institution has used specific stress assumptions on the underlying asset pool, the suitability of such assumptions and how these assumptions and resultant projected losses compare with those used for supervisory stress testing or with other empirical sources of such data, such as the rating agencies.
2. Competent authorities should consider whether the originator institution has sufficient knowledge of the underlying assets in order to be able to conduct an appropriate credit risk transfer analysis and should also consider whether there is idiosyncratic risk in the portfolio which is not captured by the originator institution's credit risk assessment or capital

calculations. Idiosyncratic risk should be captured through more conservative assumptions than a standard “base case” scenario. This conservatism should seek to capture idiosyncratic risk which may correspond with a “stress case” scenario if applicable.

3. In the case where the originator institution is relying on the supervisory formula to determine its post-securitisation own funds requirements, competent authorities should consider how sensitive the own funds requirements on the originator institution’s retained securitisation positions are to changes in the underlying IRB parameters. If the capital requirements on the retained securitisation positions are highly sensitive to small changes in these parameters, it is less likely that commensurate credit risk has been transferred.

5. Assessment of structural features

1. Competent authorities should assess if there are structural features in a transaction which might undermine the claimed credit risk transfer to third parties, such as features like optional calls or other contractual arrangements which in case of traditional securitisations increase the likelihood that assets will be brought back onto the originator institution’s balance sheet or in case of synthetic securitisations increase the likelihood that the credit protection will be terminated before the transaction’s maturity.
2. For traditional securitisations, only the following call options granted to originator institutions should not be considered detrimental to achieving effective transfer of credit risk by competent authorities, provided these call options do not grant an originator institution the right to repurchase from the transferee the previously transferred exposure to realise their benefits or oblige the originator institution to re-assume transferred credit risk:
 - a. regulatory call options or tax call options that are only exercisable if there are changes of the legal or regulatory framework that have an impact on the content of the contractual relationship of the respective securitisation transaction or that affect the distribution of economic benefits derived from the respective securitisation transaction by any of the parties in the transaction;
 - b. clean-up calls meeting the conditions referred to in Article 243(5)(f) of the CRR.

For synthetic transactions, any call options fulfilling the criteria set out in paragraph 5(2)(a) or 5(2)(b) do not need to be considered by competent authorities.

3. Furthermore, and to avoid any uncertainty, for traditional securitisation, any option granted to securitisation investors, with the exception of options that are only exercisable in the event of contractual breaches by the originator institution, should be considered by competent authorities as preventing an originator from achieving effective transfer of credit risk.
4. For synthetic securitisations, any option granted to securitisation investors or credit protection providers that is only exercisable in the event of contractual breaches by other

parties involved in the transaction should not be considered by competent authorities as preventing an originator institution from achieving effective risk transfer of credit risk, provided the requirements of Article 244(5)(c) of the CRR are fulfilled. All other options granted to securitisation investors or credit protection providers should be assessed by competent authorities, as they may result in additional own funds requirements due to maturity mismatches.

5. Competent authorities should consider if the originator institution has in the past repurchased transactions to protect investors and if the rules on implicit support as specified in Article 248 of Regulation (EU) No 575/2013 have been followed by the originator institution to ensure that risk has effectively been transferred.
6. Where transactions include replenishment periods, competent authorities should consider the eligibility criteria of the assets in the underlying pool and give consideration to the minimum and maximum credit quality of eligible assets, and consider if the assets can be substituted into the structure with the view to protecting investors from losses while increasing credit risk to the originator institution to ensure that risk has effectively been transferred.
7. Competent authorities should consider that transactions do not include any embedded mechanism at origination that is reducing the amount of credit risk transfer by the originator institution to third parties disproportionately over time.

6. Mismatches between credit protection and underlying assets for synthetic securitisations

1. Competent authorities should consider if there are maturity or currency mismatches between the protection provided and the underlying assets. When considering the maturity of the protection, competent authorities should consider whether optional calls or other features might reduce the maturity of the protection in practice, and how this relates to the expected time of defaults on the asset pool.
2. Competent authorities should assess maturity mismatches for transactions where asset pools are able to replenish as originator institutions may substitute in longer maturity assets towards the back-end of the protection period, increasing any maturity mismatch.
3. Competent authorities should assess currency mismatches for transactions where asset pools contain a different currency profile to the liabilities. Where such mismatches occur, prudent haircuts should be applied to the capital relief sought in accordance with the views of the competent authorities. Mitigating instruments, such as currency swaps should be assessed for appropriateness in terms of the balance swapped, the duration of the swap itself, and any contingent triggers.

7. Credit protection issues for synthetic securitisations

1. Where the securitisation is achieved synthetically using a credit derivative or a guarantee, competent authorities should ensure that the credit protection meets all the relevant requirements set forth in Regulation (EU) No 575/2013 and provides sufficient certainty of payment so as not to undermine the credit risk transfer. If the credit protection is funded, the collateral arrangements should be considered including that they meet all the relevant requirements set forth by Regulation (EU) No 575/2013 for funded credit protection. If the credit protection is unfunded, competent authorities should consider whether suitable arrangements are in place to ensure timely payment.
2. Competent authorities should consider the credit events that are covered by the credit protection obtained (e.g. whether it includes standard credit events like bankruptcy, failure to pay or restructuring of loans).
3. If premia paid to credit protection providers are not recognised in the profit and loss account of the originator institution, competent authorities should consider whether premia paid to credit protection providers are excessively high to the extent that SRT will be undermined. This could be assessed in a number of ways such as by looking at the premia paid compared to (i) the yield of the asset pool, or (ii) the losses being covered by the protection, or (iii) fair market rates, or (iv) some combination of these various factors. Competent authorities should also consider whether there are other features of the transaction outside of premia, such as fees, which effectively increase the cost of the protection being provided to the extent that credit risk transfer will be undermined.
4. Where premia are paid up-front, or not linked to losses in the asset pool being protected or otherwise guaranteed, competent authorities should consider if this reduces the extent of credit risk transfer.

8. SRT to third parties

1. Competent authorities should assess whether significant credit risk is transferred to third parties who are not connected to the originator institution in a manner that might undermine the credit risk transfer. Competent authorities should consider any relevant connection between the investors or credit protection providers and the originator institution, and whether the originator institution provides the third parties with significant financing when conducting their SRT assessment.

9. Credit ratings

1. Where an originator institution is using the Ratings Based Method as specified in Article 261 of Regulation (EU) No 575/2013 to calculate the own funds requirements for its exposures to a securitisation, competent authorities should consider whether the chosen credit rating

agency has appropriate experience and expertise in the asset class being rated insofar as the competent authorities are aware.

10. Internal policies for assessing transfer of credit risk and SRT

1. Competent authorities should consider whether the originator institution has appropriate internal policies for making its own assessment of credit risk transfer and SRT. This should include not only an initial assessment of the transaction when the originator institution is first seeking the exclusion of securitised exposures from the calculation of risk-weighted exposure amounts and, as relevant, expected loss amounts, but should also consider the ongoing assessment of SRT during the life of the transaction.

Title IV - Requirements for originator institutions

Part 1 - General requirements for all transactions claiming SRT under Article 243 and 244 of Regulation (EU) No 575/2013

11. Requirements relating to SRT

1. Originator institutions should provide the competent authority with all requested information of the securitisations on which they intend to demonstrate SRT, so that competent authorities can conduct the assessment of SRT to third parties as specified in Title I to Title III of these Guidelines.
2. Originator institutions should at least notify the relevant competent authority of any securitisation on which they intend to demonstrate SRT which is not similar in structure and portfolio composition to previous transactions notified by the institution.

12. Governance and policies around SRT assessments

1. Originator institutions should have a governance process in place for evaluating transactions claiming SRT. This process should include details of relevant committees, any internal approval procedure, and evidence of appropriate stakeholder involvement and a suitable, auditable trail of documentation.
2. Originator institutions should have appropriate systems and controls regarding SRT through securitisation, including for the ongoing monitoring of SRT requirements, at least on a quarterly basis, throughout the maturity of relevant transactions.
3. Originator institutions should have policies and methodologies in place that ensure ongoing compliance with all SRT requirements according to Articles 243 and 244 of Regulation (EU) No 575/2013.

Part. 2 - Specific requirements for originator institutions in order to comply with Article 243(4) or 244(4) of Regulation (EU) No 575/2013

13. Risk-management and self-assessment

1. Originator institutions should have policies and methodologies in place that ensure the possible reduction of own funds requirements achieved by originator institutions through securitisation is justified by a commensurate credit risk transfer to third parties.
2. Originator institutions' SRT policies should be part of their broader capital allocation strategies. In particular, the originator institutions' policies on transfer of credit risk and SRT to third parties should specify how transactions claiming SRT align with originator institutions' overall risk management strategies and internal capital allocation.
3. Originator institutions should make an assessment of the risks involved on any potential transaction claiming SRT, including an assessment of the risk of the underlying assets, an assessment of the securitisation structure itself considering the credit risk of the tranches and other relevant factors that affect the substance of credit risk transfer.
4. When conducting their SRT assessment, originator institutions should also consider whether the possible reduction of own funds requirements is in line with the economic credit risk transfer achieved, for example by comparing the effects of the securitisation on originator institutions' economic capital and on originator institutions' own funds requirements.
5. Originator institutions should analyse whether they can prudently afford the premia payable under the relevant transactions given their earnings, capital, and overall financial condition.

14. Other requirements

1. Originator institutions should use appropriate methods and procedures to assess and demonstrate SRT.
 2. Originator institutions should assess the expected loss (EL) and the unexpected loss (UL) of the securitised assets throughout the maturity of the transaction when conducting an SRT assessment.
 3. Originator institutions should consider the transaction structure and structural features of the securitisation, for example, if the transaction is cash or synthetic, any hedging techniques or maturity mismatches, if any.
 4. In order to identify such factors that may undermine the transfer of credit risk and SRT to third parties, originator institutions should evaluate the degree of credit risk mitigation or credit risk transfer of a transaction considering, amongst others, factors such as the following, to the extent applicable:
-

- a. A comparison of the present value of premia and other costs not yet recognised in own funds relative to losses of the protected exposures over a variety of stress scenarios;
- b. The pricing of the transaction relative to market prices, including appropriate consideration of premium payments;
- c. The timing of payments under the transaction, including potential timing differences between the originator institutions' provisioning for or write downs of the protected exposures and payments by the protection seller;
- d. A review of applicable call dates to assess the likely duration of the credit protection obtained relative to the potential timing of future losses on the protected exposures;
- e. An assessment of counterparty credit risk, in particular an analysis of whether certain circumstances could lead to the originator institutions' increased reliance on the counterparty providing credit protection at the same time that the counterparty's ability to meet its obligations is weakened;
- f. The nature of the link between the different entities involved in the transaction (originator, arranger, investors, protection seller etc);
- g. The existence of implicit forms of credit enhancement;
- h. The thickness of the mezzanine and junior tranches relative to the credit risk profile of the underlying exposures; and
- i. An assessment of the credit risk of the underlying assets: this could be achieved through stresses applied to the underlying assets, an assessment of the payment profile of the exposure to the underlying assets' credit risk, evaluation of key credit risk factors (i.e. LGD, PD, EAD, etc.).

Title V- Final Provisions and Implementation

National competent authorities should implement these Guidelines by incorporating them in their supervisory procedures within six months of adoption. Thereafter, national competent authorities should ensure that institutions fully comply with these Guidelines for all transactions entered into after the adoption of these Guidelines.

Annex 1 – Reporting Template for Competent Authorities

Name of the Competent Authority	Transaction X
NSA assessment date:	DD/MM/YYYY
NSA review outcome:	
CRR - Article of application:	<243(2), 243(4), 244(2), 244(4)>
Reason for comprehensive assessment:	<GL Title II para 1, other>
Originators call options included in transaction:	<yes, no>
Collateral Type:	{RMBS, CMBS, Student Loans, Corporate Loans, Leveraged loans, CRE Loan, Trade Finance, etc.}
Reference Currency ("Ccy"):	
Deal Notional (in Ccy):	mm
RWA Pre Securitisation (in Ccy):	mm
Pre Securitisation Capital Deductions (in Ccy):	mm
RWA Equivalent of Pre Sec Capital Deduc (in Ccy):	= Pre Securitisation Capital Deductions (in Ccy) / 8%
Total RWA Equiv Pre Securitisation (in Ccy):	= RWA Equivalent of Pre Sec Capital Deduc (in Ccy) + RWA Pre Securitisation (in Ccy)
RWA Post Securitisation on Retained Tranches (in Ccy):	mm
Post Securitisation Capital Deductions (in Ccy):	mm
RWA Equivalent of Post Sec Capital Deduc (in Ccy):	= Post Securitisation Capital Deductions (in Ccy) / 8%
Total RWA Equiv Post Securitisation (in Ccy):	= RWA Equivalent of Post Sec Capital Deduc (in Ccy) + RWA Post Securitisation on Retained Tranches (in Ccy)
RWA Reduction Sought After (in Ccy):	= Total RWA Equiv Pre Securitisation (in Ccy) - Total RWA Equiv Post Securitisation (in Ccy)
RWA Reduction Sought After (in %):	= RWA Reduction Sought After (in Ccy) / Total RWA Equiv Pre Securitisation (in Ccy)
First Loss Tranche (in Ccy):	mm
First Loss Tranche (in %):	%
First Loss Tranche Retained?:	
% First Loss Tranche Retained:	%
Mezzanine Tranche (in Ccy):	mm
Mezzanine Tranche (in %):	%
Mezzanine Tranche Retained?:	
% Mezzanine Tranche Retained:	%
Senior Tranche (in Ccy):	mm
Senior Tranche (in %):	%
Senior Tranche Retained?:	
% Senior Tranche Retained:	%
Attachment Point of Risk Sold (%):	%
Detachment Point of Risk Sold (%):	%
Reference Portfolio Size (in Ccy):	mm
EL (in Ccy):	mm
EL (in %):	= EL / Reference Portfolio Size
EL+UL (in Ccy):	mm
EL+UL (in %):	= (EL+UL) / Reference Portfolio Size
Risk Transfer Claimed by Originator Institution (%):	%
Qualitative information on assessment	NSA should include narrative information on the assessment of SRT and key considerations for approval including on structural features (incl. originator call options), issues related to synthetic securitisations, SRT to third parties, credit ratings, etc (if relevant)

4. Accompanying documents

4.1 Cost- Benefit Analysis / Impact Assessment

Introduction

Article 16(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council) provides that when any guidelines developed by the EBA shall be accompanied by an analysis of ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

The analysis of the draft Guidelines on the methodology proposed for assessing whether commensurate credit risk has been transferred to third parties in accordance with Article 243(4) or 244(4) CRR.

Scope and nature of the problem

Issues identified by the European Commission

Securitisation can help institutions to efficiently manage their balance sheet and diversify their funding sources. It is also a recognised credit mitigation tool, which can significantly reduce credit risk by transferring it to a third party. However the increased complexity of these instruments makes it harder to understand to which extent risks have effectively been transferred or mitigated. This opacity may also create incentives for firm to arbitrage between the securitisation framework and the credit risk framework in order to benefit from reduction in own funds.

Objectives of the Guidelines

In article 243(6) and 244(6) of the CRR, the European Commission mandates the EBA to monitor the range of practices regarding the use of SRT and to specify guidelines regarding the assessment of SRT. This is to avoid that national supervisory authorities have substantially divergent approach regarding the matters that need to be assessed when reviewing whether a credit risk transfer is justified, which may create uncertainty regarding the reduction in capital requirements achieved from the securitisation framework across the EU.

The Guidelines specify which criteria competent authorities should use to assess whether a credit risk transfer is justified, and which requirements institutions should meet to facilitate this assessment. The requirements proposed in these Guidelines aim to achieve the following two objectives:

- (1) To clarify the ways in which a firm can demonstrate that there is significant transfer of credit risk from its balance sheet.

- (2) To provide competent authorities with a framework to make decisions on the assessment of SRT that is as uniform as possible, in order to allow harmonised practices across member states.

The proposed guidelines seek through these two objectives to ensure that the reduction in capital requirements achieved from the securitisation framework is justified by the transfer of credit risk to third parties.

Technical options considered

This section explains the rationale behind some of the choices that the EBA has made when designing the guidelines. The main principle followed was that a credit risk transfer will only be considered significant when the proportion transferred is commensurate with, or exceeds, the proportionate reduction in regulatory capital when comparing the firm's securitisation positions and the underlying exposures.

The Guidelines have been drafted to provide more guidance on the assessment of SRT according to Article 243 or Article 244 of the CRR and apply to both originator institutions and competent authorities. The guidelines include i) requirements for originator institutions when engaging in securitisation transactions for SRT, ii) criteria for competent authorities to assess transactions that claim SRT using Articles 243(2) or 244(2) and iii) requirements for competent authorities when assessing whether commensurate credit risk has been transferred to third parties in accordance with Articles 243(4) or 244(4). The scope of the Guidelines goes partly beyond the CRR mandate where this is considered necessary by the EBA.

Requirements for originators institutions

These guidance set out some details of the procedures that institutions will need to undertake and the information institutions should provide to the competent authority when they are seeking to reduce their capital requirements by undertaking securitisation.

Requirements for competent authorities

The guidelines establishes which criteria and test competent authorities should follow when they make an assessment of whether the reduction in risk-weighted exposure amounts is justified by a commensurate transfer of credit risk to third parties.

Costs

Although the assessment of SRT by competent authorities is a requirement that has been in place since CRD II, different practices have been followed across member states and the proposed guidelines will therefore require some adjustment for institutions and competent authorities. There will be two types of costs:

Costs for national supervisory authorities – The main direct cost for supervisory authorities will be in relation to the processes for assessing significant risk transfer. The guidelines specifies what matters the competent authority must assess and provides for criteria against which credit risk transfers have to be tested. As a result, these guidelines will generate additional compliance costs within those Member States which currently conduct less extensive checks than those proposed by the guidelines. Such costs for the competent authorities will be mainly driven for instance by the need to change some of their IT or system framework, to train existing staff or hire additional staff members.

Costs for institutions – The main costs for institutions will be related to setting up processes in order to be able to disclose the necessary information and evidence to the competent authorities.

The compliance costs of these guidelines are likely to vary between jurisdictions. Some competent authorities are already conducting assessments which meet the criteria presented in the guidelines, and therefore will require them only very few additional resources, whereas in a few other jurisdictions where such assessment are not so frequent, competent authorities and institutions may have to have bear larger costs.

Benefits

By specifying the matters that competent authorities must assess when reviewing whether a credit risk transfer is justified due to a securitisation, these guidelines ensures that competent authorities uses the same methodology to establish whether a transfer of significant credit risk will be deemed to have taken place in a given case.

4.2 Views of the Banking Stakeholder Group (BSG)

The BSG welcomes this regulatory initiative, which promotes the consistent treatment of credit risk transfer in securitisations as well as promoting convergence in supervisory practices. This will contribute to the development of a level playing field, improving comparability across jurisdiction.

However, this will result in additional costs for originators (information to be provided, changes in governance and procedures) and, when implementing the requirements, it will be important to ensure that originators are not unnecessarily overburdened. The application of the principle of proportionality should be carefully observed in this regard.

The CRR approach towards securitisations is conservative in the sense that it only allows capital mitigations for securitisations with SRT, i.e. it requires a credit risk transfer that exceeds explicit minimum quantitative thresholds, in addition to complying with several qualitative requirements.

This general framework is not rigid; on the contrary; it provides flexibility for supervisors to decide on SRT on a case-by-case basis (on their own initiative or at the request of the entity) to grant the benefits of SRT when the supervisor is confident that risks have been effectively transferred to a sufficient extent. The BSG welcomes this flexibility because a rigid framework would not take account of the diversity of securitisation practices.

However, the BSG recognises that this flexibility could also generate very different supervisory approaches by different national supervisors. To mitigate these undesired effects, the CRR includes a mandate to the EBA to monitor the range of practices in this field and to issue guidelines on the assessment of SRT. The EBA shall review MS implementation of these guidelines, and will then provide its advice to the Commission by 31 December 2017 on whether binding technical standards are required.

The BSG questions whether the scope of the guidelines exceeds the CRR mandate and wonders whether, in the context of the gradual approach adopted by the CRR (issuance of guidelines in 2014, revision of the implementation and decision in 2017 on whether technical standards are needed), more specific guidance is appropriate in the short term, thus mitigating uncertainty related among other things to RWAs in the future. In particular, the BSG believes the Guidelines should include quantitative indicators to help supervisors decide and to ensure there is a certain degree of harmonisation across European financial systems, for example with regard to (i) the thickness of securitisation tranches; (ii) losses incurred on the securitised exposures; and (iii) high costs of the transfer of credit risk.

4.3 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 18 March 2014. Seven responses were received, of which five were published on the EBA website.

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 general comments in the response to question 1. In these cases, the comments and EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft Guidelines have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

The main issues raised during this consultation were the application of the Guidelines to existing transactions (grandfathering), the requirement to transfer credit risk to independent third parties, the impact of agreed call options on SRT, the lack of detail on the notification process for new SRT transactions, and the proposed criteria for assessing the cost of credit protection obtained by the originator institution.

With regard to the application of the Guidelines to existing transactions, the EBA recognises the burden that the application of the Guidelines to new and existing transactions may place on institutions and competent authorities. As introducing the Guidelines on a retroactive basis could create problems for both competent authorities and originator institutions, the EBA has decided that only transactions entered into six months after adoption of these Guidelines will need to comply with the Guidelines. Respondents also requested confirmation that a legal connection or another type of connection between the credit protection provider and the originator institution is not sufficient reason to exclude the SRT per se. In response to this request, the EBA has amended paragraph 8 of the Guidelines to include a clarification that, irrespective of the type of connection between the originator institution and the third party that is assuming part of the credit risk, competent authorities should assess whether those parties are connected in a manner that might undermine the credit risk transfer. The existence of any connection between those parties therefore does not necessarily have to hinder SRT recognition.

Some respondents did not agree with the statement made in the second explanatory box on page 12 of the draft Guidelines according to which in principle SRT cannot be achieved for a traditional securitisation that includes a time-call option. The respondents believed that this statement was not in line with Article 243(5)(e)(iii) of the CRR, which does not exclude (re)purchases of securitisation positions by the originator or sponsor beyond its contractual

obligations provided that the documentation clarifies that these (re)purchases are exceptional and may only be made at arms' lengths conditions. In response to this request, the EBA has amended paragraph 5 of the Guidelines to include clarification of which call options should not be considered detrimental to achieving effective transfer of credit risk and for which call options the competent authority should perform a comprehensive assessment to ensure there is effective transfer of the credit risk to a third party.

Regarding the notification process for SRT transactions, clarification was requested on when the information on a new securitisation must be provided, what information must be provided, on which level the information must be provided, and under what circumstances originator institutions may assume that a competent authority does not object to a new SRT transaction. Due to the variety of approaches currently taken by competent authorities to reviewing SRT transactions and the variety of factors that have to be considered when defining notification requirements, the EBA is, at this stage, of the view that competent authorities should further elaborate on the details of the notification process when implementing these Guidelines.

In respect of the cost of credit protection assessment, respondents questioned the appropriateness of the proposed 'yield of the asset pool' criterion and requested further clarification that a transaction for which SRT is claimed must pass the cost of credit protection test right at the outset of the transaction, that only features that are directly linked to the credit protection have to be taken into account, and that the features to be considered in the assessment do not include payments or other benefits to the credit protection provider that have their reason outside the transaction. The EBA generally regards a comparison of the yield of the asset pool and the premia to be paid for the credit protection as an important factor but acknowledges that the significance of this factor compared to other factors also depends on the loss expectations for the asset pool at the point in time at which the premia to be paid for the credit protection are agreed. Furthermore, while the focus of the cost of credit protection assessment is on the situation at the outset of the transaction, limiting the test to the outset of a transaction is not considered appropriate. This is because there may be circumstances where such an assessment is also required during a transaction's maturity (the SRT test may have to be recalculated, e.g. when there are repurchases, exercises of call or similar actions. With regard to other services provided by the credit protection provider and payments or other benefits to the credit protection provider that have their reason outside the transaction, these services, payments or other benefits should generally not be part of the high cost credit protection assessment provided there is no link between these services, payments or other benefits and the transaction that is being assessed. As this is already clarified by the reference to 'other features of the transaction' in paragraph 7(3) of the Guidelines, no additional clarification was deemed necessary.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Grandfathering	<p>The SRT Guidelines should not apply to securitisations already in existence prior to implementation of the Guidelines because, at the time the transaction was set up, it was not possible to take the new rules into account. An application of these new rules to existing securitisation transactions would therefore lead to an unjustified burden for originator institutions, especially as changes or adjustments during the term of a transaction are almost impossible in practice or only possible with unreasonable effort.</p>	<p>With regard to the application of the Guidelines to existing transactions, the EBA recognises the burden that the application of the Guidelines to new and existing transactions may place on institutions and competent authorities. As introducing the Guidelines on a retroactive basis could create problems for both competent authorities and originator institutions, the EBA has decided that only transactions entered into after adoption of these Guidelines will need to comply with the Guidelines. For clarification, Title V of the Guidelines has been amended accordingly.</p>	Addition to Title V
Requirement of credit risk transfer to independent third parties	<p>Confirmation was requested that the fact that the credit protection provider has a legal connection or another type of connection to the originator institution does not constitute sufficient reason to exclude the SRT per se as (i) this would lead to problems if the originator institution transfers credit risk or has transferred credit risk to (governmental) shareholders in the context of state aid or state guarantee schemes where a retroactive disqualification of SRT by the competent authorities may lead to unforeseen and harsh results, (ii) the general rules regarding the recognition of credit protection by a guarantee or similar instrument do not include such a provision that penalises guarantees provided by connected parties, and (iii) this issue is already sufficiently</p>	<p>Articles 243(1)(a) and 244(1)(a) require that significant credit risk is transferred to third parties. In terms of SRT, a party should be considered a third party if the originator institution intending to demonstrate SRT is not connected to this party in a manner that might undermine the credit risk transfer irrespective of the type of connection (legal or other) between those parties. For clarification, paragraph 8(1) of the Guidelines has been amended accordingly.</p>	Change to paragraph 8(1)

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	addressed by the CRR provisions on implicit support in accordance with Article 248 of the CRR.		
Quantitative SRT thresholds	<p>In accordance with Articles 243 and 244 of the CRR, in addition to complying with several qualitative requirements, originator institutions must ensure that the credit risk transfer exceeds certain minimum quantitative thresholds to demonstrate that SRT is being achieved. The flexibility granted to competent authorities by the CRR to decide on SRT recognition on a case-by-case basis has the drawback that this flexibility could generate very different supervisory approaches by different national supervisors. The Guidelines should therefore include quantitative indicators to help competent authorities decide and to ensure there is a certain degree of harmonisation across the European financial system, for example with regard to (i) the thickness of securitisation tranches; (ii) losses incurred on the securitised exposures; and (iii) high costs of the transfer of credit risk.</p>	<p>While acknowledging the merits of further harmonisation in this area, the EBA is of the view that considering the wide variety of different kinds of securitisations, competent authorities need sufficient flexibility to take SRT decisions on individual transactions on a case-by-case basis. as SRT decisions also have to account for many transaction-specific qualitative factors that have to be assessed together with (and not isolated from) the amount of credit risk that is being transferred.</p>	No change
Scope of the CRR mandate	<p>The general requirements for originator institutions currently to be fulfilled for all transactions claiming SRT in accordance with Articles 243(2) or (4) and 244(2) or (4) of the CRR possibly exceed the scope of the CRR mandate. For instance, paragraph 12(1) of the Guidelines refers to governance and policies to be set up by all originator institutions. It should be considered</p>	<p>As clarified in the Executive Summary, the scope of the Guidelines also covers additional SRT issues that are not addressed by the CRR mandates in accordance with Article 243(6) and 244(6) of the CRR where this is considered necessary by the EBA in accordance with Article 9(2) of the EBA Regulation. Furthermore, the EBA regards the general requirements set out in paragraphs 11 and 12 of the</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>whether these requirements should be applied only to those originator institutions applying Article 243(4) or 244(4) of the CRR to demonstrate SRT.</p>	<p>Guidelines as necessary and proportionate minimum requirements for all originator institutions claiming SRT in accordance with Articles 243 and 244 of the CRR.</p>	
Call options	<p>According to the second explanatory box on page 12 of the draft Guidelines, in principle SRT cannot be achieved for a traditional securitisation that includes a time-call option. This statement may not be in line with Article 243(5)(e)(iii) of the CRR, which states that the documentation ‘makes it clear, where applicable, that any purchase or repurchase of securitisation positions by the originator or sponsor beyond its contractual obligations is exceptional and may only be made at arms’ lengths conditions’. The ‘at arms’ length’ condition suggests that the originator institution has a significant degree of freedom as regards the incentives to call, i.e. the originator institution should be free to choose whether to exercise the call option or not.</p> <p>In addition, time-call options are not usually associated with a repurchase option on the part of the originator institution but rather grant the issuer an option to redeem notes by selling its portfolio, with no requirement, preference or referral to offer the portfolio to the originator institution, i.e. the SPV (by means of the trustee with the consent of the note holders’ meeting) is granted the ability to sell the assets to any interested buyer. The assessment of SRT should therefore be left to the discretion of the competent authority as provided for by</p>	<p>The second sentence of Article 243(5)(d) of the CRR focuses on two legal issues that are important – benefit and risk. In the EBA’s view, properly drafted regulatory and tax calls would not prevent SRT, nor would a clean-up call. Furthermore, buy back of exposures due to a breach of contractual representations and warranties on those exposures are not considered call options and should also not in general prevent SRT provided that (a) there is no warranty that assures the creditworthiness of the exposures and (b) the warranties are reasonably expected not to be breached over the life of the deal.</p> <p>As regards time calls, market value calls and step-ups, entitling the originator to buy back the exposure after a specified period of time, in general the EBA believes these options could prevent effective credit risk transfer. As seen during the financial crisis (2007–2009) many originator institutions supported their transactions although they had no commitment to do so and were not holding capital against that support. They have an incentive to do so to protect the value of their investor relationships and the value of their brand in the market for investors generally. In a difficult market, originator call options – even if just an option – will, therefore, become a mechanism for the originator to take bad exposures back onto its</p>	<p>Change to paragraphs 5(2), 5(3) and 5(4)</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Article 243(2) of the CRR, which would also align the SRT requirements with the updated Basel III requirements for the use of call options in subordinated capital issued by banks.</p>	<p>balance sheet and thereby undermine the health of its balance sheet.</p> <p>The EBA has amended paragraph 5 of the Guidelines by adding clarification about which call options should not be considered detrimental to achieving effective transfer of credit risk and for which call options the competent authority should perform a comprehensive assessment to ensure there is effective transfer of the credit risk to a third party.</p>	
<p>Responses to questions in Consultation Paper EBA/CP/2013/45</p>			
<p>Question 1.</p>			
<p>Sensitivity of IRB parameters as a criterion for the SRT assessment</p>	<p>Additional guidance is requested on paragraph 4(3) of the Guidelines according to which a commensurate transfer of credit risk is less likely if the supervisory formula method has been applied to determine the own funds requirements for the retained securitisation positions if these own funds requirements are highly sensitive to small changes in the underlying IRB parameters.</p> <p>According to some respondents, using the sensitivity of IRB parameters as a criterion for SRT assessment would completely ignore the shortcomings inherent in the current supervisory formula method itself, such as its tendency towards ‘cliff effects’. Particularly for relatively thin mezzanine positions, own funds requirements could be very sensitive to small changes in KIRB. Therefore, the application of the supervisory</p>	<p>The EBA agrees with the shortcomings identified in the current supervisory formula method such as its cliff effects. In view of the long-term perspective taken in SRT assessment to ensure SRT is sustained throughout a transaction’s maturity, these shortcomings are the very reason why competent authorities should consider the sensitivity of own funds requirements to changes in the values of IRB parameters when conducting an SRT assessment. This also does not contradict Articles 243(2)(a) and 244(2)(a) of the CRR as, in accordance with these Articles, competent authorities may decide on a case-by-case basis that SRT is not considered to have been transferred to third parties where the possible reduction in risk-weighted exposure amounts that an originator institution would achieve is not justified by a commensurate transfer of credit risk to third</p>	<p>No change</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>formula method should not be penalised, especially as it could also be argued that, for a given tranche, the application of the supervisory formula method can be expected to be more risk sensitive than the ratings-based method. It was suggested that paragraph 4(3) of the Guidelines should be removed to ensure that retaining part of the mezzanine tranches where the supervisory formula method is applied is not penalised just because the mezzanine tranches fall under the cliff effect inherent in the supervisory formula, which was also regarded as contradictory to the criteria set out in Articles 243(2)(a) and 244(2)(a) of the CRR.</p>	<p>parties, and as this decision on SRT recognition should be based on a long-term perspective.</p>	
<p>Notification process regarding new SRT transactions</p>	<p>According to paragraph 11 of the Guidelines, originator institutions must provide the competent authority with all requested information about the securitisations on which they intend to demonstrate SRT and should, as a minimum, notify the relevant competent authority of any securitisation on which they intend to demonstrate SRT that is not similar in structure and portfolio composition to previously notified transactions. Regarding this provision, clarification was requested on the questions (i) when the information on a new securitisation must be provided (i.e. prior to the transaction closing, at the transaction closing date, periodically e.g. at the end of each quarter, or only upon explicit request by the competent authority), (ii) what information must be provided, (iii) on which level the information must be provided (i.e. for each</p>	<p>Paragraph 11 of the Guidelines sets out minimum requirements regarding the notification process for new securitisations in respect of which an originator institution aims to demonstrate SRT. Due to the variety of approaches currently taken by competent authorities to review SRT transactions and the variety of factors that have to be considered when setting notification requirements, such as the similarity of new SRT transactions with previously approved transactions and the overall experience of an originator institution with regard to conducting SRT transactions, the EBA is, at this stage, of the view that competent authorities should further elaborate on the details of the notification process when implementing these Guidelines. This notification process must among other things ensure that a competent authority can fulfil its reporting requirements in accordance with paragraph 1(4) of</p>	<p>No change</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>transaction or only for each type of transaction), and (iv) whether a competent authority must explicitly approve the SRT within a given timeframe or whether the SRT is considered to be approved if the competent authority does not object.</p> <p>Respondents pointed out that the requirement for a pre-notification before the closing of a transaction and the requirement for a prior SRT approval by the relevant competent authority could ultimately hinder the viability of the securitisation business, thereby reducing the availability of credit as balance sheet growth via lending is restricted. Inter alia it was proposed that no notification to the competent authority should be required (a) where the originator considers that SRT is being claimed for a transaction similar in structure and portfolio composition to transactions previously notified to and approved by the relevant competent authority, (b) where a transaction is being carried out under a programme in respect of which the originator institution has previously reached an agreement with the relevant competent authority in terms of SRT recognition, or where (c) an entire credit risk structure is sold by the originator institution on day 1 and the originator institution applies a 1 250% risk weight to all tranches retained.</p>	<p>the Guidelines.</p> <p>As, according to Articles 243(1)(b) and 244(1)(b) of the CRR, SRT recognition is not required for securitisations where an originator institution applies a risk weight of 1 250% to all retained securitisation positions or where these retained securitisation positions are deducted from Common Equity Tier 1 items in accordance with Article 36(1)(k) of the CRR, these securitisations do not fall within the scope of application of these Guidelines.</p>	
Minimum frequency for periodic review	With regard to paragraph 12(2), confirmation was requested that the requirements in terms of an ongoing monitoring of SRT requirements and a periodic review are considered to be fulfilled if a quarterly review is undertaken by the originator	To fulfil the ongoing monitoring requirements, originator institutions should, however, have appropriate systems and controls to monitor the occurrence of certain trigger events that might undermine SRT on a continuous basis, as ongoing	Change to paragraph 12(2)

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	institution because this is regarded as allowing banks to achieve a sound assessment by taking into account operational constraints (systems, resources) and other regulatory reporting requirements.	monitoring on a quarterly basis is deemed insufficient.	
Appropriateness of ECAI criterion	According to paragraph 3(1)(b) of the Guidelines, the existence of doubt regarding the appropriateness of a particular credit assessment of an external credit assessment institution (ECAI) may trigger a comprehensive review of securitisations where the originator institution intends to demonstrate SRT in accordance with Article 243(2) or 244(2) of the CRR. The removal of this criterion was proposed as the external credit assessments are only eligible if the credit rating agency is registered or certified in accordance with Regulation (EC) No 1060/2009 and as it is assumed that these eligible ECAIs and their methodologies are properly reviewed.	The EBA is currently working on draft implementing technical standards (ITS) to determine which of the credit quality steps set out in Part Three, Title I, Chapter 5 of the CRR is associated with the relevant credit assessments of an ECAI as required by Article 270 of the CRR. In the EBA's view, the practical relevance of paragraph 3(1)(b) of the Guidelines depends on the outcome of this ongoing work, for example on whether the application of the mapping table for a particular ECAI is restricted to asset types for which comprehensive historical default and loss data are available to that ECAI. A change in the Guidelines is therefore not deemed appropriate at this stage.	No change
Appropriateness of trading book criterion	Paragraph 3(1)(g) of the Guidelines requires a comprehensive review of all securitisations of trading book positions where the originator institution intends to demonstrate SRT in accordance with Article 243(2) or 244(2) of the CRR. This requirement was not considered appropriate by some respondents mainly for the reasons (i) that trading book positions are generally small and are generally not held for an extended period of time meaning that a time-consuming full SRT review by the competent authority would presumably eliminate much or all	Through Article 337(5) of the CRR, the SRT requirements in accordance with Articles 243 and 244 of the CRR became applicable to securitisations of trading book positions. However, Article 337(5) does not apply where trading book exposures are securitised and the securitisation positions are then held in the banking book. As such, the EBA believes that transactions out of the trading book require a comprehensive review. In addition, the EBA expects that the number of these transactions is low and that originator institutions conducting these transactions would rather claim SRT under	No change

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	<p>of the originator's benefit from claiming SRT and (ii) that a comprehensive review by the competent authority does not appear to be justified in the case of traditional 'true-sale' trading book securitisations where the economic transfer of the exposures being securitised is accomplished by the transfer of ownership.</p> <p>Clarification is requested on the reasons for including this criterion and it is proposed that the comprehensive review be limited to the securitisations of trading book positions that the EBA is concerned about.</p>	Articles 243(4) and 244(4) anyway.	
High cost credit protection	<p>In respect of the required assessment in accordance with paragraph 7(3) of the Guidelines of whether premia paid to credit protection providers are excessively high to the extent that SRT will be undermined, it was proposed to include the more detailed considerations of the Consultative Document on 'Recognising the cost of credit protection purchased' published by the Basel Committee on Banking Supervision (BCBS) in March 2013 in the Guidelines.</p> <p>One respondent did not consider the 'yield of the asset pool' as a relevant criterion for determining the reasonableness of a premium paid and proposed removing this criterion from the list of criteria provided in paragraph 7(3) of the Guidelines. This is because for example if an institution intends to purchase credit protection some time after it originally acquired an asset pool, the cost of credit protection may well exceed the</p>	<p>The EBA agrees that competent authorities and originator institutions should also consider the relevant BCBS guidance on the cost of credit protection when conducting their SRT assessment. As the BCBS has, however, not yet published any final guidance on this matter, the inclusion of an explicit reference to this on-going work in the Guidelines is not considered appropriate at this time.</p> <p>In accordance with paragraph 7(3) of the Guidelines, the EBA generally regards a comparison of the yield of the asset pool and the premia to be paid for the credit protection as an important factor amongst other important factors when assessing whether the premia paid to credit protection providers may undermine SRT. The EBA acknowledges, however, that the significance of this factor compared to the other relevant factors also depends on the loss expectations for the asset pool at the point in time at which the premia to be paid for the credit</p>	No change

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	<p>yield on the asset pool which would, however, not prevent the purchased credit protection from producing significant risk transfer despite the fact that the institution would have a negative carry after taking account of the cost of credit protection.</p> <p>Another respondent requested clarification of paragraphs 7(3) and 7(4) of the Guidelines that (i) a relevant transaction for which SRT is claimed must pass the test right at the outset of the transaction, as this is the time when the costs of the credit protection are fixed on the basis of the respective expectations of the parties, (ii) that only ‘features’ that are linked to the credit protection have to be taken into account and not those linked to other services that are provided by the credit protection provider, and (iii) that ‘features’ do not include payments or other benefits to the credit protection provider that have their reason outside the transaction, e.g. dividends in case the credit protection provider is a shareholder or payments due to a decision of the EU Commission in relation to state aid proceedings.</p>	<p>protection is agreed.</p> <p>While the EBA agrees that the focus of the high cost credit protection assessment is on the situation at the outset of the transaction, an assessment of this issue may also be required during a transaction’s maturity, when the SRT test may have to be recalculated due to, for instance, repurchases, exercises of call or similar actions.</p> <p>Paragraph 7(3) of the Guidelines explicitly refers to other features <i>of the transaction</i> outside of premia which effectively increase the cost of the credit protection being provided. Other services provided by the credit protection provider are therefore not generally part of the high cost credit protection assessment provided there is no link between these services and the transaction that is being assessed. Likewise, payments or other benefits to the credit protection provider that have their reason outside the transaction and have no direct link to the transaction, such as dividends in cases where the credit protection provider is also a shareholder of the originator institution or where payments have to be made to the protection provider due to a decision of the EU Commission in connection with state aid proceedings are generally not considered as other features within the meaning of paragraph 7(3) of the Guidelines.</p>	

5. Confirmation of compliance with guidelines and recommendations

Date:

Member/EEA State:

Competent authority

Guidelines/recommendations:

Name:

Position:

Telephone number:

E-mail address:

I am authorised to confirm compliance with the guidelines/recommendations on behalf of my competent authority: Yes

The competent authority complies or intends to comply with the guidelines and recommendations: Yes No Partial compliance

My competent authority does not, and does not intend to, comply with the guidelines and recommendations for the following reasons¹:

Details of the partial compliance and reasoning:

Please send this notification to compliance@eba.europa.eu

¹ In cases of partial compliance, please include the extent of compliance and of non-compliance and provide the reasons for non-compliance for the respective subject matter areas.