Questions on the STS Securitisation proposal (COM(2015)472)

No	Scope	Author	Question	Answer
1-5	Horizontal questions	Paul TANG	**On financial stability**:	
		(S&D Rapporteur)	•The Commission impact assessment mentions systemic risk only once, when assessing the role securitisation played in the financial crisis. How did the Commission implement the lessons of the crisis into her proposals on securitisation? How does the Commission assess the effect of a revived securitisation market on the different forms of systemic risk, namely through increasing the interconnectedness of financial institutions?	The Commission proposals fully take over the post crisis reforms in the area of securitisation. They aim to protect investors and manage systemic risk by avoiding a recurrence of the flawed "originate to distribute" models. 1. Post-crisis provisions on due diligence, risk retention and transparency are taken over. 2. Criteria for Simple, Transparent and Standardised Securitisations are proposed. These criteria are based on the analysis made by European and international supervisors (EBA, BCBS/IOSCO, ECB and BoE) of soundly structured, transparent and well-performing securitisations and exclude the instruments which featured prominently in the US subprime boom and successive crisis. 3. In view of the past good performance of these "STS" securitisations a more risk sensitive treatment is proposed, which reflects the actual performance of these instruments. 4. The proposals contain a robust supervision and sanctioning regime that puts responsibilities with the market participants with strong oversight by supervisors. Securitisation allows banks to share with other financial institutions some of the risk in the loans they grant. This obviously creates interconnectedness between financial institutions. Looking at potential benefits of risk transfers, ECB and BoE in their joint-paper In their joint paper "*The case for a better functioning securitisation market in the European Union" (2014)* state that: *"Subject to meeting retention requirements, credit risk transfer away from the banking sector can be beneficial to the real economy, the banking sector and both monetary and financial stability. First, where risk is genuinely transferred to non-bank investors, it can free up bank capital, allowing banks to extend new credit to the real economy. This may support the transmission of accommodative monetary policy, where the bank lending channel may otherwise be impaired. It may also reduce the dependency of banks' lending decisions on business cycle conditions and lower the exposure of real economy*

				borrowers to re-financing or liquidity risk, thereby increasing banks' resilience and helping to contain systemic risk. Second, if properly structured, securitisations may reduce the potential for concerns to arise around banks' balance sheets, thus limiting the degree to which banks' funding sources are withdrawn during times of stress." Without interconnectedness no risk sharing is possible. In fact, it is widely recognised that interconnectedness has costs and benefit. In order to have stable and functioning financial markets, the right amount of interconnectedness must be found. This was clearly expressed by US Federal Reserve Chair Janet Yellen in her speech "Interconnectedness and Systemic Risk: Lessons from the Financial Crisis and Policy Implications" (http://www.federalreserve.gov/newsevents/speech/yellen20130104a.htm). In that speech she said: "*The difficult task before market participants, policymakers, and regulators with systemic risk responsibilities such as the Federal Reserve is to find ways to preserve the benefits of interconnectedness in financial markets while managing the potentially harmful side effects".* The STS regulation proposal goes in that direction by introducing criteria that foster simple and transparent structures and intermediation chain, allowing for the systemic risk arising from interconnectedness to be minimised and, importantly, understood by all participants in a deal. By introducing strong transparency requirements, interest-aligning (risk retention) requirements and limiting STS securitisation only to simple and easily understandable structures, the Commission's proposal ensures that risks are clear and well understood by investors in securitisation. In this way, the interconnectedness generated by securitisation translates into understood and managed risk transfer rather than unknown and unexpected risk transfer such as the one seen in the US subprime markets.
			• How will the increased complexity of the financial sector, due to a longer chain of credit intermediation, affect the stability of the sector on a European level, but also on member state level?	Increased issuances of securitisation instruments will not necessarily increase the complexity or the length of credit intermediation chains. For example, if a bank funds a pool of mortgages by issuing an obligation or by issuing securitisation notes via a vehicle the length of the intermediation chain is the same. Furthermore, as noticed in the answer to question 1, longer intermediation chains and higher interconnectedness means also wider risk sharing. With the STS criteria, the Commission proposal ensures that risk is understandable and shared among knowledgeable and informed investors. It is also worth mentioning that STS criteria explicitly prohibit "re-securitisation" transactions such as CDO squared which implied long and complex intermediation chains.

			• What were the price-effects on securitisations of the sudden close down of the securitisation market in the financial crisis? A lot is known of the low default rates of securitised assets, but the price fluctuations of securitisations have gotten much less attention. Has the Commission assessed on the stability of the European financial system if the trading in securitisation would come to a halt or the value of securitisation would see a steep price-drop?	In their joint paper "*The case for a better functioning securitisation market in the European Union" (2014)* (*https://www.ecb.europa.eu/pub/pdf/other/ecb-boe_case_better_functioning_securitisation_marketen.pdf*), the ECB and Bank of England state: "*the [securitisation] market tends to be dominated by buy and hold investors, partly due to the high idiosyncratic nature of the structures; and this buy and hold trend has further strengthened in recent years as the weighted average life of ABS has shortened*". For a buy and hold investor the default rate is a more relevant measure of risk than the fluctuation in market prices. A buy and hold investor would be able to withstand a freezing in trading on the secondary market for securitisations by holding on products that have repaid in 99.8% of the times even during the worst financial crisis since the great depression (see chapter 1 on the Impact Assessment for data). What's more, the ECB-BoE paper argues that volatility of prices could actually be reduced if investors would shift some of their portfolios from government or corporate bonds to securitisations: "*in contrast to government and corporate bonds, which pay fixed rate coupons, ABS is primarily a floating rate product that in normal market conditions can lead to lower price volatility*". For further details on the historical credit performance of EU securitisation markets, look at July 2015 EBA Advice (section 1.1, https://www.eba.europa.eu/documents/10180/950548/EBA+report+on+qualifying+securitisation.pdf)
			• If financial institutions rely on securitisation to fund their lending activities, how does the STS proposal assure that this is a stable source of funding? Could there result liquidity risk for banks or other financial institutions if this funding source would suddenly dry-up?	As underlined by the ECB-BoE (2014), "*As a funding tool, securitisation can contribute to a well-diversified funding base, in terms of maturity, investor type and currency. It can facilitate asset liability maturity-matching and can enable banks to access a broader range of investors by tailoring different tranches of an asset-backed security (ABS) to investors' risk appetite and preferences. Looking ahead, the banking system is likely to need access to a wider range of funding sources. The revival of the ABS market can therefore play a useful role in ensuring that there is not a renewed build-up of systemic risk, including from excessive reliance upon any single source of financing*." Securitisation provides an additional source of funding to financial institutions. Furthermore, being this source secured (i.e. guaranteed by collateral), it is more stable than traditional funding sources such as unsecured debt. As a consequence, soundly structured (STS) securitisation reduces the likelihood of a sudden stop of liquidity provision to financial institutions.

			• Which interplay does the Commission expect between a revival of the securitisation market and the shadow banking sector in the EU? Will securitisation reinforce the growth of shadow banking in Europe? What will the effect be on the stability of the European financial ecosystem if a large part of its assets are owned by unregulated financial firms with the use of securitisation? How will regulatory arbitrage be prevented?	As mentioned in the reply to question 1, the Commission proposals fully take over the post crisis reforms in the area of securitisation (e.g. due diligence, risk retention, transparency). In addition, the "*development of a common set of substantive rules across the Union regulatory framework for all securitisations is a significant step towards regulatory harmonisation and consistency*" (ECB Opinion of 11 March 2016). This common set of rules applying to all financial sectors will limit regulatory arbitrage opportunities. Moreover, the introduction of strict risk retention rules and the STS requirement that all ABCP conduits have full liquidity support by the sponsor bank imply that risk exposures of the originating banks towards the vehicles issuing securitisations will be accounted for and regulated. Securitisation will thus not increase maturity transformation via unregulated shadow banks. Furthermore, the introduction of strict risk retention rules, the exclusion of all synthetic except tranched covers and the increase in capital charges for securitisations reduce considerably the opportunities for arbitraging capital requirements via securitisation.
6-8			**On transparency**:	
			• How does the Commission assure that the objective of transparency through the STS label materializes for the market participants and supervisors? Was a central register considered, to make the underlying data of STS securitisations accessible?	Transparency requirements on securitisations and underlying exposures allow investors to understand, assess and compare all securitisation transactions and not only STS securitisations. They allow investors to act as prudent investors and do their due diligence. Originators, sponsors and SSPE's should make freely available the information to investors, via standardised templates, on a website that meets certain criteria such as control of data quality and business continuity. Originators, sponsors and SSPE's could use central registers or dedicated websites as long as they fulfil the regulatory requirements. Competent authorities would have to ensure application of the transparency provisions in line with the chapter on supervision. Supervisors would also get access to the information and would have the responsibility to ensure that information is properly provided to investors and that the website responds to the required characteristics.
			• Which organisation could be most suited to set up and maintain a centralised database for STS securitisations? Could this be ESMA, in	According to the Commission proposal, reporting of information and data shall be made available to investors via standardised templates. This is a key feature of a robust securitisation framework as it will enable investors to act as prudent investors and do their due diligence. These templates could be made

			line with the website/database for CRA's? Are there obstacles (for example from internal market perspective) to work with a private party to organise such a database?	available through a single and centralised website or through different websites as long as the criteria on data quality and business continuity are met. In practice, there could be a range of providers that could seek to meet these requirements. The legal framework should cater for the diversity of EU securitisation markets (types of products, geographical aspects…). The Commission proposal provides the necessary flexibility for originators, sponsors and SSPE's to address these needs. For instance, they could make use of existing centralised databases where much of this type of information is already collected for other purposes (e.g. for central bank refinancing operations), build on other existing websites or develop new websites (e.g. markets' association developing a dedicated website).The Commission is of the view that a solely publicly-managed centralised database may be difficult to create and manage and there is no absolute need from the perspective of investors or competent authorities to create a single centralised website which contains information on all EU securitisations. As regards Article 8b of the Credit Ratings Agencies Regulation, which mandates the establishment of a public and centralised Structured Finance Instruments (SFI) website the Commission has taken note of the letter sent by the ESMA on 13 January 2016 to the ECON chair stating that "*As the CRA Regulation was not accompanied by a financial fiche providing the necessary budget for the operating costs or the legal mandate to charge corresponding fees to users or reporting entities, ESMA would not be in a position to set up the SFI website. ESMA has explored alternative options such as using existing service providers, however, none of the alternatives identified was regarded as permissible under the current wording of the CRA Regulation* "The approach taken in the Commission's Securitisation proposals could be a good alternative for the creation of the SFI website under the CRA Regulation. Where it would be decided to set-up and maintain a centralised database maintained by a public entity, in line with the letter of ESMA mentioned above, budgetary means would have to be available for the responsible public or private entity to set up and run the database. Where a public entity would be made responsible, it would seem to make sense to make ESMA reponsible in line with Article 8b of the CRA Regulation. Whereas it could be possible to task a private entity to set-up and maintain such a centralised database, in principle the EU public procurement rules would have to be taken into acccount when tasking a private entity to set-up and maintain the database.

			•Did the Commission take into account a possible increase of bilateral securitisations, a shift by market participants to out-manoeuvre the increased transparency demanded from STS securitisation?	Article 5 and 10 (4) of the proposal for a Securitisation Regulation ensure that investors will have at their disposal all the relevant information on securitisations. It covers all types of securitisations and applies across sectors. Even if securitisations could be bilateral transactions, originators, sponsors and SSPE's should make freely available the information to investors.
9			**On transferring risk:**	
-14			• While in true sales securitisation, which for the time being are the only STS eligible securitisations, the assets and their risk is being transferred to the investors, some question on the transfer of risk remain. What are the expected dynamics on the balance sheets of banks if the least risky assets of a portfolio are transferred through securitisation and the riskiest part of the portfolio remains with the originating bank?	True sale securitisations allow banks, which are normally the originators of securitisations, to refinance a pool of assets before they come to maturity, de-leverage their balance sheet and free regulatory capital that can be used for additional lending or other types of investments. One of the main objectives of the Commission Securitisation proposals is to facilitate an increased lending capacity in the system, without jeopardising financial stability, which securitisation makes possible through a broader distribution of risk within the financial sector. Banks can decide by themselves which assets to securitise, but the sub-prime crisis was triggered by the securitisation of assets that had been subject to very lax underwriting standards and, therefore, were more likely to default ("originate-to-distribute model). The proposal includes a specific requirement on originators to apply consistent underwriting standards between retained and securitised assets intended to prevent the "cherry-picking" of assets, that is, the originator consciously securitising only "good" or "bad" quality assets to the detriment of third parties (Article 8 (6). The proposal provides that: *"The underlying exposures shall be originated in the ordinary course of the originator's or the original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or the original lender applies to origination of similar exposures that are not securitised. Material changes in underwriting standards shall be fully disclosed to potential investors".* The risks posed by the originate-to-distribute model were already addressed by a previous amendment to the Capital Requirements Regulation which imposed an obligation on originator credit institutions to retain the riskier 5% of the securitisation transaction ('skin-in-the-game'). The combination of the skin-in-the-game and consistent underwriting standards requirements will contribute to reduce the so-called

				"agency risks" in STS securitisations (e.g. the misalignment between originator's and investor's interests). It should also be noted that the prudential framework for credit institutions overall does not create specific incentives to retain or securitise any given type of assets or increase concentration of riskier assets on the balance sheet of the bank. In all cases, the credit institution will have to hold regulatory capital commensurate to the risk of the asset it holds, whether it is a loan which remains in the credit institution's books or a securitisation tranche. For example, the regulatory capital for the riskiest securitisation tranches or "first loss pieces" can be as high as the entire nominal amount of the tranche, which is equivalent to taking a loss in that position.
			• Could securitisation lead to a concentration of riskier parts of an asset portfolio with banks, which use securitisation to originate more loans with the same balance sheet capacity and only keeping the riskier assets and securitising the safer assets?	As explained in the previous reply, an originating bank will have to hold capital requirements for the assets retained on its balance-sheet. As these assets are risk-weighted, it means that risky assets will be subject to higher capital requirements.
			• Is STS securitisation a potential tool for banks that want to optimise their balance sheet, where the remaining part of loans on the balance sheet have a more attractive risk-reward profile than a securitised portfolio of the same assets?	No. The STS proposal is intended to increase transparency, enhance standards and facilitate the creation of a deeper and more liquid securitisation market. It does not, however, alter in any form or shape the purpose of all securitisations (whether STS or not) as a legitimate funding and risk management tool. Micro and macro prudential risks that may result from these transactions are addressed by the prudential framework (see previous answer). It should be noted that a true sale (cash) securitisation is a financial transaction undertaken by an originator (normally a credit institution) to refinance a pool of loans/assets before they come to maturity. Through a securitisation a credit institution is also able to de-leverage its balance sheet and free regulatory capital that can be used for additional lending purposes or other types of investments.

			•Will the risk weight of the remaining assets sufficiently take into account the concentration of risk in the remainder of a securitised portfolio in determining the capital charge required for these assets?	As replied above, the credit institution will have to hold regulatory capital commensurate to the risk of the asset it holds, whether it is a loan which remains in the credit institution's books or a securitisation tranche. For example, the regulatory capital for the riskiest securitisation tranches or "first loss pieces" can be as high as the entire nominal amount of the tranche, which is equivalent to taking a loss in that position. Moreover the CRR provides for a prudential framework on large exposures (Articles 387 – 403). Its purpose is to act as a backstop to prevent an institution from incurring disproportionately large losses as a result of the failure of an individual exposure or group of connected exposures due to the occurrence of unforeseen events.
			• Has the Commission more information on the expected risk dynamics for the balance sheet of banks that have securitised much of their assets in a stress situation, like a severe financial crisis or a simultaneous economic and housing market crisis? Has the Commission run an analysis on the effects of an increase of securitisation on the expectation of default of the remaining assets of a securitised portfolio of bank in a stress situation?	In relation to the behaviour of credit institutions as originators and investors in stress scenarios, the new securitisation framework adopted by the BCBS in 2014 is intended to address the risks to financial stability from the use of securitisation which became apparent during the sub-prime crisis of 2007. For instance, the new framework provides for a more cautious calibration of regulatory capital requirements for securitisation tranches which reduces the so-called "cliff-effects" resulting from the deterioration in credit quality of the underlying pool and the subsequent tranches' downgrades. That is, under the new framework the gap in the capital requirements between senior and junior tranches is less steep, thus reducing the possibility that credit institutions may be facing a sudden and expected increase in capital requirements (this is the scenario that unfolded during the sub-prime crisis and which led to a liquidity freeze in capital markets). The new framework also provides for additional measures that will enable the more sophisticated credit institutions to use their own calculations ("internal ratings") rather than external ratings to determine regulatory capital requirements for securitisation tranches they invest in and reduce the impact of external ratings on the balance sheet of credit institutions. The proposal put forward by the Commission to amend the Capital Requirements Regulation will implement these features of the 2014 BCBS securitisation framework in EU law and will deliver more risk-sensitive and stress-resistant regulatory capital framework for these transactions. Moreover the EBA Regulation and the CRD/CRR provide for regular stress testing exercises to be carried out both by the EBA and by the competent authorities in order to detect at an early stage the potential impact of different stress scenarios on the balance sheet of banks, including in securitised assets.

			•The Commission believes that the risk transfer from the bank balance sheet is a key feature of securitised products and a reason to promote reviving securitisation. Therefore, how does the Commission intend to further promote bank-to-non-bank risk transfer (e.g. via new financial incentives for insurers, funds, etc.)?	The package of measures proposed by the Commission will facilitate risk transfer to non-bank investors by helping to mitigate the stigma attached to securitisation, introducing a more harmonised and coherent EU legal framework and providing more risk-sensitive treatment of securitisations for credit institutions and insurers. The specific changes for banks will be implemented via the Commission proposal to amend the Capital Requirements Regulation. Equivalent calibrations for insurers through an amendment to the Solvency II Delegated Act will follow and the Commission intends to ensure the new calibrations in the insurance and banking sectors apply as from the same date. The Commission's impact assessment (http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2015/swd_2015_0185_en.pdf, pages 57-60) explains why modifying the treatment for all tranches (i.e. senior and non-senior tranches, rather only senior tranches) would help to encourage investment by non-bank investors and facilitate this risk-transfer mechanism.
15			**On funding the real economy:**	
-18			• Does the commission think that STS securitisation will provide a funding source also in economic bad times? What will the STS label change, since securitisation in the past also seemed widely available in economic good times with a market shutting down in times of stress and crisis?	Please find below additional elements to the reply to question 4. Securitisation provides an additional source of bank funding that possess two key characteristics that renders more stable in economic bad times: 1) collateralisation and 2) bankruptcy remoteness. 1) Collateralisation: being secured, securitisation is a less risky form of bank funding than unsecured bank debt. When the economic environment becomes more uncertain, investors tend to shift towards secured lending (as demonstrated by the increase in the cost of unsecured over secured lending during times of market volatility). Thus, securitisation is preferred to unsecured lending by bank investors in bad economic times. 2) Bankruptcy-remoteness: if a bank is declared insolvent, the owners of a true sale securitisation issued by it are untouched. The securitisation performance is in fact dependent only on the performance of the underlying assets, which have been sold to an external entity (so called "SPV"). Thus, in times of economic uncertainty and worries about banks stability, true sale securitisation provides a more stable funding channel than standard unsecured debt. For this reasons the only non-true sale (i.e. synthetic) securitisation allowed in the STS framework is tranched cover: a very specific structure used by national promotional banks to promote SME lending.

				The STS will increase the stability of funding via securitisation because it will ensure high standards of structuring and of assets underlying EU securitisations. This implies that investors' view on the quality of EU STS securitisations and their willingness to buy them will not depend upon market behaviour but only on their own assessment of simple, transparent and standardised structures packaging assets whose risk is analysable with a high degree of certainty.
			• Which safeguards did the Commission built into its proposal to make sure that the balance sheet capacity that securitisation frees up is used to finance new loans to the real economy? Could we set conditions to banks using STS securitisation for using the freed up capital for new lending to the real economy?	We believe it is more effective to set incentives than conditions. For banks with excessive leverage, securitisation allows them to reduce their leverage by selling part of their assets without cutting credit. Forcing them to extend new credit in order to use securitisation would eliminate precisely the rationale for them to use securitisation, forcing them to deleverage by cutting credit instead. For banks with optimal leverage, securitisation will create incentives to generate new credit to the real economy because it will reduce the cost of funding loans to firms and families.
			• What prevents banks from using STS to deleverage its balance sheet to meet the increase in capital requirements imposed on them?	Reducing excessive leverage and enhancing the resilience of the EU banking sector through the increase in the quality and the level of the capital base is an objective of the post-crisis reforms. In case a bank cannot raise own capital (e.g. because of adverse market conditions), it can make use of the securitisation technique to meet minimum capital requirements. Meeting minimum capital requirements is a legal requirement and will allow them more easily to provide credit on a sustainable basis.
			•Does the Commission have convincing evidence that the STS true sales securitisation is a practical tool for securitising SME loans? Even when the current market of SME loans securitisation mostly uses synthetic securitisation or other guarantee like methods?	The Commission is well aware that true sale securitisation is not the most cost-efficient tool to fund SME loans. It is precisely for this reason that a specific simple type of synthetic securitisation that is used by public development banks to fund SME loans (tranched cover) has been granted an STS-equivalent prudential treatment. Furthermore, the creation of STS criteria for short term securitisation (ABCP) has been proposed precisely because such vehicles are a major source of credit for EU SMEs. It is worth recalling that an average €240bn of ABCP have been issued in the last five years and that 63% of these instruments fund trade receivables, floorplan loans and equipment leases, which are primarily granted to SMEs (see "AFME securitisation data report", available at: http://www.afme.eu/documents/statistics-and-reports.aspx)
19			**On the alignments of risk:**	

-21			•How did the Commission substantiate its choice to require a 5% retention rate? Does this assure that the originating bank has enough skin in the game to align the risk of bad quality credit being originated with the sole purpose to distribute?	The 5% risk retention rate was already integral part of the EU legislation on securitisation: the Capital Requirements Directive (CRD 2), the Solvency II Regulation and the AIFM Regulation all require 5% risk retention and the impact assessments and preliminary work for these legislations assessed the 5% level optimality. Furthermore, in the public consultation carried out by the Commission in prior to the adoption of the STS regulation, the overwhelming majority of respondents (almost 70%) were in favour of maintaining the level and forms of risk retention as they are. The majority of regulatory authorities, central banks and finance ministries responding to the consultation argued that the risk retention requirements' level and form are currently working fine, so that they see no reason for changing them. Finally, in the technical advice on securitisation provided to the commission the EBA supported maintaining the 5% level (see EBA report on qualifying securitisation, www.eba.europa.eu/documents/10180/950548/EBA+report+on+qualifying+securitisation.pdf).
			• What will be the adverse consequences of putting this retention rate at 10% or even 15%?	It would increase substantially the costs of issuing securitisation in EU, imposing on it a relevant disadvantage with, for example, US securitisation where the risk retention level (when required) is 5%. It would hit in particular relatively costly structures such as SME loans securitisations, possibly rendering them uneconomical. Finally, it would require adaptation to a new regime, while it is important to ensure the stability of the regulatory framework for market participants. As pointed out in the previous answer, such adverse consequences would be imposed without a clear reason for changing arising from regulators', supervisors' or issuers' and investors' feedback.
			• The retention rate only looks at the securitised assets and disregards that in practice usually only a part of an asset portfolio is securitised. Why did the Commission leave this part of the portfolio, which is also relevant for the alignment of risk, outside of the scope of the retention rate requirements?	The part of the asset portfolio that is not securitised is fully retained by the originator. It is unclear how the 5% risk retention requirement is needed if the portfolio is already retained. Assets are on the balance sheet of the originating bank and capital requirements fully applied. If instead this part of portfolio is sold unsecuritised, it clearly falls outside the remit of the securitisation regulation.
22			**On supervision:**	

-24			•How does the Commission expects to prevent regulatory arbitrage to develop, with the many different National Competent Authorities involved and also the three European Authorities, EBA, ESMA and EIOPA in charge of coordinating the supervision of the STS securitisation rules?	First, it is important to underline that all competent authorities and ESAs will have to work on the basis of the same legislative framework; Since it concerns a Regulation there will not be any national differences in transposition. This greatly reduces the possibilities for regulatory arbitrage. Secondly, competent authorities and market participants are well aware of the cross-sectoral and cross-border nature of the Securitisation market, which increases their willingness to cooperate and coordinate with each other. Thirdly, precisely to take care of the issue of coordination between competent authorities specific rules have been introduced in the proposal on cooperation between competent authorities. The general rule already provides that they shall cooperate closely with each other and exchange information to carry out their duties (Article 21 (1). This is strengthened by the regulatory technical standard that will specify the general cooperation obligation and the information to be exchanged (Article 21 (6) and specific provisions for cases of suspected infringements. For instance, where a competent authority has evidence that originators, sponsors and SSPE's have made a materially incorrect or misleading STS notification, it should immediately inform ESMA, EBA or EIOPA and the competent authorities of the Member States concerned to discuss its findings. Where competent authorities cannot come to an agreement, there is the possibility to have binding mediation in accordance with the ESMA Regulation.
			•How did the Commission assess the feedback from certain market participants that a fine of up to 5% of global revenue will prevent them from using the STS securitisation label due to the relative size of possible adverse consequences, also in light of the large set of requirements and the uncertainty in their exact application by supervisors?	A robust securitisation framework requires a credible and dissuasive regime for sanctioning infringements. This is particularly true for STS requirements since the EU framework relies on self-certification. The sanctioning regime proposed in the Securitisation Regulation is fully consistent with the sanctioning regime already adopted by the EU legislator in a large number of EU financial services acts. Therefore the regime should work in practice in a comparable manner as the already functioning sanctioning regimes. The Commission proposal provides that member States should make certain sanctions available to their competent authorities/Courts. In case of a legal person, an administrative fine of up to 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body should be available (Article 17 (2). However, the fact that this fine has to be made available does not mean that such a fine should be given for any infringement of the Regulation. Sanctioning provisions have to give competent authorities a certain scope to decide what is the appropriate sanction for a specific infringement, since only in that way can it be ensured that the sanctions are really effective, proportionate and dissuasive. When determining the type and level of an

				administrative sanction or remedial measure imposed under Article 17 competent authorities shall take into account all relevant circumstances, which ensures strict proportionality. According to Article 18 (2) competent authorities should take into account: (a) the materiality, gravity and the duration of the infringement; (b) the degree of responsibility of the natural or legal person responsible for the infringement; (c) the financial strength of the responsible natural or legal person, as indicated in particular by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person; (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined; (e) the losses for third parties caused by the infringement, insofar as they can be determined; (f) the level of cooperation of the responsible natural or legal person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person; (g) previous infringements by the responsible natural or legal person. Therefore, the proposal requires competent authorities to be strictly proportional in the exercise of their sanctioning powers and any concerns raised about disproportionate sanctions are not justified on the basis of the Commission proposal.
			• Is the time between the adoption of the legislation and the date of application of the STS securitisation regulation enough for ESMA to develop technical guidelines?	ESMA will, in close cooperation with EBA and EIOPA, develop draft regulatory technical standards on supervision aspects. These RTS will mainly deal with i) general cooperation obligation and exchange of information on STS transactions and on ii) the STS notification obligations. ESAs have twelve months to submit these draft RTS (Article 21 (6). This timeline is in line with other legislative proposal from the Commission has been discussed informally with ESMA. Moreover, in his letter to the ECON Chair (13/01/2016), the ESMA Chair said about this issue: "*ESMA invites the co-legislators and the European Commission to consider, in the current negotiations on the Securitisation Regulation, to set a period of twelve months to allow for the development of good quality and properly consulted technical standards*".

25			**On synthetic securitisation:**	
-28			• What are the reasons for the Commission to completely exclude synthetic securitisation of the scope of the STS proposal? This is especially relevant since synthetic securitisation has a specific use in the financial markets and is used by banks to share risk with investors.	The Commission's proposals only allow 'true sale' securitisations, but not synthetic transactions, to qualify as STS securitisations. In synthetic securitisations the underlying exposures are not transferred through a "true sale" to an third party, but the credit risk related to the underlying exposures is transferred by means of a guarantee or derivative contract. This introduces an additional counterparty credit risk and potential complexity related in particular to the content of the contract. When the Commission adopted its proposals neither the international standard setters (BCBS-IOSCO), nor the EBA had yet developed STS criteria for synthetic securitisation and there was no consensus on their inclusion in the STS framework. Moreover, at the moment of adoption there was insufficient clarity on which synthetic securitisations should be considered STS and under which conditions. However, the Commission singled out a specific category of SME securitisations guaranteed by public authorities or involving public guarantee schemes (i.e. 'tranched cover'), which would be granted a prudential treatment equivalent to STS. The Commission announced in its proposals that it would further consider this issue and follow the work of international and European bodies on this topic. The Commission will assess whether some synthetic securitisations that have performed well during the financial crisis and that are simple, transparent and standardised should be able to qualify as STS. Please see for further details Annex 5 of the impact assessment, which is entirely dedicated to synthetic securitisation and the reason to exclude most types of it from the STS label. See also answer to question 27 discussed below for further details.
			• Synthetic securitisation can mean many things, from beneficial guarantees on SME loans to toxic products that lead up to the financial crisis. Has the Commission worked out a definition that only catches the positive forms of synthetic securitisation and worked out a clear definition of the synthetic securitisation that is not deemed malign?	As said in reply to question 26, when the Commission adopted its proposals neither the international standard setters (BCBS-IOSCO), nor the EBA had yet developed STS criteria for synthetic securitisation and there was no consensus on their inclusion in the STS framework. Moreover, at the moment of adoption there was insufficient clarity on which synthetic securitisations should be considered STS and under which conditions. However, the Commission singled out a specific category of SME guaranteed by public authorities or involving public guarantee schemes (i.e. 'tranched cover'), which would be granted a prudential treatment equivalent to STS. The EBA published its Report on Synthetic Securitisations in December 2015. Building on the Commission's approach on 'tranched covers' the EBA recommended two refinements to their

				treatment: 1) extending the prudential treatment given to tranched-covers to transactions benefiting from full cash-funded credit protection provided by private investors in the form of cash deposited with the originator institution, provided that some specific criteria are fulfilled; 2) refining certain STS criteria that the tranched-cover transaction should meet to qualify for the preferential regulatory treatment. The Commission is analysing further the EBA report and stands ready to discuss about it with the European Parliament.
			• Were specific forms of synthetic securitisation considered as STS eligible (in the future), like the securitisation of SME loans by banks that do not sell the assets from a client-relationship perspective, or bad loan/non-performing loans securitisation that help banks to clean up there balance sheet and take the loss on these assets?	As described in the EBA report, balance sheet synthetic securitisations performed consistently better than arbitrage transactions and were typically structured to be far less complex. In addition, while 'balance sheet' synthetic transactions fulfil the genuine risk transfer objective envisaged for securitisation in prudential regulation, arbitrage synthetic transactions are primarily structured to achieve yield arbitrage targets driven by investors.
			• The Commission does not include in its STS proposal the synthetic securitisation. Yet, it provides a carve out for certain tranches of certain types of STS synthetic securitisation under CRR. How does the Commission view the proposals related to synthetic securitisation expressed by the EBA in its December 2015 Report on that topic?	As explained above, the Commission proposals do not introduce STS criteria for Synthetic securitisations. Compared to true sale securitisations, synthetic securitisations carry additional legal and counterparty risks that need to be taken into consideration. Further analysis is needed in order to determine whether it would be appropriate to allow synthetic securitisations to quality as STS securitisations. As already mentioned, the Commission proposal to amend the CRR (Article 270) envisages a specific treatment for the tranche retained by the originator for transactions backed by pools of SME loans ('tranched covers') under certain strict conditions (including compliance with some of the STS criteria). The EBA recommendations build on the Commission proposal and focus on some potential improvements on the eligibility criteria for the retained tranche as a condition to get a preferential risk-weight. The Commission is analysing further the EBA report and stands ready to discuss about it in a constructive manner with the European Parliament.

29			**On the role of Credit Rating Agencies**:	
-31			•What will the STS label do for the role of rating agencies play in the securitisation process? Will it reinforce the market position of the large credit rating agencies?	The Securitisation Regulation proposal aims at promoting simpler, more transparent and more standardised instruments. It will allow investors to better understand, assess and compare securitisations. It means in practice that investors will be able to reduce their reliance on credit rating agencies as they will be better placed to perform their own due diligence. In addition, increased simplicity and standardisation is likely to help smaller rating agencies to deliver ratings of STS Securitisations. The amendments to the CRR will also reduce the reliance on credit-rating agencies. To remove any form of mechanistic reliance on external ratings, banks should use their own calculation of regulatory capital requirements where the institution has permission to use the Internal Ratings Based approach (SIC-IRBA). A Securitisation External Ratings-Based Approach ("SEC-ERBA") should then be available to banks that may not use the SEC-IRBA in relation to their positions in a given securitisation. When the first two approaches are not available or the use of the SEC-ERBA would result in incommensurate regulatory capital requirements relative to the credit risk embedded in the underlying exposures, institutions should be able to apply the Securitisation Standardised Approach (the "SEC-SA"). Therefore, while the current framework is fully based on the use of external rating, the Commission proposal will reduce reliance on credit-rating agencies for the prudential treatment. Finally, the Securitisation package treats all rating agencies in an equal manner and all have the same opportunities to provide their services with respect to securitisations. In this respect, it is important to guarantee that smaller CRAs are not treated less favourably from the point of view of the impact of their ratings on capital requirements. The Commission has been continuously promoting equal access for all CRAs and especially in the context of the mapping of ECAIs, which defines the correspondence between each CRA's rating class and the corresponding capital requirements under CRR and Solvency 2.

			•Does the Commission have a position on the proposal to let banks and investors choose between the standardized approach and external rating to determine the risk of securitisations? What will this mean for comparability of different securitisations and could this lead to banks choosing the most favourable method per securitisation?	Allowing banks full discretion to choose between the SEC-ERBA and SEC-SA on a case-by-case basis would produce regulatory arbitrage, impact the overall level of harmonization and comparability with regard to the EU securitisation framework and be a source of financial stability risks. A systematic inversion between the SEC-ERBA and SEC-SA is also not desirable since the SEC-SA was conceived as the least risk sensitive approach and therefore the overall prudence of the framework would be reduced. This would also increase complexity of the framework for less sophisticated investors/banks, as the SEC-SA is a formula-based approach and, therefore, operationally more complex to apply that the SEC-ERBA which is based on readily available external ratings. Moreover it would lead to disproportionate capital charges for exposures in Countries not subject to a rating ceiling. It is, however, appropriate to allow banks flexibility to apply the SEC-SA, instead of the SEC-ERBA, under strict conditions and only for senior tranches. This is because, as noted in the EBA Report, the hierarchy of approaches does not deliver its intended purpose in those jurisdictions where a country ceiling is applied by rating agencies' methodologies and a transaction is unable to get the highest possible rating. In these cases, the capital charges for a transaction's senior tranches resulting from the SEC-ERBA approach are significantly higher than those that would result from the application of the SEC-SA approach and may be disproportionate to the actual credit risk embedded in those tranches. This is contrary to the intended design of the hierarchy which was meant to deliver higher capital requirements under the SEC-SA than the SEC-ERBA for comparable tranches. Accordingly, the Commission proposal includes a provision that gives banks only limited flexibility and subject to competent authorities' review.
			• What would be the consequence if the priority of rating methods is changed, where the standardized approach would come first for all banks, or second after the internal model approach and the external rating as last resort?	Please see previous answer
32			On the interplay with other financing instruments:	

-33			• Securitisation as funding source cannot be seen in isolation, but is one of the many sources banks can choose from. Is the Commission aware that covered bonds are at the moment a more favourable financing instrument for banks from a capital charge perspective? What will the STS proposal do to align the (unjustified) discrepancy there is between securitisations and covered bonds?	The different treatment of securitisations and covered bonds (in particular under the Standardised Approach) is partly justified by the structural differences between the two instruments, such as the dual recourse which covered bond holders enjoy. The proposal will however address the imbalance and enhance the level playing field between the two instruments by setting similar levels of regulatory capital requirements. In particular under the SEC-SA the STS securitisations will be subject to a 10% Risk-Weight floor which is perfectly aligned with the treatment of eligible covered bonds under art 129 CRR
			• Has the Commission assessed how its proposals would affect the competitiveness of securitised products as an asset class <u>in comparison</u> with other funding/investment options? Why did it not aim in this proposal at levelling the requirements between the different instruments? Does it consider that part or the whole of the STS criteria should also be applied to other types of products (e.g. covered bonds)?	The Commission has thoroughly assessed and compared securitisation and the most similar financial instrument (covered bonds) in the preparation of the proposals. In the Commission public consultation, some stakeholders pointed out the differences in the prudential treatments of the two instruments notwithstanding their similarities. The Commission agrees there is a degree of substitutability between covered bonds and some securitisation instruments (i.e. residential mortgage backed securities), but they also have different key characteristics, in particular the dual recourse for covered bonds. This feature explains differences in approaches. The Commission has launched a public consultation on covered bonds and is currently assessing the contributions.
34			**On interests of the ECB in securitisation**:	
-35			• A large part of the securitisations are retained by banks to be used in Repo-agreements with the central bank. What is the exact interest of the ECB in the STS securitisation proposal? What will be the effect of this regulation for the assets that the ECB has on its balance sheet as part of the Repo-agreements with banks? ·What is the size of the funding that the ECB provided banks in the last 5 years	These specific questions have to be addressed by the ECB. They mainly deal with monetary policy and the ECB is independent in this area. On a more general level the COM has looked carefully at all studies and inputs provided by the ECB and other central banks on this issue. For example, the ECB and the Bank of England launched a public consultation in May 2014 on the case for a better functioning securitisation market in the European Union (see answer to question 1). The ECB has also contributed to technical works at EBA or BCBS levels. It is fair to say that STS criteria reflect - to a large extent - the ECB's existing collateral framework for refinancing operations. Finally in its Opinion of 11 March 2016, the ECB *"welcomes the objectives of the proposed regulations of*

			based on securitised asset Repo-agreements?	*promoting the further integration of Union financial markets, diversifying funding sources and unlocking capital for sound lending to the real economy. The development of a common set of substantive rules across the Union regulatory framework for all securitisations is a significant step towards regulatory harmonisation and consistency. The ECB also supports the establishment of criteria to identify a subset of securitisations which can be classified as simple, transparent and standardised (STS) and welcomes the proposed CRR amendment's adjustment to capital charges to provide for a more risk-sensitive treatment for STS securitisations."* In addition, the "*ECB considers that the proposed regulations strike the right balance between the need to revive the European securitisation market by making the securitisation framework more attractive for both issuers and investors, and the need to maintain the prudential nature of the regulatory framework. The ECB notes that European securitisations with features broadly similar to those of the proposed STS securitisations suffered low levels of losses during the financial crisis."*
36-38			**On market impact:**	
			• Has the Commission assessed how many securitisations would be immediately qualifying for being considered as STS and what would be the major obstacles for market participants to adapt their practices to the criteria proposed by the Commission, including in terms of compliance costs for them?	Since the STS list includes various criteria whose degree of compliance is not known for all EU markets, an estimate of immediately STS-compliant issuance in the EU has some intrinsic uncertainty. That said, Fitch estimates 90% of the EU securitisation issuance in 2012 (latest data available) to be compliant with the STC criteria developed by BCBS-IOSCO that are very similar to STS. For what concerns compliance costs, please see section 6.3 of the impact assessment, which is dedicated to finding the option minimising compliance costs.
			• STS criteria are overall made to apply to the whole securitisation market, without differentiation per asset class, except term securitisation vs ABCP securitisation. Is the Commission confident that this one-size-fits-all approach will not artificially prevent certain types of securitisations from becoming STS, due to requirements being non-applicable or too complex or too costly to achieve, compared to	The STS criteria embody characteristics that are present in the overwhelming majority of EU securitisation and that were theoretically and empirically proven as conducive to solid performance. The STS criteria strike a balance between establishing a robust, clear and predictable STS framework and avoiding a too detailed and closed list of criteria which may prevent the emergence of a STS market. Too detailed or precise requirements may limit the necessary flexibility. Commission proposal aims at having a balanced approach. Indeed the STS criteria draw on work carried out by the EBA, the Basel Committee and IOSCO (including public consultations) and are then adapted to the EU context and specificities. The majority of the respondents to the Commission's public consultation actually argued that the EBA criteria were too prescriptive and argued for broader, principle-based criteria such as those proposed by Basel-IOSCO (please see Annex 7 of the impact

			current market practices?	assessment). All this allows the Commission to be confident about the applicability and manageability of the criteria. Supporting this is the estimate quoted in the previous answer, according to which 90% of EU securitisations already qualify for STS.
			• In line with the spirit of the CMU, does the Commission proposal include any provision that would actually make it possible or easier for issuers to pool together underlying loans from different MS in common securitised products and for investors to invest in a cross-border fashion in securitised products issued in another MS from theirs? If not, what were the reasons for this policy choice?	One of the key objectives of the Commission proposal is to establish a clear and consistent EU legal framework for securitisation across all financial sectors. This aims at reducing current regulatory inconsistencies, increasing legal certainty and promoting standardisation. A cross-sectoral EU-wide regulatory framework for securitisation will facilitate cross-border investments. Looking at STS transactions, there is no requirement to have all underlying loans originated in the same Member State. An STS securitisation can package loans granted in different MS just as it would package those granted in one single Member State, thus making it easier for issuers to pool together underlying loans from different MS in common securitised products. Regarding cross-border flows, one of the key objectives of the proposal is precisely to facilitate cross-border investments in securitisations. This is done via EU-level standardisation of requirements as well as reducing the correlation between the credit rating of the state where the securitisation is issued and the securitisation itself. However, we should keep in mind that differences in national insolvency regimes may limit investors' willingness to invest in assets subject to different regimes as this would make due diligence more complex.
39-40			**On third countries:**	
			• Can also non-European entities use the STS label? As the EU has no sanctioning powers in third countries such as US, JAP etc. – how can the compliance with the STS requirements be ensured and reputational risks for the STS label avoided?	The Securitisation regulation proposal provides essentially for a system that is open to third country securitisations. EU institutional investors can invest in non-EU securitisations and will have to perform the same due diligence as for EU securitisations, which includes a check whether the risk is retained and whether the originator, sponsor and SSPE make available all the relevant information. As far as STS securitisation is concerned, there is no requirement that the underlying exposures are located in the EU as long as they fulfil all STS requirements. Enforcement issues are key as authorities should be able to check (and possibly intervene/sanction) whether a securitisation meets all STS criteria. Thus, originator, sponsor and SSPE of a STS securitisation should have a competent authority pursuant to the EU legislation (article 14 (1) of the proposal). This is essential in particular for the STS notification requirement. Having said that, large financial entities or businesses such as automotive

				companies could securitise assets in EU through their EU subsidiaries. Investors established outside the EU could invest in STS securitisation. However, the prudential treatment applied to banks or insurance companies investing in these instruments is governed by the rules in place in these third countries. The Commission is taking part to international discussions on securitisation in the BCBS-IOSCO and in the Basel Committee. The Commission proposal foresees a general review clause and it may allow the Commission to take into account international developments in the securitisation area.
			• How does the Commission perceive the risks related to third countries, in the absence of a third-country regime? Does it believe that there are substantial risks in allowing under the STS regime securitisation of assets located in third countries or that actually the bigger risks reside in allowing non-EU supervised entities to originate STS securitisation?	As outlined in the Commission's impact assessment, the US subprime crisis had damaging effects including on EU investors. Enforcement is key to build a robust, resilient and credible STS framework. To ensure financial stability and prevent emergence of new risks, EU institutional investors could benefit from the more risks-sensitive STS prudential treatment only if the compliance with all STS criteria can be ensured and enforced. For that, entities have to have a competent authority in the EU. However, these entities may of course be subsidiaries of third county entities. The Commission did not propose to introduce a third-country equivalence regime in its proposal as major non-EU jurisdictions - and in particular the US - informed the Commission that they were not foreseeing introducing a STS regime in a near future. In the absence of a regulatory framework in a third country, it would not be possible for the Commission to assess the equivalence of the third country STS criteria and enforcement mechanisms. Having said that, the Commission proposal contains a review clause and this issue could be reassessed in light of further international developments.
41	Horizontal questions	Morten MESSERSCHMIDT (ECR Shadow)	On CLOs: What are the potential benefits and risks of Collateralised Loan Obligations (CLOs)?	CLOs fund loans to corporates (usually big corporations but there are also some CLOs of SME loans) issuing notes sold to market investors that would otherwise find it hard to take exposure to corporate loans. CLOs' main benefits is thus to create a bridge between capital markets and firms. However, CLOs present features that make them not easily fit into the STS framework: 1) CLO managers actively manage the pool of assets underlying the securitisation, thus the CLO investor does not buy a stable asset pool he/she can assess but rather buys the manager's ability to manage loans for a profit. This reduces transparency, interest alignment between CLO manager and investors and investor's ability to assess the riskiness of the securitisation he/she's buying. 2) CLOs managers are alternative funds and as such they are not subject to prudential capital requirements like banks or MIFID institutions. Thus, CLO managers are not able to retain risk, unless a

				sponsoring bank is present. See, for more details, "CLO: a primer" by Andreas Jobst, available at https://www.ifk-cfs.de/fileadmin/downloads/publications/wp/02_13.pdf
42			On Third Countries: By making STS an EU only product, are we concentrating risk and limiting the potential funding benefits to the wider economy that would be brought by a more outwardly facing regime? Global standards will be developed, and it is certainly the case that other markets would like to develop domestic regimes that comply with the high standards we set in the EU in order to trade with us. Why did the Commission not put forward obligations on how an equivalence regime might work as and when these standards are adopted internationally?	STS is not an EU-only product: assets created anywhere in the world can be packaged and sold as STS securitisation. What's more, financial enterprises from anywhere in the world can issue STS securitisation with only one condition, that they have a subsidiary incorporated in the EU. This is unavoidable since the STS framework has requirements touching on all stages of the securitisation process. In order to ensure compliance and enforcement, EU authorities must have jurisdiction on the agents involved in the securitisation, hence these latter must be incorporated in the EU. As for equivalence, the proposed review clause allows for looking into the issue in two years' time. By then, other markets may have developed domestic regimes that might comply with the high standards we set in the EU. Nonetheless, so far no jurisdiction outside of the EU manifested interest in doing so. Hence, it would have been premature to put forward obligations on how an equivalence regime might work.
43		GUE/NGL Group	Can the Commission explain why it believes the STS proposal serves mainly SME while ECB surveys clearly show that the biggest concerns of SME is finding customers whereas access to finance is their lowest concern? (seehttps://www.ecb.europa.eu/press/pr/date/2015/html/pr151202.en.html)	The Commission proposal aims to facilitate the availability of credit and reduce the cost of funding to all European companies, including SMEs (see Section 3 of the impact assessment). The financial and sovereign debt crisis has taken a heavy toll on EU growth, with many European countries suffering from permanent and significant losses of GDP. The crisis also had a huge impact on jobs, as the unemployment rate in the EU increased from 7.2% in 2007 to 10.2% in 2014. Today, growth is back but economic activity is obviously not as strong as desired. The Commission forecast for GDP growth this year is around 2% and unemployment is still around 10% across the EU, with 1/5 still out of work. It is encouraging to see that some recent surveys point to improvements in the availability of bank lending and a loosening of funding constraints to SMEs at the aggregate level, as the accommodative monetary policies start to feed through into the real economy. Nevertheless substantial growth differences persist, reflecting both structural features and different cyclical positions (see the European Commission Winter 2016 Forecast for more information). There are still a large number of growing European companies unable to obtain funding and a big investment gap that needs to be filled.

				Developing deeper and stronger securitisation markets is a key part of the Commission's Action Plan for a Capital Markets Union to provide more options and better returns to investors and companies. By diversifying the sources of funding in the economy, this will also make the financial system more resilient to adverse shocks, such as the banking crisis in 2008. It is important to acknowledge that the STS proposal is part of the long term solution, requiring a structural change in the European economy, which will become increasingly important as the accommodative monetary policy of central banks starts to normalise again. As said stronger securitisation markets in Europe would benefit all European companies, including SMEs. The largest benefit to SMEs would likely be indirect – from the development of other securitisation segments that can free up space on bank balance sheets to enable them to lend further to SMEs. The Commission's proposal however also includes a number of specific elements targeted to magnify the benefits for SMEs, including: 1. The inclusion of criteria on short-term securitisations (Asset Backed Commercial Paper), which is often used by small businesses to finance trade receivables; 2. A prudential treatment equivalent to STS for certain types of SME securitisation (called "tranched covers").
			44) Can the COM explain in detail what lessons have been learned with respect to past mistakes and how exactly this proposal avoids such mistakes?	As recognised already in the introduction of the impact assessment (section 1.3), the financial crisis showed how, if not properly structured, securitisation can increase financial instability and damage the wider economy. The impact assessment devotes several sections (1, 3 and 6 in particular) to explaining how the STS regulation excludes those practices and structures associated with high defaults and large losses. In more general terms, the Commission proposals fully take over the post crisis reforms in the area of securitisation. They aim to protect investors and manage systemic risk by avoiding a recurrence of the flawed "originate to distribute" model: 1. Post-crisis provisions on due diligence, risk retention and transparency are taken over. 2. Criteria for Simple, Transparent and Standardised Securitisations are proposed. These criteria are based on the analysis made by European and international supervisors (EBA, BCBS/IOSCO, ECB and BoE) of soundly structured, transparent and well-performing securitisations and exclude the instruments which featured prominently in the US subprime boom and successive crisis. 3. In view of the past good performance of these "STS" securitisations a more risk sensitive

				treatment is proposed, which reflects the actual performance of these instruments. 4. The proposals contain a robust supervision and sanctioning regime that puts responsibilities with the market participants with strong oversight by supervisors.
45			More specifically should not we learn from best practice from some of the largest pension funds and mandate 20% risk retention? Such a measure does not cost anything as risk retained is remunerated, whereas it removes potential conflicts of interest, a key lesson from the crisis.	Please see answer to questions 19 and 20 above. Also notice that the more risk is retained the less reduction in prudential capital requirements is obtained by the issuer of a securitisation. Thus, increasing risk retention requirements to 20% would not be a zero cost measure it would cost the same to the issuer and would provide considerably less reduction in prudential capital that must be funded by the issuer. As a result, the issuance may become uneconomical.
46			Since the investors in securitisation are financial entities highly interconnected with banks as they already finance them, how do you expect securitisation to bring true diversification of risk and not additional interconnectedness?	The investor base for securitisations includes banks, insurers, hedge funds, pension funds, public sector entities, amongst others. These markets are not aimed at retail investors. For non-bank investors, securitisations can be useful in generating appropriate returns and meeting their asset diversification and investment duration needs. The choice to invest in securitisations may offer these firms new investment opportunities in areas where they are not able to invest directly (e.g. SME loans). Furthermore, long-term institutional investors may see advantages from the perspective of investment duration, returns and asset-liability management. For example, life insurance companies traditionally have long-dated liabilities that they could naturally match with the long-term assets of a bank's mortgages (via a mortgage-backed securitisation). The Commission's proposal for an EU securitisation framework aims to allow a broad set of institutional investors, as well as banks. The proposal provides an opportunity to expand the investor base for securitisation further, beyond banking actors, to EU institutional investors, such as insurers and other long term investors. By helping to mitigate the stigma attached to securitisation, introduce a more harmonised and coherent EU legal framework and provide more risk-sensitive treatment. The appetite from institutional investors other than banks should improve and lead to a more sustainable market in the future. The goal is for Europe to benefit from a deep, liquid and robust market for securitisation, which is able to attract a broader and more stable investor base to help allocate finance to where it is most needed in the economy. Soundly structured securitisations allow for a broader distribution of financial sector risk, enabling institutional investor to diversify their portfolios, while at the same time, helping banks' free up their balance sheets and facilitate a more efficient allocation of risk across the financial system.

47			Can the COM quantify and explain the real economic value of non-STS? Are there any reasons not to limit other models such as the "originate to distribute" models?	Non-STS securitisations can be sustainable and viable assets that, even if not simple and transparent enough to qualify for the STS label, represent a sustainable funding channel for the EU economy. Excluding such funding channels would be hardly justifiable from a theoretical and empirical point of view. Their additional complexity and different risk-reward profile is taken into account by the different prudential regime these are subject to.
48			Given the various changes and adaptations to different level 1 and level 2 legislation, can the COM provide a structured and systematic overview which texts need to be changed when ?	The Commission proposal establishes a clear and consistent EU legal framework for securitisation across financial sectors. It aims at reducing regulatory inconsistencies, increasing legal certainty and promoting standardisation. For further information we refer to section 5 of the Commission's Impact assessment ("standardisation and harmonisation"). Such a horizontal EU legal instrument will facilitate use by issuers, investors and supervisors as it will simplify and clarify the EU legal framework. Currently, the framework for EU securitisation is determined by a large number of EU legal acts. These include : • the Capital Requirements Regulation for banks; • the Solvency II Directive for insurers, and • the UCITS and AIFMD directives for asset managers. Legal provisions, notably on information disclosure and transparency, are also laid down in the Credit Rating Agency Regulation (CRAIII) and in the Prospectus Directive. For the Level 1 texts, the necessary changes were already proposed in the two COM proposals. The proposals also contain empowerments for level 2 acts and for each of them a deadline is provided in the relevant provisions. Provisions relating to securitisation are also included in delegated acts. The EU has already taken steps to create a differentiated regulatory treatment in two delegated acts covering the prudential requirements for insurers (under the Solvency II Directive), and the liquidity of credit institutions (through the Liquidity Coverage Ratio Regulation). The adoption of these delegated acts in 2014 was a preliminary step that will need to be complemented by further action. On substance, the main objective of amendments to Solvency II/LCR would be to ensure consistency with the new STS Regulation and to ensure consistency of the insurance calibrations with future banking rules. On timing, these amendments will be proposed once agreement is found on the Securitisation Regulation proposal. The Solvency II framework currently includes specific provisions for insurers' investments in securitisation, including definitions, risk retention requirements, risk management requirements and calibrations. This framework would therefore need to be changed, to ensure a uniform application of the Securitisation Regulation on all institutional investors. First, the Solvency II Directive (Directive 2009/18/EC) would be marginally amended by the

				Securitisation Regulation (Article 24), to replace empowerments given to the Commission by a reference to the new horizontal provisions. At the same time, Solvency II implementing measures (Commission Delegated Regulation 2015/35) would also need to be amended, to ensure their consistency with the new horizontal framework. At this occasion, a new calibration would be introduced, with improved risk-sensitivity. The Commission intends to ensure that the new calibrations in the insurance and banking sector will apply as from the same date.
49			Which provisions in the proposal address the risk that the least risky tranches of securitisations are sold into the market but banks are left holding lower quality exposures (either increasing the probability of failure or depleting their spare capital)?	Tranches retained by banks are subject to strict prudential capital requirements in line with international standards and EU law. As such, their riskiness is fully taken into account and holding them does not increase the probability of failure.
50		Molly SCOTT CATO (Greens Shadow and Greens Group)	What obstacles of a practical nature are there to a system of licensed securitisation houses (instead of ad hoc SPVs), subject to a specific regulatory framework and bankruptcy remote from other financial institutions?	Section 6.3 of the impact assessment investigates the feasibility and desirability of a licensing regime for STS securitisation. As for the "securitisation houses", more details would be needed to understand precisely in which way these would be different from SPVs currently used in securitisation markets.
51			What evidence is there of the relation between success of securitisation markets and the number of tranches in a securitisation?	To our knowledge and based on the research work carried out at international and EU level, there is no evidence of a correlation between number of tranches and securitisation markets' performance. It is worth recalling that the overwhelming majority of the securitisations issued in the EU before the crisis were tranched and yet they experienced negligible default rates and losses.

52			Since tranching would create enormous additional complexity by manufacturing risks that are hard to assess and that can't be mitigated, and would also generate conflict of interest between investors in different tranches, could the Commission state whether it is aware of these risks and how it can consider securitisation simple and transparent when it allows tranching?	There is no evidence that tranching creates the sort of risk referred to in the question. This is one of the reasons why the Commission's proposal maintains non-neutrality of the prudential treatment. In other words, the additional capital required to hold a securitisation compared with the capital required to hold the assets is aimed at mitigating the model risk introduced by tranching. It is worth recalling that the almost totality of EU securitisations issued in the run up to the crisis were tranched and yet they generated negligible default rates and losses.
53		Marco ZANNI	Since with this proposal the Commission would put a set of rules on securitisation in one legal act, streamlining and simplifying the existing rules, could the Commission state how it intends to ensure consistency and convergence across the different sectors?	Standardisation and harmonisation of securitisation provisions has been raised as a key issue by many respondents of the public consultation (see annex 7 of the impact assessment). Section 6.5 of the impact assessment investigated which option would provide such standardisation and harmonisation in the most efficient way. In drafting the proposal, great care was used in harmonising aspects that apply to all sectors (e.g. definitions, transparency) while allowing for specificities of sectors.
54		(EFDD Shadow)	According to ECB SAFE survey, European SME's biggest concern today is finding clients whereas lack of funding is their lowest concern, does the Commission really believe that revive the European securitisation market will add value to real economy?	It is encouraging to see that some recent surveys point to improvements in the availability of bank lending and a loosening of funding constraints to SMEs at the aggregate level, as the accommodative monetary policies start to feed through into the real economy. Nevertheless substantial growth differences persist, reflecting both structural features and different cyclical positions (see the European Commission Winter 2016 Forecast for more information). There are still a large number of growing European companies unable to obtain funding and a big investment gap that needs to be filled. Please see answer to question 43 above for further details.

55			According to the Commission Green Paper on building a Capital Market Union (February 2015) securitisation issuance in Europe amounted to some €216 billion in 2014 compared to €594 billion in 2007, while the issuance level of SME securitisations amounted to €36 billion in 2014 compared with €77 billion in 2007. Has the Commission set tangible targets and results to achieve through this new EU securitisation framework?	Section 8 of the impact assessment provides qualitative targets for neasuring the success of the initiative: increase in EU securitisation issuance, emergence of an STS premium and widening of the investor base form current levels. Specific issuance targets are not feasible because issuance is influenced by several factors, many of which are beyond the control of the Commission (e.g. ECB monetary policy, EU GDP growth).
56			How should the notion of "*becoming exposed*" be interpreted? Does it apply only after a transaction is made?	This covers situations where institutional investors invest in a securitisation (e.g. securitisation being an asset on their balance-sheet) or if they have other types of exposures to a securitisation and in particular off-balance sheet items (e.g. liquidity lines, guarantees…). Indeed an institutional investor cannot become exposed to a securitisation before the transaction is made.
57 (a)	Article 1	Paul TANG	What definitions have been changed compared to CRR and why?	The definitions in the proposal are to a large extent taken over from CRR and ensure that the same definitions apply across financial sectors, including those not covered by the CRR. Respondents to the public consultation organised by neither the Commission, nor other stakeholders flagged specific concerns on the existing definitions. The definition of 'SSPE' had to be slightly adjusted in comparison to Article 4 (1) (66) of the CRR to take into account the cross-sectoral nature of the Securitisation Regulation and thus to provide that originators can also be other than CRR-institutions. Therefore, it does not mention the word "institution" in the CRR sense anymore. The definition of 're-securitisation' has been slightly adjusted in comparison to Article 4 (1) (63) of CRR. In particular, the words "the risk associated with an underlying pool of exposures is tranched and" have been deleted between the words "where" and "at" as this is already part of the general securitisation definition. The reference to "institution" in the sponsor definition has been replaced with a reference to the relevant articles of the CRR, as the definition is not anymore in the same EU legal act.

				The word "transaction" has been inserted to align the sponsor definition with the general definition of securitisation in the proposal (See Article 4 (1) (14) of the CRR).
57 (b)	Article 2	(S&D Rapporteur)	Why has the definition of "securitisation position" been deleted compared to CRR?	The CRR definition of a "securitisation position" ("an exposure to a securitisation") was not deemed necessary as it is a natural term that does not have to be defined to be understandable.
57 (c)			Why does the originator definition not prescribe a list of entities which can be an originator? Is there not a risk in being so vague?	The definition of 'originator' has not been amended in comparison to the CRR. Most stakeholders and in particular competent authorities did not raise any specific concerns nor pointed out to potential risks.
58			On the sponsor definition: Could the Commission clarify why it has not included non-MIFID asset managers within the Sponsor definition? Could UCITS and AIFM asset managers be considered sponsors for the purpose of retention, or would it depend entirely on MIFID authorisations from national competent authorities?	The STS sponsor definition is aligned with the CRR definition, which is restricted to firms (including authorised firms under MiFID) authorised to deal on own account. UCITS managers and AIFMs, even if authorised to perform certain investment services, don't deal on own account. Imposing risk retentions requirements to asset managers would raise an issue as to whether such managers using their own balance sheets to comply with this requirements would be considered as dealing on own account. According to the Commission's understanding the market is evolving to a direction where if the manager is not eligible as sponsor, the investors will require a third entity (eligible as sponsor or originator) to ensure the risk retention. AIFs and UCITS can however invest in securitisation transactions, within the limits of the respective legal frameworks. A UCITS manager or an AIFM could still provide investment advice and portfolio management services, if authorised to perform such services.
59			The due diligence requirements impose a high degree of expertise and of resources to perform them all. Does that not run contrary to the objective of expanding the potential scope of investors in the securitisation markets beyond the few dozen big and quite specialised entities which are capable of handling and	
		Petr JEŽEK (ALDE Shadow)		Due diligence rules are nothing else than rules that say how a prudent institutional investor should act, the experience in the financial crisis showed the importance for investors to be able to understand the risks inherent to these instruments. Since securitisations are relatively complex and can involve higher risks than other financial instruments, institutional investors need to be subject to due diligence rules. This also protects the policy holders of insurance companies and those that have put their money in investment funds. The due diligence requirements are essentially taken over from existing Union law.

			analysing so much data and of monitoring risks? Do those requirements not set a bar too high for most investors, taking into account that funds such as UCITS were till now not covered by such requirements?	The existing rules are laid down in the CRR, the Solvency II delegated act and the Commission Delegated Regulation 231/2013 (the AIFM Regulation). These rules will be repealed and replaced by a single Article that provides for all types of regulated institutional investors engaging in business in or through the EU identical and streamlined due diligence provisions. For UCITS no due diligence rules apply so far: the Commission is however empowered to adopt such rules (Article 50a UCITS Directive). It has not done so yet, due to the intention to cover UCITS in this initiative (i.e. securitisation regulation). For that reason, the proposal creates identical requirements for UCITS, also to avoid discrepancies in the requirements that apply to different institutional investors As underlined by the COM proposal, it is also essential that market participants and their professional associations continue working on further standardisation of market practices, and in particular the standardisation of documentation of securitisations. This will facilitate investor due diligence and thus reduce costs for all their due diligence requirements.
60	Article 3	Paul TANG	In Art. 3(2): what is meant by "*due diligence assessment commensurate with the risks involved*..."? How can the institutional investor ex ante assess the level of due diligence assessment required? If concerned risks are limited to the value of the transaction, should it be not possible to consider that an investor could shy away from its due diligence assessment because it simply considers the value of each individual transaction negligible compared to its balance sheet size?	As underlined in the Commission's proposal (recital 11), it is essential that institutional investors are subject to proportionate due diligence requirements ensuring that they properly assess the risks arising from all types of securitisations, to the benefit of end investors. Due diligence can also enhance confidence in the market and between individual originators, sponsors and investors. Therefore, there is an obligation to do a due diligence and to look at the elements indicated in Article 3 (2). In practice, investors will of course have to do a proportionate due diligence and depending on the specific securitisation in which they invest: is the amount they invest in it significant compared to the size of their assets, do they have experience with the specific originators, sponsor and/or structure etc., but they will always have to the do the minimum required by the Regulation.

61		(S&D Rapporteur)	In Art. 3(3): what is meant by "*regularly perform stress tests*"? what frequency is envisaged here? Similarly, what is meant by "*adequate level of reporting*"?	The requirement as regards stress-testing mirrors the requirement currently in place in the article 406 of the CRR which provides that "Institutions shall regularly perform their own stress tests". The management body of an institutional investor should have the benefit from an "an adequate level of internal reporting" to ensure they are aware of the material risk arising from the securitisation positions. As for the regularity of stress-testing, the adequacy of the level of reporting may differ depending on the characteristics of the investments and of the investors.
62			To what extent do risk retention requirements under this article change anything to the CRR framework applicable to credit institutions? If changes are minor, why would EBA need to develop new level 2 measures differing from those it already adopted on risk retention rules? Has the Commission been considered to increase the risk retention level as a way to mitigate the risk of false self-declaration of STS by the issuer?	The aim of the proposed Article 4 is to create a fully consistent risk retention regime across financial sectors. Currently, the rules in the Capital Requirements Regulation, the Solvency II delegated act and the Alternative Investment Fund Manager's delegated act are not fully consistent. To a large extent the provisions proposed are taken over from Article 405 of the Capital Requirements Regulation (CRR). Apart from drafting changes the text includes two changes. First, the existing provisions create an indirect approach to risk retention, which means that the investing entity (credit-institution or investment firm, insurer or AIF) must check whether risk is retained by the originator, sponsor or original lender. In view of the burden for the investor this imposes, the Commission proposed to complement this indirect approach with a direct approach. This means that the originator, sponsor or the original lender are directly obliged to retain the risk, while institutional investors have to check that these entities indeed retain risk in accordance with the due diligence article (Article 3 (1) (b) of the proposal). Since the article imposes a direct obligation on the originator, sponsor or the original lender, it is made explicit that in absence of an agreement between the three entities the default rule is that the risk is maintained by the originator. Secondly, in line with the recommendations of the European Banking Authority's report on risk retention, due diligence and disclosure, a potential loophole has been closed. The broad definition of originator in the CRR makes it possible to establish a separate legal entity with third-party equity investors for the sole purpose of creating an 'originator' that meets the legal definition of the regulation and which will become the retainer in a securitisation. As regards the existing the level 2 measures under the Capital Requirements Regulation, Article 4 aims at creating a cross-sectoral framework that therefore goes beyond the scope of the banking sector. Moreover, the above changes have to be taken into account. However, the Commission does not think it is necessary to create a fully new level 2 framework for risk retention, as also follows from the transitional provisions in Article 28. According to Article 28 (5) until the moment that the regulatory

				technical standards to be adopted by the Commission pursuant Article 4 (6) of the proposal are of application originators, sponsors or the original lender shall for the purposes of the obligations set out in Article 4 of the proposal, apply the provisions in Chapters 1, 2 and 3 and Article 22 of Commission Delegated Regulation (EU) No 625/2014 (the CRR level 2 risk retention provisions). The Commission has considered different options to mitigate the risk of false STS notifications by the issuer. In the Commission's view the most suitable option is to create a specific, targeted and proportionate sanctioning regime for such cases. That is what the Commission has proposed in Article 17. Increasing the level of risk retention to mitigate false STS declarations in mind would create a neither well targeted nor proportionate sanction, since it would also apply to issuers that have not made any false or incorrect STS notification.
63			Art. 4(1): The last paragraph introduces a joint responsibility but, in case of disagreement, put the responsibility on the originator to retain the 5%. If so, why is it not the responsibility of the originator in any case? If not, why did other articles where joint responsibility is introduced not attribute a default responsible entity on the mould of Art. 4(1)?	Article 4(1) of the proposal does not create a joint-responsibility for the originator, sponsor and original lender, but stipulates that one of them should retain risk ("or"). It is up to these entities to decide which of them retains the risk, but if they do not agree between themselves it is the originator that should retain the risk. This is in line with existing EU law and established market practices.
64	Article 4		The (direct) risk retention requirement of Article 4 STS regulations applies to European entities (originator, sponsor, original lender) only. How is ensured that current risk retention requirement for all non-European securitisations is kept ?	Compliance with risk retention requirement for all non-European securitisations sold to EU investors is ensured with the "indirect" approach (i.e. by requiring that investors ensure any securitisation they buy satisfies the risk retention rules set out in the STS regulation), which accompanies the direct approach. Ensuring such compliance is precisely the reason behind the Commission's choice of having a direct and indirect risk retention requirement together (as also supported by the EBA in their advice, see EBA report on qualifying securitisation, available at: www.eba.europa.eu/documents/10180/950548/EBA+report+on+qualifying+securitisation.pdf).

65		Morten MESSERSCHMIDT (ECR Shadow)	On Risk Retention: Participants support the revision to the risk retention obligation. However some have expressed concern that a practical consequence of the language used in the Commission's proposal is that it will ban entities established in the EU from marketing securitisations to non-EU jurisdictions that have different risk retention standards. Preventing EU issuers from selling securitisation outside the EU would appear to negatively impact the objectives of this proposal, to increase funding and diversify risk. Was this the Commission's intent? If so, why?	The Commission's proposal does not ban entities established in the EU from marketing securitisations to non-EU jurisdictions that have different risk retention standards. The direct approach which complements the indirect approach for risk retention imposes on the issuer side the obligation to retain risk in accordance with the proposed risk retention rules. Under the current indirect approach the investor has to check whether the issuer side has maintained risk in accordance with these rules. In practice, this means that if EU issuers only sell their securitisations to institutional investors not subject to the risk retention rules (at this moment only credit-institutions and investments firms, insurers and AIFM's are covered), they would not have to comply with the risk retention rules. Under the proposal issuers would always have to comply with the risk retention rules, except if a specific exception applies (Article 4 (4) and (5) of the proposal. The proposal thus contributes to a better alignment of risk between issuers and investors for all securitisations issued in the EU. In cases where issuers would aim at only selling their securitisation to third country investors and would like to comply only with the relevant third country provisions, they should structure their securitisation in the relevant third country. However, when they decide to issue from the EU, they should apply the relevant EU rules.
66	Article 4 and Article 8	Molly SCOTT CATO (Greens Shadow)	In relation to Art 4 (risk retention) and Article 8 (requirements relating to simplicity): requiring a certain minimum degree of seasoning (e.g. 50% of the weighted average maturity of the loans) of a portfolio that is a candidate for securitisation would effectively filter out poorly underwritten loans (assuming the loans are of a standard kind and do not have features that change post securitisation). What are the pros and cons of this approach versus the current rather complicated risk retention requirement?	The current risk retention regime was supported by the majority of the respondents to the public consultation (please see annex 7 of the impact assessment). Since the system is already in place in various pieces of EU legislation (CRD II, AIFMD, Solvency II) and market practitioners, regulators and supervisors consider it well functioning, there is no clear reason for changing it (please see also the reply to questions 19 and 20 above).

67			Can the Commission explain the purpose of paragraph 5 (Article 4) and the kind of transactions it relates to?	Article 4 (5) is taken over from Article 405 (4) of the CRR and Article 255 (2) of the Solvency II delegated Act and is thus already applicable EU law. The aim of this provision is to exempt from the risk retention rules securitisations of which the assets underlying are based on a clear, transparent and accessible index. In that case the assets are well known to the market and therefore there one cannot say that by referencing them in a securitisation one undertakes adverse selection. This means there is less need for risk retention as a form to guard against adverse selection.
68	Article 5	Paul TANG (S&D Rapporteur)	Art. 5: the disclosure requirements would benefit only to holders of a securitisation position and to the competent authorities. Yet, prospective investors are required under Art. 3 to undertake a number of due diligences. Is there a mismatch between the two articles in this regard? If the scope of Art. 5 were to be extended to benefit also to future investors, how should these obligations set therein apply to bilateral and private transactions of securitisations?	The proposal requires that originators, sponsors and SSPE's make the information specified in accordance with Article 5 free of charge available to investors. The standardised templates will be specified through level 2 legislation and the information should be provided on a website that meets certain criteria such as control of data quality and business continuity. Article 5 contains no legal obligation to provide the information also to potential investors. However, in the Commission's view in practice this legal obligation will have effect also on potential investors, as issuers marketing their securitisations know that since they will be legally obliged to give all the information after investment, they have no good reason not to give the information beforehand. Investors will request the information and if they do not receive it they will not be able to invest in the securitisations. Therefore, there is no mismatch between Articles 3 and 5. Giving potential investors the right to receive information might lead to the situation where such investors could request information on securitisations that are of a private and bilateral nature and where there is for them in reality no investment opportunity. This could therefore lead to a situation where the Regulation would have to define what is a potential investor and/or a specific regime for private and bilateral transactions. The Commission therefore is of the view that its proposal strikes the right balance.
69			Art. 5(3): why is the ESMA in the lead for that RTS when EBA is in the lead for this RTS under Art. 4(6), while both related to obligations of the originator / sponsor / original lender?	As underlined in the Commission's proposal in article 5(3), the RTS on the standardised reporting templates will be largely based on those already developed by ESMA and adopted under the CRA Regulation. This will ensure that securitisation reporting is based on common templates, to the advantage of both issuers and investors. Moreover, ESMA shall specify in a draft regulatory technical standards the requirements to be met by the website on which the information shall be made available. The transparency is in particular intended to create transparency on financial markets, which is typically something for which ESMA is in charge. As regards risk-retention, the RTS on risk-retention could be largely based on the RTS already

				developed by EBA under the CRR and adopted by the Commission. As in many cases banks are the originators, sponsors or original lenders that have to retain risks the expertise on these issues is typically found in EBA. In any case, all the empowerments specify that the ESAs should cooperate closely with each other for the preparations of the RTSs.
70		Petr JEŽEK (ALDE Shadow)	**On Third-Country Provisions**: In the Council's General Approach in Article 6 of the proposed STS Regulation, it is specified that the originator, sponsor and SSPE involved in an STS securitisation shall be established within the Union. In the Commission's view, could this unintentionally restrict investment choices for EU investors by hindering the possibility for third country entities to enter the STS market, or negatively impacting those originators, sponsors or SSPEs whose establishment is outside the Union but which has operations in the Union?	See on third country aspects the answer to questions 39-40. The Council requirement that the originator, sponsor and SSPE involved in an STS securitisation shall be established within the Union, aims at ensuring that the entities involved can be properly supervised. However, there is no requirement that the underlying exposures of STS securitisations are located in the EU as long as they fulfil all STS requirements. Third country entities are also free to establish a subsidiary in the EU that would meet this requirement. Although there may be some impact of the Council general approach in this respect, the option of third country equivalence regime was considered not opportune as major non-EU jurisdictions - and in particular the US - informed the Commission that they were not foreseeing introducing a STS regime in a near future. In the absence of a regulatory framework in a third country, it would not be possible for the Commission to assess the equivalence of the third country STS criteria and enforcement mechanisms. Having said that, the Commission proposal contains a review clause and this issue could be reassessed in light of further international developments.
71	Article 7		What is meant by "*shall be <u>considered</u> STS*"? That they can be declared STS? Why would other types of products which meet those requirements but are not securitisations not be allowed to be considered as STS?	
		Paul TANG (S&D Rapporteur)		The system proposed in the draft Securitisation Regulation stipulates criteria for Simple, Transparent and Standardised Securitisation and are bespoke to securitisation. Only securitisations that meet all the STS criteria and for which a notification pursuant to Article 14 of the proposal has been made can make use of the designation "STS" (see Article 6). The STS criteria have been developed for securitisation and not for other financial instruments and they are not necessarily suited for other financial instruments. Other financial instruments such as corporate bonds are characterised by a lower degree – or even an absence - of agency risks, model risk, legal and operational risk, counterparty risk, servicing risk, liquidity risk, concentration risk and risks of operational nature.

				Even if other financial instruments would meet all the criteria, the notification procedure foreseen in Article 14 does not apply so the guarantees of that procedure, including the supervision provided in the Regulation, could not be applied. Therefore, using the designation STS would be misleading and inappropriate.
72	Article 8		Art. 8(1): what is meant by a sale or assignment, in the absence of the definition of assignment in particular? What legal structure would that cover?	The Commission proposal caters for the different legal frameworks across Member States. As underlined by the July 2015 EBA report (cf. criterion 3): "*Simple securitisations should achieve economic transfer of the securitised exposures either through transfer of ownership to an SSPE or through sub-participation by an SSPE. The transfer of the exposures ensures effective ring-fencing and segregation of the exposures to be securitised from the insolvency estate of the seller. Only an effective segregation can ensure that the rights of the securitisation investors over the securitised exposures can be enforced should the seller become insolvent, and that ultimately the payment obligations towards the investors can be duly fulfilled. Such ring-fencing and segregation are commonly achieved through a process of legal true sale of the exposures to be securitised to an SSPE, although in some instances/jurisdictions, they may also result from an effective assignment of those exposures to an SSPE".*
73			Art. 8(6): what is the added value of recalling the obligation of assessment of the creditworthiness? What is meant by "*shall have expertise*"	In the Commission's view it is very important to recall the obligation to assess the creditworthiness in line with EU law, as this ensures that these provisions are part of the STS criteria and the originator, sponsor and SSPE have to assess for the STS notification whether EU law in this area has been complied with. Secondly, it also allows application of this criterion on third country exposures that have been subject to equivalent requirements in third countries. The requirement in article 8(6) that "the originator or original lender shall have expertise in originating exposures of a similar nature to those securitised" is a safeguard to prevent the recurrence of purely 'originate to distribute' models. The fact that the originator or original lender has expertise provides a certain guarantee that they know what they are doing and they are not just newly set up to create loans that they will securitise immediately.

74			Art. 8(9): What is meant by "*subsequently rolled-over*"?	Article 8 (9) of the Commission proposal provides that "The repayment of the holders of the securitisation positions shall not depend, substantially, on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced." The Commission proposal builds on Article 13(3) of the LCR Delegated Act. Reliance on the sale of assets increases the liquidity and market risks to which the securitisation is exposed and makes the credit risk of the securitisation more difficult to model and assess from an investor's perspective. Nonetheless, this does not mean that the underlying loans may not be refinanced (which includes rolling-over) later in the process, which is common practice in some market segments (such as car-loans securitisations).
75			International standards lay down criteria for comparability instead of standardisation: how does the proposal address the issue of comparability of securitised products?	The BCBS-IOSCO principles refer to "comparable" rather than "standardised". In practice, establishing "standardised" products promotes greater comparability and on substance the standardisation criteria proposed by the Commission are in line with the comparability criteria of the BCBS-IOSCO principles.
76	Article 9 -10		Art. 9(4): what is meant by "*no substantial amount of cash shall be trapped in the SSPE*?" should the notion of "*substantial*" and "*trapped*" be defined or further specified a level-2 measure? (same question applies to Art. 12(4))	This means that the cash in the SSPE shall not be kept there, but should be paid out to investors. EU financial legislation always lets some degree of flexibility to market participants and competent authorities as it is hardly possible to foresee all possible circumstances ex ante. What is substantial depends of course on the total amounts involved in the securitisation and what is substantial for a small securitisation can be very insubstantial for a large securitisation.
77			Art. 10(1): what is meant by "*substantially similar*"? Could the provision related to giving access to data of a period no shorter than seven years for non-retail and five years for retail investors have negative effects on the possibility of newcomers on the issuing side of STS securitisation market?	STS securitisations should be transparent to the extent that they allow investors to rely on evidence concerning the static and dynamic historical performance of the assets to be securitised. At the same time - as underlined in the question - this requirement should not prevent newcomers to enter the STS markets. Therefore, flexibility is foreseen as long as originator, sponsor or SPPE are able to "provide data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised to the investor before investing". The data do not necessarily have to concern their own data and exposures, but the data should concern substantially similar exposures. On the precise definition of "substantially similar", EU financial legislation normally allows some degree of flexibility to market participants and competent authorities

				as it is not possible to foresee all possible circumstances ex ante.
78	Article 12	Petr JEŽEK (ALDE Shadow)	In Article 12.2 of the Commission proposal, it is stated that underlying exposures for transactions within an ABCP programme shall be homogeneous in asset type. Could the Commission expand on its definition of homogeneous in this case, giving examples of what may and may not be considered homogeneous asset types?	The Commission proposal requires that "Transactions within an ABCP programme shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type . The objective of this criterion is to facilitate investor due diligence and the assessment of underlying risks. Recital 18 of the proposal provides examples of what "homogenous in terms of asset type" means: pools of residential loans, pools of commercial loans, leases and credit facilities to undertakings of the same category to finance capital expenditures or business operations, pools of auto loans and leases to borrowers or lessees or loans and pools of credit facilities to individuals for personal, family or household consumption purposes. Note that for ABCP, this homogeneity requirement does not apply at programme level. An ABCP programme could include several ABCP transactions containing different asset types. However, at transaction level homogeneity is necessary.

79	Article 12		In the same article, the Commission proposes that STS eligible ABCP Securitisations shall have a remaining weighted average life of no more than two years and no underlying exposure should have a residual maturity of longer than three years. Does the Commission believe that such maturity limits would restrict ABCP Securitisations from including therefore auto-loans and leases? If so, does the Commission believe that this should be amended to allow for underlying exposures to include auto-loans and leases?	The Commission proposed to have a maturity cap for the exposures underlying STS ABCP transactions of two years weighted average life and a maximum residual maturity of three years (Article 12 (2). In its proposals the Commission already extended the maturity cap significantly in comparison to the recommendations of the EBA in its advice on Qualifying Securitisations. The EBA recommended that exposures in the ABCP transactions have a remaining maturity of no longer than one year (See criterion 4 (v), page 73 of the EBA report). The Commission assessed this recommendation carefully and came to the conclusion that the maturity cap could be extended in a prudentially sound and safe manner to two years weighted average life and a maximum residual maturity of three year. The proposal appears to strike a right balance between the need for limiting maturity mismatch in the ABCP conduits and the need for providing financing of EU businesses (e.g. auto manufacturers and SMEs). It also avoids crowding out effects between auto ABS and ABCP markets. The maturity cap proposed was based on exchanges with supervisors and market participants and remain for the Commission a balanced approach to this issue. Until now the Commission has not seen new data that demonstrate that the maturity caps proposed by the Commission are still not sufficient and would lead to problems in the ABCP market.
80		Paul TANG (S&D Rapporteur)	**On the ABCP securitisation:** Could the Commission share its deliberations to choose an average maturity of 1 year for ABCP STS securitisations? What are the effects from a risk perspective since the Council have proposed to enlarge the eligibility for ABCP securitisation to an average maturity of three years?	See answer to previous question. The Commission proposed to have a maturity cap for the exposures underlying STS ABCP transactions of two years weighted average life and a maximum residual maturity of three years. As stated above the Commission decided not to follow the EBA recommendation and provide somewhat more flexibility in the STS criteria. The proposal appears to strike a right balance between the need for limiting maturity mismatch in the ABCP conduits and the need for providing financing of EU businesses (e.g. auto manufacturers and SMEs). The maturity cap chosen was based on discussions with supervisors and market participants which provided information on existing ABCP programmes and transactions. From the information available it appeared that the cap chosen in the proposal would make most existing exposures/transactions eligible, while not increasing the maturity mismatch too big.

81			Art. 13(4): why did the Commission choose to restrict the scope of the sponsor to EU credit institutions? What about non-EU institutions which are supervised in a similar way, starting with EEA entities?	The Commission proposal is in this respect in line with the EBA report on qualifying securitisations. To ensure that the party providing full support to each transaction of the programme is in a position to meet its obligations at any time, it should also be subject to adequate supervision of its liquidity risk position. As regards the EEA entities, the EEA Agreement provides that, after incorporation of the relevant EU legal acts, EEA entities will be treated like EU institutions.
82	Chapter 3	Morten MESSERSCHMIDT (ECR Shadow)	Criteria: How do you respond to criticisms of the Commission text made by participants that say the criteria are too uncertain and create an unworkable compliance framework? In order to minimise the risk of differing interpretations by market participants and increase market confidence, what more could be done to tighten the STS criteria further whilst remaining within the overall international framework?	The STS criteria draw on the large body of work carried out by the EBA, the Basel Committee and IOSCO (including public consultations carried out by these organisations) and are then adapted to the EU context and needs. The majority of the respondents to the Commission's public consultation actually argued that the EBA criteria were too prescriptive and argued for broader, principle-based criteria such as those proposed by Basel-IOSCO (please see Annex 7 of the impact assessment). A minority of respondents required instead more detailed criteria. Clearly, a balance must be struck between prescriptiveness and flexibility and this is what the Commission has aimed to do. Since market participants have diverging views on where such balance lies, it is unlikely a balance will be found to satisfy everyone. ESMA's binding mediation in case of differing interpretation of STS criteria among supervisors aims to minimise the risk of differing interpretations by market participants and increase market confidence.
83			ABCP: Does the Commission agree that more analysis of the ABCP framework is required, in particular whether such granularity is required at the transaction level given the requirement of full liquidity support? Will the European Parliament's timetable provide the EU with time to implement the developing BCBS/IOSCO work?	The ABCP framework proposed is based on the valuable EBA report on Qualifying Securitisation, which provides also criteria for STS ABCP. These criteria for ABCP are based on the STS criteria for term securitisation and adapted to the specific features of ABCP. Work is ongoing at international level on potential principles for ABCP instruments, leveraging notably on the EBA report and the BCBS-IOSCO principles for term securitisations. While the requirement of full liquidity support is an important requirement for STS ABCP securitisations, it is not sufficient to ensure the robustness and credibility of the STS framework. A large number of investments in ABCP instruments are motivated by investors' willingness to reduce their exposures to banking risks (i.e. counterparty risks). This feature is an important lesson from the 07-08 financial crisis. The timeline of the BCBS-IOSCO work may evolve in the coming months. The Commission is not in a position to comment on the date of finalisation of this work.

84	Chapter 3 and Chapter 4	Petr JEŽEK (ALDE Shadow)	There are a number of interlinking measures related to certification, eligible assets and sanctions, which could combine to deter originators and investors from building an STS Securitisation market. Regarding certification and determination of STS compliant Securitisations, the Commission proposes self-certification, whereby originators would be wholly responsible for certifying STS-compliant securitisations. This certification would be determined based on the criteria set out in Chapter 3 of the STS regulation. Supervision would be in the hands of National Competent Authorities. There is a concern that STS originators could interpret the STS criteria differently, and that without an overall European supervision at an early stage to determine what is, and what is not STS compliant, it could discourage originators and investors from taking up the STS product. What is the Commission's view on this? Is there a potential for varying interpretations of the criteria across originators and across member states' competent authorities?	Since market operators and supervisors from different Member States and sectors will have to apply the Regulation, there is a risk that they interpret the regulation in different manners. However, this is not different than for other pieces of EU financial services legislation. The fact that the provisions are laid down in a regulation and not in a Directive already facilitates interpretation as there will not be 28 different national transpositions of the same framework. As the Commission is aware of the risk of divergent interpretations it has included in the proposal a framework that should contribute to consistent interpretation of the Regulation across the EU. In view of the cross-border and cross-sectoral nature of the securitisation market, cooperation between competent authorities and the ESAs is crucial. Information exchange, cooperation in supervisory activities and investigations and coordination of decision-taking is a basic requirement. To ensure a consistent interpretation and common understanding of the STS requirements by competent authorities, EBA, ESMA and EIOPA should coordinate the work of competent authorities across financial sectors and assess practical issues which may arise with regards to STS securitisations. They may in particular coordinate their work in the framework of the joint-committee of the European Supervisory Authorities. A Q&A process could facilitate the implementation of this Regulation by market participants and competent authorities (see recital 10 of the Commission proposal). In doing so, the views of market participants should also be requested and taken into account to the extent possible. The outcome of these discussions should be made public on the websites of the ESAs so as to help originators, sponsors, SSPEs and investors assess STS securitisations before issuing or investing in such positions. Such a coordination mechanism would be particularly important in the period leading to the implementation of this Regulation (recital 10 of COM proposal). Moreover, in case of disagreements between competent authorities the draft regulation provides a framework that can lead to binding mediation by ESMA, thereby ensuring a consistent interpretation across the EU (Article 21).

			Would the Commission consider that any of the following need to be considered by the European Parliament in its amendments phase:	Please see the answers for the individual points below
85			1. More specific eligibility criteria	The Commission has tried to ensure that the STS criteria strike the right balance between establishing a robust, clear and legally certain STS framework and avoiding a too detailed and closed list of criteria which may lead to undue restrictions of further developments of the STS Securitisation market. As the list of criteria is already rather extensive and the criteria rather detailed, creating more criteria and/or specifying them could create a risk for the flexibility of the system proposed.
			2. Expanding the certification provisions to allow for third party certification, or to provide only for third party certification.	As regards compliance with the STS requirements the most suitable mechanism identified by the Commission is to ensure that the responsibility rests with originators and investors, under the control by competent authorities. The latter are able to monitor market developments and check that a transaction fulfils all STS requirements and impose sanctions, where needed. The Commission proposal allows for third party certification and in recital 23 it recognises that the involvement of third parties to help check compliance of a securitisation with the STS requirements may be useful for investors, originators, sponsors and SSPE's and could contribute to increase confidence in the market for STS securitisations. However, in the Commission's view it is essential that originators, sponsors and SSPEs take responsibility for their claim that a Securitisation is STS and that investors make their own assessment, take responsibility for their investment decisions and do not mechanistically rely on such third parties.
			3. In the event that 3rd party certification was to be allowed, what effect would this have on the due-diligence requirements of originators and investors?	The involvement of third parties in helping to check compliance of a securitisation with the STS requirements may be useful for investors, originators, sponsors and SSPE's and could contribute to increase confidence in the market for STS securitisations. However, it is essential that investors make their own assessment, take responsibility for their investment decisions and do not mechanistically rely on such third parties (Recital 23 of the Commission proposal). The financial crisis has shown that in the past investors have relied too much on third parties, such as credit rating agencies. This overreliance on third parties weakened due diligence by investors.

			4. Giving greater co-ordinating power in the initial phase of determining STS-compliant criteria to ESMA, or giving further power to ESMA to develop and define RTS for eligibility requirements	As explained in the Commission answer to question 84, the proposal already gives an important role to the ESAs - including ESMA - in ensuring coordination of the STS framework. The Commission has not identified the need for an RTS on the STS criteria. As underlined in the Commission reply to question 85.1, the STS criteria strike a balance between establishing a robust, clear and legally-certain STS framework and avoiding a too detailed and closed list of criteria which may prevent the emergence of a STS market. As the list of criteria is already rather extensive and the criteria rather detailed, specifying further the criteria could create a risk for the flexibility of the system proposed. Moreover, it would take time to prepare an RTS and most likely market participants would wait for the adoption of the RTS before they would issue STS securitisations and would therefore lead to a further delay of effective application of the regulation.
			5. A checklist determining STS eligibility, which would be used across the Union	Under the Commission proposal such a checklist will already be provided. Article 14 (5) of the proposal provides that ESMA, in close cooperation with EBA and EIOPA, shall develop draft regulatory technical standards that specify the information that the originator, sponsor and SSPE provide to comply with their notification obligation pursuant to Article 14 (1) and shall provide the format by means of standardised templates.
		Paul TANG (S&D Rapporteur)	Art. 14: in the absence of ex ante public certification or third-party certification, investors would have to perform checks of the STS compliance for every transaction, without relying on a common certifier or on a public body's word. Therefore, this system does not allow any economy of scale. Has the Commission assessed the cumulated costs for each investor of having to do separately the STS compliance checks for the same securitisation?	In the Commission's view it is essential that originators, sponsors and SSPEs take responsibility for and are accountable for their claim that a Securitisation is STS and that investors make their own assessment, take responsibility for their investment decisions and do not mechanistically rely on third parties. The subprime crisis showed that investors should not rely mechanically on third parties. However, originators, sponsors and SSPEs and investors are allowed to make use of third parties, which can help creating economies of scale. Moreover, regular investors in securitisation will be able to quickly build up expertise for the assessment and institutional investors will in any case have to do a due diligence on the securitisations. Having said that, the introduction of a STS category in the EU legal framework will promote standardisation, transparency and comparability of securitisation instruments and thus also generate economies of scales to investors and make due diligence easier.

87	Article 14	Paul TANG (S&D Rapporteur)	Art. 14(1): given that originators, sponsors and SSPEs are allowed to be located under different EU MS, should the sentence "*they shall also inform their competent authority*" by interpreted as "they shall inform their *respective* competent authority".	Yes
88 (a)		Paul TANG (S&D Rapporteur)	This article fragments the regulatory responsibility across MS and across entities, depending on their status. Why did the Commission opt against the designation of a single national competent authority for enforcing the STS proposal and against reinforcing the powers of the ESAs?	The proposal takes into account the reality on the ground that in practice many different entities are involved in securitisations and thus caters for the vast variety of situations across and within Member States. Different entities have, in accordance with existing provisions of EU law different competent authorities and since securitisation activities take place in a broader context of multiple activities in general it makes sense to stick as closely as possible to existing supervisory arrangements. The Commission proposal gives an important role to the three ESAs in the STS framework, for instance in the preparation of Regulatory Technical Standards and for binding mediation
88 (b)	Article 15		Given that the authority competent for the supervision of the originator or sponsor, likely to be a banking authority, is given strong responsibility in the enforcement of the STS, the proposal seems to induce a bias whereby the heart of the matter is the identity of the bank on the issuing side instead of the features of the securitised products: is there not a risk that the investors react by favouring securitisations on the basis of the reputation of the credit institutions acting as originator / sponsors for those securitisations?	The Commission proposal does not aim at promoting any types of originators in the detriment of others. There is no requirement for originators to be credit institutions. An important number of originators are, at this moment, credit institutions. It only reflects the fact that these entities are the main providers of loans in the EU. In any case, the competent authorities from whatever sector have to ensure compliance with the STS criteria which are product criteria. The Commission does not see the risk that investors choose securitisations also on the basis of the reputation and credibility of the issuer. Issuers can make their reputation by creating sound securitisations that perform well. In that case, their products will often been seen more attractive than those from others with worse reputation. On the other hand, it would obviously not seem best practice to rely solely only on the reputation on the issuer.

88 (c)			Why does the proposal further offer to MS to designate one or more competent authority for entities which are not regulated under paragraph 3?	This helps to cater for the wide variety of entities which could be captured by paragraph 4 and is fully in line with the principle of subsidiarity.
89 (a)			Member States would have to set up one or more competent authorities to ensure the compliance with the STS regime for entities not covered by certain legislative Union acts (see Article 15 paragraph 4): Which entities would fall under this scope?	As originators, original lenders and SSPEs are not necessarily credit institutions or investment firms, insurers, IORPs or UCITS and thus have no competent authorities under EU financial services legislation, Member States should designate competent authorities for these entities.
89 (b)			Would also real economy entities which use ABCP programs needed to be supervised? If so, what would be the merit of a prudential supervision of real economy entities, e.g. of dairy firms, car producers, equipment manufactures etc.?	The supervision pursuant to Article 15 (4) is limited to ensuring compliance with Articles 4 to 14 of the proposal and limited to cases where real economy entities are involved and to the extent they are involved.
90			What would be the consequences for investors in a STS securitisation in case this securitisation loses its STS status? What would be the consequences for banks? For insurance companies? For UCITS or AIF?	If a securitisation loses its STS status it would be withdrawn from the STS list maintained by ESMA pursuant to Article 14 (4) and would become subject to the regulatory regime of a non-STS securitisation, which would imply an increase in the capital charge for those investors than are subject to capital charges (CRR firms and Solvency II firms). This situation can be compared to that of a bond whose credit rating is downgraded: the investors face higher capital charges for their holdings of the bond. In order to minimise investors' risks, the ESMA binding mediation system is introduced. This will contribute to a consistent interpretation of STS criteria and thus minimise the risk of a securitisation being sold as STS and then considered to non-STS. For all investors, the requalification of an STS securitisation into a non-STS securitisation will most likely have consequences for the value of their investment, which will decrease. The investors will in principle be able to claim damages to the originator, sponsor and SSPE, because they claimed to sell an STS securitisation, which has proved incorrect. The originator, sponsor and SSPE could also be sanctioned pursuant to the Regulation.

				Under Solvency II, insurance companies benefit from freedom of investment (Article 133 of the Solvency II Directive). Consequently, if a securitisation is no longer STS, insurers are not obliged to disinvest from it. Capital requirements related to this asset will increase, to reflect the new risk profile of the investment, considering that Solvency II calibrations are risk-based. UCITS and AIF have to follow their mandate (e.g. fund rules or instrument of incorporation) thus, depending on the rules, they should take appropriate action, but since they have no capital charges, there is no impact on this aspect.
91		Paul TANG (S&D Rapporteur)	How are MS supposed to introduce a predictable penalty regime in cases of joint responsibility?	Article 17 (1) of the proposal stipulates in which cases Member States should provide for sanctions and measures. Article 17 (2) provides that those sanctions and measures shall be effective, proportionate and dissuasive and shall include the sanctions indicated in the list in Article 17 (2). When determining the type and level of an administrative sanction or remedial measure imposed under Article 17 competent authorities shall take into account all relevant circumstances, including the list indicated in Article 18 (2). The sanctions and measures can all be applied to the entities jointly responsible for an infringement, for instance a public statement mentioning all entities involved in the infringement or an administrative fine. It is possible that not all of the entities jointly responsible are in exactly the same circumstances: one of them could have been more directly responsible for the infringement, may have not cooperated well with the competent authority or have previously already have infringed the Regulation. These objective circumstances can in view of Article 18 (2) (b) (f) (g) all play a role in the exercise of the sanctioning powers.
91	Article 17			
				The sanctioning regime proposed is fully consistent with the sanctioning regime already present in a large number of EU financial services acts. Therefore the regime should work in practice in a comparable manner as the already functioning sanctioning regimes. The Commission does not foresee any specific issues in this regard. Sanctioning provisions have to give competent authorities a certain scope to decide what is the appropriate sanction for a specific infringement, since only in that way can it be ensured that the sanctions are really effective, proportionate and dissuasive. As with all provisions of legal acts that give some scope for decision-taking by competent authorities there is a certain risk that Member States' competent authorities do not take exactly the same approach. However, coordination of supervisory action should take place within the ESAs, the actions of competent authorities are subject to legal remedies before the national court and the European Court of Justice is competent give a binding interpretation to the provision of the regulation, which ensures a consistent interpretation throughout the EU.

				The interpretation of Article 17 is slightly different than implied in the question. Member States shall ensure that maximum administrative fines of at least EUR 5 000 000 or of up to 10 % of the total annual turnover of the legal person are available. This does not mean that sanctions should always reach that level, it merely means that competent authorities should be legally empowered to impose such sanctions. As said above, the provisions on sanction are taken over from existing EU financial services acts and comparable sanctions are available under, for instance, Mifid II (Article 70), CRD IV (Article 67) and the Securities Financing Transaction Regulation (Article 22). When determining the type and level of an administrative sanction or remedial measure imposed under Article 17 competent authorities shall take into account all relevant circumstances, which ensures strict proportionality. According to Article 18 (2) competent authorities should take into account: (a) the materiality, gravity and the duration of the infringement; (b) the degree of responsibility of the natural or legal person responsible for the infringement; (c) the financial strength of the responsible natural or legal person, as indicated in particular by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person; (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined; (e) the losses for third parties caused by the infringement, insofar as they can be determined; (f) he level of cooperation of the responsible natural or legal person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person; (g) previous infringements by the responsible natural or legal person. Therefore for small infringements due to the principle of proportionality, it will legally not be possible to impose the maximum penalty and any concerns raised about disproportionate sanctions are not justified on the basis of the Commission proposal.

92 - 93		Petr JEŽEK (ALDE Shadow)	In Article 17, it is stated that any fines imposed should be at least €5m or 10% of annual turnover. How did the Commission arrive at these figures and how will it be ensured that Member States interpret the provisions for use of sanctions in an equivalent manner? How does the Commission envisage the Sanctions regime working in practise?	Please see answer to question 91.
		Morten MESSERSCHMIDT (ECR Shadow)	On Sanctions: It is important to have a sanctions regime that deters risky activity, but in order to develop the market, it is also important to reflect proportionality, being sufficiently punitive but also proportionate based on the type of misdemeanour. Does the Commission consider that more work can be done here to add more clarity to the proportionality that it was trying to achieve, and how could this be best done? Should we look to other legislation, such as the Market Abuse Regulation?	In the Commission's view the proposal ensures proportionality of the sanctions imposed, in particular by requiring competent authorities, when determining the type and level of an administrative sanction or remedial measure, shall take into account all relevant circumstances full (Article 17). See also the answers to questions 91 - 92.
94		Paul TANG (S&D Rapporteur)	Art. 21(5): does the procedure of binding mediation not create further legal uncertainty over the interpretation of the STS label?	The binding mediation procedure in accordance with the ESMA Regulation ensures greater certainty for the interpretation of STS criteria as in the end at European level a common approach on the interpretation of the regulation can be taken. In the absence of such a procedure, competent authorities could take divergent views, the incentives for them to cooperate could be lower and market participants could end up in a situation where competent authorities do not come to a consistent interpretation.

95	Article 25		Does the Commission support including a deletion of Art. 8(b) of the CRA III? If so, what would be the consequences in terms of consequences of the CRA market, since such a deletion would affect not only the obligation of ESMA to set up a website but also other obligations applying to issuers? In addition, is there any provision in the proposal that would actually help improving public transparency on the loan-level data of securitised products or on the characteristics of issued securitisations?	Providing investors with sufficient high-quality information is key to enabling them to do their own due diligence and to make fully informed investment decisions. Transparency is also essential to enable competent authorities to ensure correct application of EU law and to monitor the development of European securitisation markets. The Commission proposals ensure, in line with existing EU law, that comprehensive information on all securitisations will be made available to investors and competent authorities free of charge via standardised templates. These templates should be made available through a website. The proposals allow for the development of different websites throughout the EU which may have different scopes (e.g. EU / regional coverage; focus on a specific asset class…), so there is no requirement to make the information available via a single central website. The websites are required to meet certain conditions that are essential for investors and competent authorities, such as data quality control and safeguards to ensure integrity of the information. Since the Commission is of the view that there is no absolute need for investors or competent authorities to create a single centralised website, either public or private, which contains information on all EU securitisations, the Commission proposals take a somewhat different approach than Article 8b of the Credit Ratings Agencies Regulation, which mandates the establishment of a public and centralised Structured Finance Instruments (SFI) website. As regards this website the Commission has taken note of the letter sent by ESMA on 13 January 2016 to the ECON chair stating that ESMA would not be in a position to set up the SFI website. The approach taken in the Commission's Securitisation proposals could be a good alternative for the creation of the SFI website.
96	Article 27		Can the Commission confirm the consistency of those additional paragraphs with the existing RTS on the clearing obligation and the future RTS on the risk management techniques for non-cleared OTC derivatives under EMIR?	The amendments to EMIR exclude certain covered bonds and securitisations from the clearing obligation, and also allow these structures to take account of impediments to exchanging collateral when determining the level and type of collateral to be exchanged. These changes are consistent with existing clearing obligations as well as the draft RTS on risk-mitigation techniques for uncleared derivatives, as both contain exemptions for certain covered bonds. The broad impact of this amendment is therefore to provide equal treatment between covered bonds and securitisations providing that both types of structure fulfil the applicable conditions.

97	Article 28		Transitional provisions are particularly complex. Could the Commission explain the timeline and further clarify how ex ante due diligences are supposed to be performed by investors already holding positions in existing securitisations which could be considered as STS by their originator?	In general the transitional provision aim to ensure that the Regulation only applies to securitisations issued after the date of entry into force of the Regulation (Article 28 (1)) and the related paragraphs ensure a smooth transition to the new system. In particular, it should be possible for securitisations issued before that moment, to also obtain the STS label, but they should meet all the STS requirements (28 (2)). As regards the precise question on due diligence, investors already holding a securitisation cannot do ex ante due diligence. They can only do their ongoing due diligence (Article 3 (3) of the proposal).
98	Article 28	Petr JEŽEK (ALDE Shadow)	The STS proposal states that level 2 measures should be developed on capital requirements, due diligence requirements and sanctions. With the entry into force of the legislation due 6 months before the submission of level 2 measures, how does the disclosure and application of these provisions work in the period between the entry into force of the Regulation and the adoption of level 2 measures? What criteria would existing securitisations apply between the entry into force of the Regulation and the publication of the level 2 measures?	There are no level 2 measures foreseen for the due diligence requirements nor for the sanctions. For the risk retention and transparency there are level 2 measures foreseen. For risk retention the transitional provisions provide that the existing level 2 act under the CRR shall be applied (Article 28 (5), while for the transparency Article 28 (6) creates a transitional regime. Article 28 of the proposal provides for a transitional regime with the necessary grandfathering provisions. Level 1 provisions will function for a limited time without the more detailed implementing provisions.
99-101	Council General Approach Article	Cora Van NIEUWENHUISZEN (ALDE)	• Does the Commission agree with EBA's recommendation to extend preferential treatment to synthetic securitisations that are fully cash-funded by entities that are not public or supranational counterparties?	See reply to question 26.

	29a		• Does the Commission believe that favourable capital treatment should be limited to balance sheet synthetic transactions?	See reply to question 26.
			• Does the Commission see an option for creating 2 categories of synthetic securitisation which could be eligible for reduced capital treatment:	See reply to question 26.
			1. Fully cash-funded transactions where only capital treatment of the originator is considered and for which, as EBA recommends, certain criteria of the STS framework (notably transparency requirements)	See reply to question 26.
			2. Fully cash-funded transactions where both capital treatment of the originator is considered, and where the original STS criteria can be applied along with additional criteria to ensure the credit protection contract provides adequate safeguard for both the originator and the investors (e.g. with respect to credit events or credit protection payment)	See reply to question 26.

102	Article 29 and Article 30	Molly SCOTT CATO (Greens Shadow)	How can the effectiveness of the securitisation legislation, in terms of ultimate benefits to European SMEs and citizens be monitored? What are the key indicators, beyond the KPIs for intermediate benefits briefly mentioned on page 13 of the introduction to its STS proposal, would the Commission suggest using in the reports and review to measure success or otherwise of this initiative?	Please see section 8 of the impact assessment, stating the monitoring and review procedures and statistics envisaged by the Commission.
103	Article 29 and Article 30	Molly SCOTT CATO (Greens Shadow)	Given that the ECBs regular surveys of SME financing reveal that access to finance is the least of their worries (but finding new business to invest in is) it must be the case that the push to revive securitisation is driven either by non-SME financing needs or needs endogenous to financial markets: can the Commission provide recent data on the actual use of securitisation products (secondary market trading and investment, liquidity buffers, collateral for central banks, collateral for intra financial system use, etc.) and how this regulation is expected to impact it ?	As explained in the answer to question 43, the aim of the STS regulation is to revive a channel of credit and funding for the whole EU economy, not only for SMEs. Regarding the use of securitisation, Chart 15 of the impact assessment shows that 80% of EU long term securitisations fund residential mortgages, auto purchase loans and SME loans. Chart 16 shows short term securitisations fund SME trade receivables (54%), auto loans and leases (21%). Merrill Lynch data (available upon request) shows that 57% of EU securitisations are bought by non-banks (fund managers, central banks, insurers and others) and 43% by banks. As for use as collateral with central banks, of 1400 EUR billion of outstanding EU securitisations, 301 billion (21.5%) are used as collateral with central banks. The STS regulation aims at reducing this proportion and foster placement of newly issued securitisations to the market (before the crisis 70% of issuance was placed to investors compared to 33% now).

104	Article 30	Morten MESSERSCHMIDT (ECR Shadow)	Are there any ways in which the EU could legislate now to lessen the impact that the Solvency II securitisation rules are having on the market?	Solvency II introduced a comprehensive framework for insurers' investments in securitisation, including risk retention rules, risk management requirements and differentiated calibrations for securitisation fulfilling certain criteria. As provided in the Commission's proposal, the adoption of the Securitisation Regulation would replace Solvency II criteria for STS securitisation by horizontal rules for institutional investors, thus improving the availability of simple, transparent and standardised products for all institutional investors. A political agreement between co-legislators on this Regulation would also be the appropriate moment for the Commission to develop new calibrations for securitisation in Solvency II, based on the new securitisation framework. The Commission intends to ensure the new calibrations in the insurance and banking sectors will apply as from the same dates.
105		Petr JEŽEK (ALDE Shadow)	Solvency II - Article 3, Article 4: Could the Commission clarify how the STS Regulation would match with existing rules (Type 1 - Type 2) in Solvency II relating to due diligence and risk weighting requirements? Is the expectation that the STS rules would complement or replace Solvency II rules, specifically the rules as laid out in article 177 of Solvency II?	Existing Solvency II risk retention and due diligence requirements (Articles 254 to 256 of Commission Delegated Regulation 2015/35, applicable to both type 1 and type 2 securitisations), would be replaced by horizontal rules in the Securitisation Regulation (Articles 3 and 4). To ensure consistency among institutional investors, the new horizontal rules would apply equally to all and do share common principles with the current rules in the Solvency II Delegated Act. Similarly, type 1 and type 2 securitisations in Solvency II would be replaced by STS and non-STS securitisations, to align the definitions with the horizontal framework. Consequently, Article 177 of Commission Delegated Regulation 2015/35 will need to be updated to refer to the Securitisation Regulation.
106		Michael THEURER (ALDE Shadow, CRR Proposal)	Are all relevant provisions and clarifications provided in the Basel securitisation framework included in the CRR amendment? If something is missing, what are the reasons? Are there provisions/clarifications which should be added?	Yes. All significant provisions of the 2014 BCBS securitisation framework have been included. The proposals as usual include a number of mandates on the Commission for the adoption of RTS/ITS to specify in greater detail level 1 provisions.

107		Paul TANG (S&D Rapporteur, STS proposal)	The base of for the performance of securitisations is the underlying exposures. “Originate to distribute” (i.e. the provision of credits with low credit granting standards, which were immediately securitized) caused a lot of the problems of the financial crises in 2007/2008. How is ensured that banks and shadow banks apply the same sound and well-defined criteria for credit-granting to exposures that they securitize and that they keep on their balance sheets, so that “originate to distribute” won’t be used in future ? We have noticed that the current CRR requirements in article 408 will be deleted by the CRR amendments (deletion of part five (= articles 404-410)).	In the STS regulation there are a number of strict criteria to reduce the risks of "originate to distribute" models occurring. First, risk retention rules ensure the originator of loans (or the sponsor of the securitisation) have "skin in the game", thus aligning their incentives with those of the investors. Then, criteria imposing identical underwriting standards for securitised and non-securitised (i.e. retained) assets, excluding active management of assets in the securitised portfolio (which could allow the manager to pick worse assets and include them in the securitised portfolio) and finally excluding impaired obligors, low-rated assets and non-performing loans. One can thus say that the Commission's proposal excludes "originate-to-distribute" models while promoting "originate-and-distribute" models.

108		Paul TANG (S&D Rapporteur, STS proposal)	The Commission followed the two-stage approach recommended by the EBA and kept a few STS criteria applicable to the underlying exposures only, outside the STS proposal and within the CRR proposal. Do legal issues arise from defining STS securitisation in one way under the STS proposal and yet to define them differently in the eyes of banks in terms of eligibility for differentiated capital requirements? Does it not de facto create two STS categories (qualifying STS and non-qualifying STS) and an inequality of treatment between banks and non-banks when they invest in STS securitisations?	No. The credit risk criteria set out in the CRR for STS securitisations are in addition to the general STS criteria set out in the Securitisation Regulation. The CRR criteria do not amend the STS criteria but simply supplement them for a specified purpose. Accordingly, we do not see any legal issues that may arise from this legal construct.
109	Article 254	Michael THEURER (ALDE Shadow, CRR Proposal)	Hierarchy of methods: Art. 254 Paragraph 3 allows a derogation from the hierarchy of methods for the calculation of necessary own fund. Does this possibility apply to all securitisations, e.g. also for securitisations of the US or Indonesia? Why is this necessary? How is ensured that banks have sufficient own funds for covering risks arising from securitisations?	The derogation provided for in Article 254 is applicable to all securitisations regardless of the country of origination and is subject to ex-post approval by the competent authority. As far as the level of capital requirements that will be generated by the new framework, one of the objectives of the reform of the BCBS was precisely to enhance the framework's risk sensitivity and better reflect in capital requirements the risks of the underlying assets (see responses to questions 9-13).