Commission de Surveillance
du Secteur Financier

Circular CSSF 24/868

Regarding amendments to Circular CSSF 19/719 implementing the EBA Guidelines on the STS criteria for non-ABCP securitisation and the STS criteria for ABCP securitisation

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To all originators, original lenders, sponsors, securitisation special purpose entities, investors and third parties verifying simple, transparent and standardised (STS) compliance

Luxembourg, 9 December 2024

Ladies and Gentlemen,

We inform you that the aforementioned Circular CSSF 19/719 has been amended to take into account the amendments provided for by the following guidelines of the European Banking Authority (EBA):

> **Guidelines on the STS criteria for on-balance-sheet securitisation** and amending Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation (**EBA/GL/2024/05**)

Please find attached the amended version of the aforementioned Circular CSSF 19/719.

Yours faithfully,

Claude WAMPACH
Director

Marco ZWICK
Director

Jean-Pierre FABER
Director

Françoise KAUTHEN
Director

Claude MARX
Director General

Annex Circular CSSF 19/719 implementing the EBA Guidelines on the STS criteria for non-ABCP securitisation and the STS criteria for ABCP securitisation (amended version)

Circular CSSF 19/719 as amended by Circular CSSF 24/868

Implementation of the EBA Guidelines on the STS criteria for non-ABCP securitisation and the STS criteria for ABCP securitisation

To all originators, original lenders, sponsors, securitisation special purpose entities, investors and third parties verifying simple, transparent and standardised (STS) compliance

Luxembourg, 15 May 2019

Ladies and Gentlemen,

On 12 December 2018, the European Banking Authority (EBA) issued guidelines (EBA/GL/2018/08 and EBA/GL/2018/09) in accordance with Articles 19(2) and 23(3) of Regulation 2017/2402[1] (hereinafter the "Guidelines") on the harmonised interpretation and application of the STS criteria (Simple, Transparent and Standardised) set out in Articles 20, 21 and 22 of Regulation 2017/2402 for non-ABCP securitisation (Asset Backed Commercial Papers) and of the STS criteria set out in Articles 24, 25 and 26 of Regulation (EU) 2017/2402 for ABCP securitisation.

The main objective of the Guidelines is to provide a single point of consistent interpretation of the STS criteria and ensure a common understanding of them across the European Union by the originators, original lenders, sponsors, securitisation special purpose entities (SSPEs), investors, competent authorities and third parties verifying compliance with STS criteria in accordance with Article 28 of Regulation 2017/2402.

The Guidelines will be applied on a cross-sectoral basis throughout the European Union with the aim of facilitating the adoption of the STS criteria, which is one of the prerequisites for the application of a more differentiated and risk-sensitive regulatory treatment of exposures to securitisations under the new securitisation framework.

The Guidelines will enter into force on 15 May 2019.

The Guidelines are annexed to this circular. They are also available on the EBA's website at:

~~Guidelines on the STS criteria for ABCP and non ABCP securitisation | European Banking Authority~~~~https://eba.europa.eu/documents/10180/2519490/Guidelines+on+STS+criteria+for+ABCP+securitisation%29.pdf~~

Guidelines on the STS criteria for ABCP and non-ABCP securitisation | European Banking Authority

~~https://eba.europa.eu/documents/10180/2519490/Guidelines+on+STS+criteria+for+non-ABCP+securitisation.pdf~~

On 27 May 2024, the EBA issued guidelines (EBA/GL/2024/05) in accordance with Article 26a(2) of Regulation 2017/2402 (hereinafter the "New Guidelines") on the STS criteria for on-balance sheet securitisation and amending the Guidelines.

[1] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (**Regulation 2017/2402**)

The CSSF has integrated the Guidelines and the New Guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at the European level.

The New Guidelines include a limited set of targeted amendments to the Guidelines, for a specific number of requirements, to ensure that the interpretation provided by the EBA is consistent across all three guidelines.

The New Guidelines are annexed to this circular. They are also available on the EBA's website at:

Guidelines on the STS criteria for on-balance-sheet securitisations | European Banking Authority~~Guidelines on the STS criteria for on balance sheet securitisations | European Banking Authority~~

The CSSF expects that all in-scope entities apply the Guidelines and the New Guidelines.

Claude WAMPACH
Director

Marco ZWICK
Director

Jean-Pierre FABER
Director

Françoise KAUTHEN
Director

Claude MARX
Director General

Annexes

EBA Guidelines on the STS criteria for non-ABCP securitisation

EBA Guidelines on the STS criteria for ABCP securitisation

EBA Guidelines on the STS criteria for on-balance sheet securitisation and amending Guidelines EBA/GL/2018/08 and EBA/GL2018/09 on the STS criteria for ABCP and non-ABCP securitisation

EBA/GL/2018/09

12 December 2018

Final Report

on Guidelines

on the STS criteria for non-ABCP securitisation

Contents

1. Executive summary

These guidelines have been developed in accordance with Article 19(2) of Regulation (EU) 2017/2402 that requests the European Banking Authority (EBA) to provide a harmonised interpretation and application of the criteria on simplicity, transparency and standardisation (STS) applicable to non-asset-backed commercial paper (non-ABCP) securitisation, as set out in Articles 20, 21 and 22 of that regulation.

The main objective of the guidelines is to provide a single point of consistent interpretation of the STS criteria and ensure a common understanding of them by the originators, original lenders, sponsors, securitisation special purpose entities (SSPEs), investors, competent authorities and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402, throughout the Union.

The guidelines will be applied on a cross-sectoral basis throughout the Union with the aim of facilitating the adoption of the STS criteria, which is one of the prerequisites for the application of a more risk-sensitive regulatory treatment of exposures to securitisations compliant with such criteria, under the new EU securitisation framework.

The guidelines should thus play an important role in the new EU securitisation framework, which will become applicable from January 2019 and aim to build and revive a sound and safe securitisation market in the EU.

2. Background and rationale

1. In January 2018, the new EU securitisation framework, which comprises Regulation (EU) 2017/2402 [1] (the Securitisation Regulation) and Regulation (EU) 2017/2401 [2] containing targeted amendments to the Capital Requirements Regulation (CRR) with regard to capital treatment of securitisations held by credit institutions and investment firms, entered into force with the aim of building and reviving a sound and safe securitisation market in the EU. Regulation (EU) 2017/2402 establishes a set of criteria for identifying simple, transparent and standardised (STS) securitisation; the amended CRR sets out a framework for a more risk-sensitive regulatory treatment of exposures to securitisations complying with such criteria. In June 2018, a Delegated Regulation entered into force that amends capital treatment of securitisations held by insurance and reinsurance undertakings[3].

2. Regulation (EU) 2017/2402 establishes two sets of criteria for such STS securitisation, one for term (i.e. non-ABCP) securitisations, and the other for short-term (i.e. ABCP) securitisation. The criteria are largely similar, with a few differences in the criteria for ABCPs, adapted to reflect the specificities of the short-term securitisation: while the criteria for non-ABCP securitisation focus on the simplicity, transparency and standardisation, those for ABCP securitisation focus on the distinction between transaction-, sponsor- and programme-level criteria. In addition, the ABCP criteria include some additional criteria that are not found in the criteria applicable to non-ABCP securitisation, and vice versa.

3. Regulation (EU) 2017/2402 assigns the EBA the mandate to develop, in close cooperation with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), two sets of guidelines and recommendations, by 18 October 2018: (i) guidelines and recommendations that interpret the criteria on simplicity, standardisation and transparency applicable to non-ABCP securitisation; and (ii) guidelines and recommendations that interpret the transaction-level and programme-level criteria applicable to ABCP securitisation (sponsor-level criteria are outside the scope of the EBA's mandate).

4. Concretely, Article 19(2), applicable to non-ABCP securitisation, sets out that 'by 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations

[1] Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2402&from=EN

[2] Regulation (EU) 2017/2401 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2401&from=EN

[3] Commission Delegated Regulation (EU) 2018/1221 amending Delegated Regulation (EU) 2015/35 as regards the calculation of regulatory capital requirements for securitisations and STS securitisations held by insurance and reinsurance undertakings: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1221

on the harmonised interpretation and application of the requirements set out in Articles 20 [Requirements related to simplicity], 21 [Requirements related to standardisation] and 22 [Requirements related to transparency]'.

5. Article 23(3), applicable to ABCP securitisation, establishes a similar mandate for ABCP securitisation, according to which, 'by 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised interpretation and application of the requirements set out in Articles 24 [Transaction-level requirements] and 26 [Programme-level requirements].'

6. Recital 20 provides additional guidance for both non-ABCP and ABCP securitisation and specifies that 'implementation of the STS criteria throughout the EU should not lead to divergent approaches. Divergent approaches would create potential barriers for cross-border investors by obliging them to familiarise themselves with the details of the Member State frameworks, thereby undermining investor confidence in the STS criteria. The EBA should therefore develop guidelines to ensure a common and consistent understanding of the STS requirements throughout the Union, in order to address potential interpretation issues. Such a single source of interpretation would facilitate the adoption of the STS criteria by originators, sponsors and investors. ESMA should also play an active role in addressing potential interpretation issues.'

7. Lastly, recital 37 specifies that 'The requirements for using the designation 'simple, transparent and standardised' (STS) are new and will be further specified by EBA guidelines and supervisory practice over time'.

8. The present guidelines address the mandate under Article 19(2) of Regulation (EU) 2017/2402 to interpret the criteria on simplicity, transparency and standardisation applicable to non-ABCP securitisation. The mandate under Article 23(3) to interpret the programme and transaction level criteria for ABCP securitisation is addressed in separate guidelines.

9. In accordance with the mandate, the EBA has developed an interpretation of all STS criteria applicable to non-ABCP securitisation, while focusing on clarifying the main areas of potential unclarity and ambiguity in each criterion.

10. To the extent possible and where appropriate, the existing recommendations in the 'EBA report on the qualifying securitisation'[4] and the 'Basel III revisions to the securitisation framework'[5] have been taken into account when developing the interpretation.

11. The main objective of the guidelines is to ensure consistent interpretation and application of the STS criteria by the originators, original lenders, sponsors, SSPEs, investors involved in the STS securitisation, the competent authorities designated to supervise the compliance of the

[4] The EBA report on qualifying securitisation (July 2015): http://www.eba.europa.eu/documents/10180/950548/EBA+report+on+qualifying+securitisation.pdf
[5] Basel III Revisions to the securitisation framework (July 2016): http://www.bis.org/bcbs/publ/d374.pdf

entities with the criteria, and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402. The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is a prerequisite for the application of preferential risk weights under the amended capital framework and by the severe sanctions by Regulation (EU) 2017/2402 for negligence or intentional infringement of the STS criteria. In addition, given the inherent cross-sectoral nature of securitisation, the guidelines will be applied on a cross-sectoral basis, i.e. by different types of entities that will act as originators, original lenders, investors, sponsors, SSPEs, third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402, as well as by a large number of competent authorities that will be designed to supervise the entities involved.

12. The guidelines are interlinked with the ESMA regulatory technical standards (RTS) and implementing technical standards (ITS) on STS notification[6]. While the EBA guidelines are focused on providing guidance on the content of the STS criteria, the ESMA RTS and ITS are focused on specifying the format for notification of compliance of the STS criteria. It is expected that the guidance in the EBA guidelines for each single STS criterion should be appropriately reflected in the disclosures on the compliance with the STS criteria, in the STS notification, and/or in the transaction documentation, as appropriate.

13. The guidelines aim to cover all the STS criteria in a comprehensive manner. Recommendations may be developed, if necessary, at a later stage to address particular aspects arising from the practical application of Regulation (EU) 2017/2402 and the EBA guidelines. This approach is also consistent with the legal nature of these two legal instruments: while in terms of their legal power they are both non-legally binding instruments subject to the comply or explain mechanism, guidelines are instruments of general application 'erga omnes' (towards all), while recommendations are instruments of specific application, e.g. applying to a particular set of addressees or for a limited period of time only.

14. With respect to the structure of the guidelines, while the main interpretation of the STS criteria is provided in section 3, 'Guidelines on the STS criteria for non-ABCP securitisation', this section, 'Background and rationale', includes additional information on the objectives and rationale of each single criterion and the interpretation that these guidelines focus on.

15. Unless otherwise stated, in this section all references to individual Articles refer to Articles of Regulation (EU) 2017/2402.

[6] ESMA RTS and ITS on the STS notifications: https://www.esma.europa.eu/press-news/esma-news/esma-defines-standards-implementation-securitisation-regulation

2.1 Background and rationale for the criteria related to simplicity

True sale, assignment or transfer with the same legal effect, representations and warranties (Article 20(1)-(6))

16. The criterion specified in Article 20(1) aims to ensure that the underlying exposures are beyond the reach of, and are effectively ring-fenced and segregated from, the seller, its creditors and its liquidators, including in the event of the seller's insolvency, enabling an effective recourse to the ultimate claims for the underlying exposures.

17. The criterion in Article 20(2) is designed to ensure the enforceability of the transfer of legal title in the event of the seller's insolvency. More specifically, if the underlying exposures sold to the SSPE could be reclaimed for the sole reason that their transfer was effected within a certain period before the seller's insolvency, or if the SSPE could prevent the reclaim only by proving that it was unaware of the seller's insolvency at the time of transfer, such clauses would expose investors to a high risk that the underlying exposures would not effectively back their contractual claims. For this reason, Article 20(2) specifies that such clauses constitute severe clawback provisions, which may not be contained in STS securitisation.

18. Whereas, pursuant to Article 20(2), contractual terms and conditions attached to the transfer of title that expose investors to a high risk that the securitised assets will be reclaimed in the event of the seller's insolvency should not be permissible in STS securitisations, such prohibition should not include the statutory provisions granting the right to a liquidator or a court to invalidate the transfer of title with the aim of preventing or combating fraud, as referred to in Article 20(3).

19. Article 20(4) specifies that, where the transfer of title occurs not directly between the seller and the SSPE but through one or more intermediary steps involving further parties, the requirements relating to the true sale, assignment or other transfer with the same legal effect, apply at each step.

20. The objective of the criterion in Article 20(5) is to minimise legal risks related to unperfected transfers in the context of an assignment of the underlying exposures, by specifying a minimum set of events subsequent to closing that should trigger the perfection of the transfer of the underlying exposures.

21. The objective of the criterion in Article 20(6), which requires the seller to provide the representations and warranties confirming to the seller's best knowledge that the transferred exposures are neither encumbered nor otherwise in a condition that could potentially adversely affect the enforceability of the transfer of title, is to ensure that the underlying exposures are not only beyond the reach not only of the seller but equally of its creditors, and to allocate the commercial risk of the encumbrance of the underlying exposures to the seller.

22. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

(a) how to substantiate the confidence of third parties with respect to compliance with Article 20(1): it is understood that this should be achieved by providing a legal opinion. While the guidance does not explicitly require the provision of a legal opinion in all cases, the guidance expects a legal opinion to be provided as a general rule, and omission to be an exception;

(b) the triggers to effect the perfection of the transfer if assignments are perfected at a later stage than at the closing of the transaction.

Eligibility criteria for the underlying exposures, active portfolio management (Article 20(7))

23. The objective of this criterion in Article 20(7) is to ensure that the selection and transfer of the underlying exposures in the securitisation is done in a manner which facilitates in a clear and consistent fashion the identification of which exposures are selected for/transferred into the securitisation, and to enable the investors to assess the credit risk of the asset pool prior to their investment decisions.

24. Consistently with this objective, the active portfolio management of the exposures in the securitisation should be prohibited, given that it adds a layer of complexity and increases the agency risk arising in the securitisation by making the securitisation's performance dependent on both the performance of the underlying exposures and the performance of the management of the transaction. The payments of STS securitisations should depend exclusively on the performance of the underlying exposures.

25. Revolving periods and other structural mechanisms resulting in the inclusion of exposures in the securitisation after the closing of the transaction may introduce the risk that exposures of lesser quality can be transferred into the pool. For this reason, it should be ensured that any exposure transferred into the securitisation after the closing meets the eligibility criteria, which are no less strict than those used to structure the initial pool of the securitisation.

26. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

(a) the purpose of the requirement on the portfolio management, and the provision of examples of techniques which should not be regarded as active portfolio management: this criterion should be considered without prejudice to the existing requirements with respect to the similarity of the underwriting standards in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, which requires that all the underlying exposures in a securitisation be underwritten according to similar underwriting standards;

(b) interpretation of the term 'clear' eligibility criteria;

(c) clarification with respect to the eligibility criteria that need to be met with respect to the exposures transferred to the SSPE after the closing.

Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 20(8))

27. The criterion on the homogeneity as specified in the first subparagraph of Article 20(8) has been further clarified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402.

28. The objective of the criterion specified in the third sentence in the first subparagraph and in the second subparagraph of Article 20(8) is to ensure that the underlying exposures contain valid and binding obligations of the debtor/guarantor, including rights to payments or to any other income from assets supporting such payments that result in a periodic and well-defined stream of payments to the investors.

29. The objective of the criterion specified in the third subparagraph is that the underlying exposures do not include transferable securities, as they may add to the complexity of the transaction and of the risk and due diligence analysis to be carried out by the investor.

30. To facilitate consistent interpretation of this criterion, a clarification should be provided with respect to:

(a) interpretation of the term ‘contractually binding and enforceable obligations’;

(b) a non-exhaustive list of examples of exposures types that should be considered to have defined periodic payment streams. The individual examples are without prejudice to applicable requirements, such as the requirement with respect to the defaulted exposures in accordance with Article 20(11) of Regulation (EU) 2017/2402 and the requirement with respect to the residual value in accordance with Article 20(13) of that regulation.

No resecuritisation (Article 20(9))

31. The objective of this criterion is to prohibit resecuritisation subject to derogations for certain cases or for resecuritisation as specified in Regulation (EU) 2017/2402. This is a lesson learnt from the financial crisis, when resecuritisations were structured into highly leveraged structures in which notes of lower credit quality could be re-packaged and credit enhanced, resulting in transactions whereby small changes in the credit performance of the underlying assets had severe impacts on the credit quality of the resecuritisation bonds. The modelling of the credit risk arising in these bonds proved very difficult, also due to high levels of correlations arising in the resulting structures.

32. The criterion is deemed sufficiently clear and does not require any further clarification.

Underwriting standards (Article 20(10))

33. The objective of the criterion specified in the first subparagraph of Article 20(10) is to prevent cherry picking and to ensure that the exposures that are to be securitised do not belong to exposure types that are outside the ordinary business of the originator, i.e. types of exposures in which the originator or original lender may have less expertise and/or interest at stake. This criterion is focused on disclosure of changes to the underwriting standards and aims to help the investors assess the underwriting standards pursuant to which the exposures transferred into securitisation have been originated.

34. The objective of the criterion specified in the second subparagraph of Article 20(10) is to prohibit the securitisation of self-certified mortgages for STS purposes, given the moral hazard that is inherent in granting such types of loans.

35. The objective of the criterion specified in the third subparagraph of Article 20(10) is to ensure that the assessment of the borrower's creditworthiness is based on robust processes. It is expected that the application of this article will be limited in practice, given that the STS is limited to originators based in the EU, and the criterion is understood to cover only exposures originated by the EU originators to borrowers in non-EU countries.

36. The objective of the criterion specified in the fourth subparagraph of Article 20(10) is for the originator or original lender to have an established performance history of credit claims or receivables similar to those being securitised, and for an appropriately long period of time.

37. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

    (a) the term 'similar exposures', with reference to requirements specified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402;

    (b) the term 'no less stringent underwriting standards': independently of the guidance provided in these guidelines, it is understood that, in the spirit of restricting the 'originate-to-distribute' model of underwriting, where similar exposures exist on the originator's balance sheet, the underwriting standards that have been applied to the securitised exposures should also have been applied to similar exposures that have not been securitised, i.e. the underwriting standards should have been applied not solely to securitised exposures;

    (c) clarification of the requirement to disclose material changes from prior underwriting standards to potential investors without undue delay: the guidance clarifies that this requirement should be forward-looking only, referring to material changes to the underwriting standards after the closing of the securitisation. The guidance clarifies the interactions with the requirement for similarity of the underwriting standards set out

in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, which requires that all the underlying exposures in securitisation be underwritten according to similar underwriting standards;

(d) the scope of the criterion with respect to the specific types of residential loans as referred to in the second subparagraph of Article 20(10) and to the nature of the information that should be captured by this criterion;

(e) clarification of the criterion with respect to the assessment of a borrower's creditworthiness based on equivalent requirements in third countries;

(f) identification of criteria on which the expertise of the originator or the original lender should be determined:

(i) when assessing if the originator or the original lender has the required expertise, some general principles should be set out against which the expertise should be assessed. The general principles have been designed to allow a robust qualitative assessment of the expertise. One of these principles is the regulatory authorisation: this is to allow for more flexibility in such qualitative assessments of the expertise if the originator or the original lender is a prudentially regulated institution which holds regulatory authorisations or permissions that are relevant with respect to origination of similar exposures. The regulatory authorisation in itself should, however, not be a guarantee that the originator or original lender has the required expertise;

(ii) irrespective of such general principles, specific criteria should be developed, based on specifying a minimum period for an entity to perform the business of originating similar exposures, compliance with which would enable the entity to be considered to have a sufficient expertise. Such expertise should be assessed at the group level, so that possible restructuring at the entity level would not automatically lead to non-compliance with the expertise criterion. It is not the intention of such specific criteria to form an impediment to the entry of new participants to the market. Such entities should also be eligible for compliance with the expertise criterion, as long as their management body and senior staff with managerial responsibility for origination of similar exposures, have sufficient experience over a minimum specified period.

38. It is expected that information on the assessment of the expertise is provided in sufficient detail in the STS notification.

No exposures in default and to credit-impaired debtors/guarantors (Article 20(11))

39. The objective of the criterion in Article 20(11) is to ensure that STS securitisations are not characterised by underlying exposures whose credit risk has already been affected by certain

negative events such as disputes with credit-impaired debtors or guarantors, debt-restructuring processes or default events as identified by the EU prudential regulation. Risk analysis and due diligence assessments by investors become more complex whenever the securitisation includes exposures subject to certain ongoing negative credit risk developments. For the same reasons, STS securitisations should not include underlying exposures to credit-impaired debtors or guarantors that have an adverse credit history. In addition, significant risk of default normally rises as rating grades or other scores are assigned that indicate highly speculative credit quality and high likelihood of default, i.e. the possibility that the debtor or guarantor is not able to meet its obligations becomes a real possibility. Such exposures to credit-impaired debtors or guarantors should therefore also not be eligible for STS purposes.

40. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

(a) Interpretation of the term 'exposures in default': given the differences in interpretation of the term 'default', the interpretation of this criterion should refer to additional guidance on this term provided in the existing delegated regulations and guidelines developed by the EBA, while taking into account the limitation of scope of that additional guidance to certain types of institutions;

(b) Interpretation of the term 'exposures to a credit-impaired debtor or guarantor': the interpretation should also take into account the interpretation provided in recital 26 of Regulation (EU) 2017/2402, according to which the circumstances specified in points (a) to (c) of Article 24(9) of that regulation are understood as specific situations of credit-impairedness to which exposures in the STS securitisation may not be exposed. Consequently, other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be outside the scope of this requirement. Moreover, taking into account the role of the guarantor as a risk bearer, it should be clarified that the requirement to exclude 'exposures to a credit-impaired debtor or guarantor' is not meant to exclude (i) exposures to a credit-impaired debtor when it has a guarantor that is not credit impaired; or (ii) exposures to a non-credit-impaired debtor when there is a credit-impaired guarantor;

(c) Interpretation of the term 'to the best knowledge of': the interpretation should follow the wording of recital 26 of Regulation (EU) 2017/2402, according to which an originator or original lender is not required to take all legally possible steps to determine the debtor's credit status but is only required to take those steps that the originator/original lender usually takes within its activities in terms of origination, servicing, risk management and use of information that is received from third parties. This should not require the originator or original lender to check publicly available information, or to check entries in at least one credit registry where an originator or original lender does not conduct such checks within its regular activities in terms of origination, servicing, risk management and use of information received from third

parties, but rather relies, for example, on other information that may include credit assessments provided by third parties. Such clarification is important because corporates that are not subject to EU financial sector regulation and that are acting as sellers with respect to STS securitisation may not always check entries in credit registries and, in line with the best knowledge standard, should not be obliged to perform additional checks at origination of any exposure for the purposes of later fulfilling this criterion in terms of any credit-impaired debtors or guarantors;

(d) Interpretation of the criterion with respect to the debtors and guarantors found on the credit registry: it is important to interpret this requirement in a narrow sense to ensure that the existence of a debtor or guarantor on the credit registry of persons with adverse credit history should not automatically exclude the exposure to that debtor/guarantor from compliance with this criterion. It is understood that this criterion should relate only to debtors and guarantors that are, at the time of origination of the exposure, considered entities with adverse credit history. Existence on a credit registry at the time of origination of the exposure for reasons that can be reasonably ignored for the purposes of the credit risk assessment (for example due to missed payments which have been resolved in the next two payment periods) should not be captured by this requirement. Therefore, this criterion should not automatically exclude from the STS framework exposures to all entities that are on the credit registries, taking into account that this would unintentionally exclude a significant number of entities given that different practices exist across EU jurisdictions with respect to entry requirements of such credit registries, and the fact that credit registries in some jurisdictions may contain both positive and negative information about the clients;

(e) Interpretation of the term 'significantly higher risk of contractually agreed payments not being made for comparable exposures': the term should be interpreted with a similar meaning to the requirement aiming to prevent adverse selection of assets referred to in Article 6(2) of Regulation (EU) 2017/2402, and further specified in the Article 16(2) of the Delegated Regulation specifying in greater detail the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402[7], given that in both cases the requirement (i) aims to prevent adverse selection of underlying exposures and (ii) relates to the comparison of the credit quality of exposures transferred to the SSPE and comparable exposures that remain on the originator's balance sheet. To facilitate the interpretation, a list is given of examples of how to achieve compliance with the requirement.

At least one payment made (Article 20(12))

41. STS securitisations should minimise the extent to which investors are required to analyse and assess fraud and operational risk. At least one payment should therefore be made by each

[7] Final draft regulatory technical standards that specify in greater detail the risk retention requirement: https://www.eba.europa.eu/regulation-and-policy/securitisation-and-covered-bonds/rts-on-risk-retention

underlying borrower at the time of transfer, since this reduces the likelihood of the loan being subject to fraud or operational issues, unless in the case of revolving securitisations in which the distribution of securitised exposures is subject to constant changes because the securitisation relates to exposures payable in a single instalment or with an initial legal maturity of an exposure of below one year.

42. To facilitate consistent interpretation of this criterion, its scope and the types of payments referred to therein should be further clarified.

No predominant dependence on the sale of assets (Article 20(13))

43. Dependence of the repayment of the holders of the securitisation positions on the sale of assets securing the underlying exposures increases the liquidity risks, market risks and maturity transformation risks to which the securitisation is exposed. It also makes the credit risk of the securitisation more difficult for investors to model and assess.

44. The objective of this criterion is to ensure that the repayment of the principal balance of exposures at the contract maturity – and therefore repayment of the holders of the securitisation positions – is not intended to be predominantly reliant on the sale of assets securing the underlying exposures, unless the value of the assets is guaranteed or fully mitigated by a repurchase obligation.

45. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

    (a) the term 'predominant dependence' on the sale of assets securing the underlying exposures should be further interpreted:

        (i) when assessing whether the repayment of the holders of the securitisation positions is or is not predominantly dependent on the sale of assets, the following three aspects should be taken into account: (i) the principal balance at contract maturity of underlying exposures that depend on the sale of assets securing those underlying exposures to repay the balance; (ii) the distribution of maturities of such exposures across the life of the transaction, which aims to reduce the risk of correlated defaults due to idiosyncratic shocks; and (iii) the granularity of the pool of exposures, which aims to promote sufficient distribution in sale dates and other characteristics that may affect the sale of the underlying exposures.

        (i) no types of securitisations should be excluded ex ante from the compliance with this criterion and from the STS securitisation as long as they meet all the requirements specified in the guidance. For example, this criterion does not aim to exclude leasing transactions and interest-only residential mortgages from STS securitisation, provided they comply with the guidance provided and all other applicable STS requirements. However, it is expected that commercial real

estate transactions, or securitisations where the assets are commodities (e.g. oil, grain, gold), or bonds whose maturity dates fall after the maturity date of the securitisation, would not meet these requirements, as in all these cases it is expected that the repayment is predominantly reliant on the sale of the assets, that other possible ways to repay the securitisation positions are substantially limited, and that the granularity of the portfolio is low.

46. With respect to the exemption provided in the second subparagraph of Article 20(13) of Regulation (EU) 2017/2402, it should be ensured that the entity providing the guarantee or the repurchase obligation of the assets securing the underlying exposures is not an empty-shell or defaulted entity, so that it has sufficient loss absorbency to exercise the guarantee of the repurchase of the assets.

2.2 Background and rationale for the criteria related to standardisation

Risk retention (Article 21(1))

47. The main objective of the risk retention criterion is to ensure an alignment between the originators'/sponsors'/original lenders' and investors' interests, and to avoid application of the originate-to-distribute model in securitisation.

48. The content of the criterion is deemed sufficiently clear that no further guidance in addition to that provided by the Delegated Regulation further specifying the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402 is considered necessary.

Appropriate mitigation of interest-rate and currency risks (Article 21(2))

49. The objective of this criterion is to reduce any payment risk arising from different interest-rate and currency profiles of assets and liabilities. Mitigating or hedging interest-rate and currency risks arising in the transaction enhances the simplicity of the transaction, since it helps investors to model those risks and their impact on the credit risk of the securitisation investment.

50. It should be clarified that hedging (through derivative instruments) is only one possible way of addressing the risks mentioned. Whichever measure is applied for the risk mitigation, it should, however, be subject to specific conditions so that it can be considered to appropriately mitigate the risks mentioned.

51. One of these conditions aims to prohibit derivatives that do not serve the purpose of hedging interest-rate or currency risk from being included in the pool of underlying exposures or entered into by the SSPE, given that derivatives add to the complexity of the transaction and to the complexity of the risk and due diligence analysis to be carried out by the investor. Derivatives hedging interest-rate or currency risk enhance the simplicity of the transaction,

since hedged transactions do not require investors to engage in the modelling of currency and interest-rate risks.

52. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

    (a) conditions that the measures should comply with so that they can be considered to appropriately mitigate the interest-rate and currency risks;

    (b) clarification with respect to the scope of derivatives that should and should not be captured by this criterion;

    (c) clarification of the term 'common standards in international finance'.

Referenced interest payments (Article 21(3))

53. The objective of this criterion is to prevent securitisations from making reference to interest rates that cannot be observed in the commonly accepted market practice. The credit risk and cash flow analysis that investors must be able to carry out should not involve atypical, complex or complicated rates or variables that cannot be modelled on the basis of market experience and practice.

54. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

    (a) the scope of the criterion (by specifying the common types and examples of interest rates captured by this criterion);

    (b) the term 'complex formulae or derivatives'.

Requirements in case of enforcement or delivery of an acceleration notice (Article 21(4))

55. The objective of this criterion is to prevent investors from being subjected to unexpected repayment profiles and to provide appropriate legal comfort regarding their enforceability, for instances where an enforcement or an acceleration notice has been delivered.

56. STS securitisations should be such that the required investor's risk analysis and due diligence do not have to factor in complex structures of the payment priority that are difficult to model, nor should the investor be exposed to complex changes in such structures throughout the life of the transaction. Therefore, it should be ensured that junior noteholders do not have inappropriate payment preference over senior noteholders that are due and payable.

57. In addition, taking into account that market risk on the underlying collateral constitutes an element of complexity in the risk and due diligence analysis to be carried out by investors, the objective is also to ensure that the performance of STS securitisations does not rely, due to contractual triggers, on the automatic liquidation at market price of the underlying collateral.

58. To facilitate consistent interpretation of this criterion, the scope and operational functioning of conditions specified under letters (a), (b) and (d) of Article 21(4) should be specified further.

Non-sequential priority of payments (Article 21(5))

59. The objective of this criterion is to ensure that non-sequential (pro rata) amortisation should be used only in conjunction with clearly specified contractual triggers that determine the switch of the amortisation scheme to a sequential priority, safeguarding the transaction from the possibility that credit enhancement is too quickly amortised as the credit quality of the transaction deteriorates, thereby exposing senior investors to a decreasing amount of credit enhancement.

60. To facilitate consistent interpretation of this criterion, a non-exhaustive list of examples of performance-related triggers that may be included is provided in the guidance.

Early amortisation provisions/triggers for termination of the revolving period (Article 21(6))

61. The objective of this criterion is to ensure that, in the presence of a revolving period mechanism, investors are sufficiently protected from the risk that principal amounts may not be fully repaid. In all such transactions, irrespective of the nature of the revolving mechanism, investors should be protected by a minimum set of early amortisation triggers or triggers for the termination of the revolving period that should be included in the transaction documentation.

62. In order to facilitate the consistent interpretation of this criterion, interactions of this criterion with the criterion under Article 21(7)(b) with respect to the insolvency-related event with respect to the servicer should be further clarified.

Transaction documentation (Article 21(7))

63. The objective of this criterion is to help provide full transparency to investors, assist investors in the conduct of their due diligence and prevent investors from being subject to unexpected disruptions in cash flow collections and servicing, as well as to provide investors with certainty about the replacement of counterparties involved in the securitisation transaction.

64. This criterion is considered sufficiently clear and no further guidance is considered necessary.

Expertise of the servicer (Article 21(8))

65. The objective of this criterion is to ensure that all the conditions are in place for the proper functioning of the servicing function, taking into account the crucial importance of servicing in securitisation and the central nature of this function within any securitisation transaction.

66. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

(a) criteria for determining the expertise of the servicer;

(b) criteria for determining well-documented and adequate policies, procedures and risk management controls of the servicer.

67. The criteria for the expertise of the servicer should correspond to those for the expertise of the originator or the original lender. Newly established entities should be allowed to perform the tasks of servicing, as long as the back-up servicer has the appropriate experience. It is expected that information on the assessment of the expertise is provided in sufficient detail in the STS notification.

Remedies and actions related to delinquency and default of a debtor (Article 21(9))

68. Investors should be in a position to know, when they receive the transaction documentation, what procedures and remedies are planned in the event that adverse credit events affect the underlying exposures of the securitisation. Transparency of remedies and procedures, in this respect, allows investors to model the credit risk of the underlying exposures with less uncertainty. In addition, clear, timely and transparent information on the characteristics of the waterfall determining the payment priorities is necessary for the investor to correctly price the securitisation position.

69. To facilitate consistent interpretation of this criterion, the terms 'in clear and consistent terms' and 'clearly specify' should be further clarified.

Resolution of conflicts between different classes of investors (Article 21(10))

70. The objective of this criterion is to help ensure clarity for securitisation noteholders of their rights and ability to control and enforce on the underlying credit claims or receivables. This should make the decision-making process more effective, for instance in circumstances where enforcement rights on the underlying assets are being exercised.

71. To facilitate consistent interpretation of this criterion, the term 'clear provisions that facilitate the timely resolution of conflicts between different classes of investors' should be further interpreted.

2.3 Background and rationale for the criteria related to transparency

Data on historical default and loss performance (Article 22(1))

72. The objective is to provide investors with sufficient information on an asset class to conduct appropriate due diligence and to provide access to a sufficiently rich data set to enable a more accurate calculation of expected loss in different stress scenarios. These data are necessary for

investors to carry out proper risk analysis and due diligence, and they contribute to building confidence and reducing uncertainty regarding the market behaviour of the underlying asset class. New asset classes entering the securitisation market, for which a sufficient track record of performance has not yet been built up, may not be considered transparent in that they cannot ensure that investors have the appropriate tools and knowledge to carry out proper risk analysis.

73. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

    (a) its application to external data;

    (b) the term 'substantially similar exposures'.

Verification of a sample of the underlying exposures (Article 22(2))

74. The objective of the criterion is to provide a level of assurance that the data on and reporting of the underlying credit claims or receivables is accurate and that the underlying exposures meet the eligibility criteria, by ensuring checks on the data to be disclosed to the investors by an external entity not affected by a potential conflict of interest within the transaction.

75. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

    (a) requirements on the sample of the underlying exposures subject to external verification;

    (b) requirements on the party executing the verification;

    (c) scope of the verification;

    (d) requirement on the confirmation of the verification.

Liability cash flow model (Article 22(3))

76. The objective of this criterion is to assist investors in their ability to appropriately model the cash flow waterfall of the securitisation on the liability side of the SSPE.

77. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

    (a) interpretation of the term 'precise' representation of the contractual relationships;

    (b) implications when the model is provided by third parties.

Environmental performance of assets (Article 22(4))

78. It should be clarified that this is a requirement of disclosure about the energy efficiency of the assets when this information is available to the originator, sponsor or SSPE, rather than a requirement for a minimum energy efficiency of the assets.

79. To facilitate consistent interpretation of this criterion, the term 'available information related to the environmental performance' should be further clarified.

Compliance with transparency requirements (Article 22(5))

80. The objective of this criterion is to ensure that investors have access to the data that are relevant for them to carry out the necessary risk and due diligence analysis with respect to the investment decision.

81. The criterion is deemed sufficiently clear and not requiring any further clarification.

3. Guidelines on the STS criteria for non-ABCP securitisation

EBA/GL/2018/09

12 December 2018

Guidelines

on the STS criteria for non-ABCP securitisation

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010[8]. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and the other addresses of the guidelines referred to in paragraph 8 must make every effort to comply with the guidelines.

2. Guidelines set the European Banking Association (EBA) view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.

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

[8] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p. 12).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify the criteria relating to simplicity, standardisation and transparency for non-asset-backed commercial paper (non-ABCP) securitisations in accordance with Articles 20, 21 and 22 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017[9].

Scope of application

6. These guidelines apply in relation to the criteria of simplicity, standardisation and transparency of non-ABCP securitisations.

7. Competent authorities should apply these guidelines in accordance with the scope of application of Regulation (EU) 2017/2402 as set out in its Article 1.

Addressees

8. These guidelines are addressed to the competent authorities referred to in Article 29(1) and (5) of Regulation (EU) No 2017/2402 and to the other addressees under the scope of that Regulation.

[9] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L,347, 28.12.2017, p. 35).

3. Implementation

Date of application

9. These guidelines apply from 15.05.2019.

4. Criteria related to simplicity

4.1 True sale, assignment or transfer with the same legal effect, representations and warranties (Article 20(1)-(6))

True sale, assignment or transfer with the same legal effect

10. For the purposes of Article 20(1) of Regulation (EU) 2017/2402 and in order to substantiate the confidence of third parties, including third parties verifying simple, transparent and standardised (STS) compliance in accordance with Article 28 of that Regulation and competent authorities meeting the requirements specified therein, all of the following should be provided:

    (a) confirmation of the true sale or confirmation that, under the applicable national framework, the assignment or transfer segregate the underlying exposures from the seller, its creditors and its liquidators, including in the event of the seller's insolvency, with the same legal effect as that achieved by means of true sale;

    (b) confirmation of the enforceability of the true sale, assignment or transfer with the same legal effect referred to in point (a) against the seller or any other third party, under the applicable national legal framework;

    (c) assessment of clawback risks and re-characterisation risks.

11. The confirmation of the aspects referred to in paragraph 10 should be achieved by the provision of a legal opinion provided by qualified external legal counsel, except in the case of repeat issuances in standalone securitisation structures or master trusts that use the same legal mechanism for the transfer, including instances in which the legal framework is the same.

12. The legal opinion referred to in paragraph 11 should be accessible and made available to any relevant third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402 and any relevant competent authority from among those referred to in Article 29 of that regulation.

Severe deterioration in the seller credit quality standing

13. For the purposes of Article 20(5) of Regulation (EU) 2017/2402, the transaction documentation should identify, with regard to the trigger of 'severe deterioration in the seller credit quality standing', credit quality thresholds that are objectively observable and related to the financial health of the seller.

Insolvency of the seller

14. For the purposes of Article 20(5) of Regulation (EU) 2017/2402, the trigger of 'insolvency of the seller' should refer, at least, to events of legal insolvency as defined in national legal frameworks.

4.2 Eligibility criteria for the underlying exposures, active portfolio management (Article 20(7))

Active portfolio management

15. For the purposes of Article 20(7) of Regulation (EU) 2017/2402, active portfolio management should be understood as portfolio management to which either of the following applies:

    (a) the portfolio management makes the performance of the securitisation dependent both on the performance of the underlying exposures and on the performance of the portfolio management of the securitisation, thereby preventing the investor from modelling the credit risk of the underlying exposures without considering the portfolio management strategy of the portfolio manager;

    (b) the portfolio management is performed for speculative purposes aiming to achieve better performance, increased yield, overall financial returns or other purely financial or economic benefit.

16. The techniques of portfolio management that should not be considered active portfolio management include:

    (a) substitution or repurchase of underlying exposures due to the breach of representations or warranties;

    (b) substitution or repurchase of the underlying exposures that are subject to regulatory dispute or investigation to facilitate the resolution of the dispute or the end of the investigation;

    (c) replenishment of underlying exposures by adding underlying exposures as substitutes for amortised or defaulted exposures during the revolving period;

    (d) acquisition of new underlying exposures during the 'ramp up' period to line up the value of the underlying exposures with the value of the securitisation obligations;

    (e) repurchase of underlying exposures in the context of the exercise of clean-up call options, in accordance with Article 244(3)(g) of Regulation (EU) 2017/2401;

    (f) repurchase of defaulted exposures to facilitate the recovery and liquidation process with respect to those exposures;

(g) repurchase of underlying exposures under the repurchase obligation in accordance with Article 20(13) of Regulation (EU) 2017/2402.

Clear eligibility criteria

17. For the purposes of Article 20(7) of Regulation (EU) 2017/2402, the criteria should be understood to be 'clear' where compliance with them is possible to be determined by a court or tribunal, as a matter of law or fact or both.

Eligibility criteria to be met for exposures transferred to the SSPE after the closing of the transaction

18. For the purposes of Article 20(7) of Regulation (EU) 2017/2402, 'meeting the eligibility criteria applied to the initial underlying exposures' should be understood to mean eligibility criteria that comply with either of the following:

    (a) with regard to normal securitisations, they are no less strict than the eligibility criteria applied to the initial underlying exposures at the closing of the transaction;

    (b) with regard to securitisations that issue multiple series of securities including master trusts, they are no less strict than the eligibility criteria applied to the initial underlying exposures at the most recent issuance, with the results that the eligibility criteria may vary from closing to closing, with the agreement of securitisation parties and in accordance with the transaction documentation.

19. Eligibility criteria to be applied to the underlying exposures in accordance with paragraph 18 should be specified in the transaction documentation and should refer to eligibility criteria applied at exposure level.

4.3 Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 20(8))

Contractually binding and enforceable obligations

20. For the purposes of Article 20(8) of Regulation (EU) 2017/2402, 'obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors' should be understood to refer to all obligations contained in the contractual specification of the underlying exposures that are relevant to investors because they affect any obligations by the debtor and, where applicable, the guarantor to make payments or provide security.

Exposures with periodic payment streams

21. For the purposes of Article 20(8) of Regulation (EU) 2017/2402, exposures with defined periodic payment streams should include:

(a) exposures payable in a single instalment in the case of revolving securitisation, as referred to in Article 20(12) of Regulation (EU) 2017/2402;

(b) exposures related to credit card facilities;

(c) exposures with instalments consisting of interest and where the principal is repaid at the maturity, including interest-only mortgages;

(d) exposures with instalments consisting of interest and repayment of a portion of the principal, where either of the following conditions is met:

(i) the remaining principal is repaid at the maturity;

(ii) the repayment of the principal is dependent on the sale of assets securing the exposure, in accordance with Article 20(13) of Regulation (EU) 2017/2402 and paragraphs 47 to 49;

(e) exposures with temporary payment holidays as contractually agreed between the debtor and the lender.

4.4 Underwriting standards, originator's expertise (Article 20(10))

Similar exposures

22. For the purposes of Article 20(10) of Regulation (EU) 2017/2402, exposures should be considered to be similar when one of the following conditions is met:

(a) the exposures belong to one of the following asset categories referred to in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402:

(i) residential loans secured with one or several mortgages on residential immovable property, or residential loans fully guaranteed by an eligible protection provider among those referred to in Article 201(1) of Regulation (EU) No 575/2013 qualifying for credit quality step 2 or above as set out in Part Three, Title II, Chapter 2 of that regulation;

(ii) commercial loans secured with one or several mortgages on commercial immovable property or other commercial premises;

(iii) credit facilities provided to individuals for personal, family or household consumption purposes;

(iv) auto loans and leases;

(v) credit card receivables;

(vi) trade receivables;

(b) the exposures fall under the asset category of credit facilities provided to micro-, small-, medium-sized and other types of enterprises and corporates including loans and leases, as referred to in Article 2(d) of the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, as underlying exposures of a certain type of obligor;

(c) where they do not belong to any of the asset categories referred to in points (a) and (b) of this paragraph and as referred to in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous for the purposes of Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, the underlying exposures share similar characteristics with respect to the type of obligor, ranking of security rights, type of immovable property and/or jurisdiction.

No less stringent underwriting standards

23. For the purposes of Article 20(10) of Regulation (EU) 2017/2402, the underwriting standards applied to securitised exposures should be compared to the underwriting standards applied to similar exposures at the time of origination of the securitised exposures.

24. Compliance with this requirement should not require either the originator or the original lender to hold similar exposures on its balance sheet at the time of the selection of the securitised exposures or at the exact time of their securitisation, nor should it require that similar exposures were actually originated at the time of origination of the securitised exposures.

Disclosure of material changes from prior underwriting standards

25. For the purposes of Article 20(10) of Regulation (EU) 2017/2402, material changes to the underwriting standards that are required to be fully disclosed should be understood to be those material changes to the underwriting standards that are applied to the exposures that are transferred to, or assigned by, the SSPE after the closing of the securitisation in the context of portfolio management as referred to in paragraphs 15 and 16.

26. Changes to such underwriting standards should be deemed material where they refer to either of the following types of changes to the underwriting standards:

(a) changes which affect the requirement of the similarity of the underwriting standards further specified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402;

(b) changes which materially affect the overall credit risk or expected average performance of the portfolio of underlying exposures without resulting in substantially

different approaches to the assessment of the credit risk associated with the underlying exposures.

27. The disclosure of all changes to underwriting standards should include an explanation of the purpose of such changes.

28. With regard to trade receivables that are not originated in the form of a loan, reference to underwriting standards in Article 20(10) should be understood to refer to credit standards applied by the seller to short-term credit generally of the type giving rise to the securitised exposures and proposed to its customers in relation to the sales of its products and services.

Residential loans

29. For the purposes of Article 20(10) of Regulation (EU) 2017/2402, the pool of underlying exposures should not include residential loans that were both marketed and underwritten on the premise that the loan applicant or intermediaries were made aware that the information provided might not be verified by the lender.

30. Residential loans that were underwritten but were not marketed on the premise that the loan applicant or intermediaries were made aware that the information provided might not be verified by the lender, or become aware after the loan was underwritten, are not captured by this requirement.

31. For the purposes of Article 20(10) of Regulation (EU) 2017/2402, the 'information' provided should be considered to be only relevant information. The relevance of the information should be based on whether the information is a relevant underwriting metric, such as information considered relevant for assessing the creditworthiness of a borrower, for assessing access to collateral and for reducing the risk of fraud.

32. Relevant information for general non-income-generating residential mortgages should normally be considered to constitute income, and relevant information for income-generating residential mortgages should normally be considered to constitute rental income. Information that is not useful as an underwriting metric, such as mobile phone numbers, should not be considered relevant information.

Equivalent requirements in third countries

33. For the purposes of Article 20(10) of Regulation (EU) 2017/2402, the assessment of the creditworthiness of borrowers in third countries should be carried out based on the following principles, where appropriate, as specified in Directives 2008/48/EC and 2014/17/EC:

    (a) before the conclusion of a credit agreement, on the basis of sufficient information, the lender assesses the borrower's creditworthiness on the basis of sufficient information, where appropriate obtained from the borrower and, where necessary, on the basis of a consultation of the relevant database;

(b) if the parties agree to change the total amount of credit after the conclusion of the credit agreement, the lender should update the financial information at its disposal concerning the borrower and should assess the borrower's creditworthiness before any significant increase in the total amount of credit;

(c) the lender should make a thorough assessment of the borrower's creditworthiness before concluding a credit agreement, taking appropriate account of factors relevant to verifying the prospect of the borrower's meeting his or her obligations under the credit agreement;

(d) the procedures and information on which the assessment is based should be documented and maintained;

(e) the assessment of creditworthiness should not rely predominantly on the value of the residential immovable property exceeding the amount of the credit or the assumption that the residential immovable property will increase in value unless the purpose of the credit agreement is to construct or renovate the residential immovable property;

(f) the lender should not be able to cancel or alter the credit agreement once concluded to the detriment of the borrower on the grounds that the assessment of creditworthiness was incorrectly conducted;

(g) the lender should make the credit available to the borrower only where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement are likely to be met in the manner required under that agreement;

(h) the borrower's creditworthiness should be re-assessed on the basis of updated information before any significant increase in the total amount of credit is granted after the conclusion of the credit agreement unless such additional credit was envisaged and included in the original creditworthiness assessment.

Criteria for determining the expertise of the originator or original lender

34. For the purposes of determining whether an originator or original lender has expertise in originating exposures of a similar nature to those securitised in accordance with Article 20(10) of Regulation (EU) 2017/2402, both of the following should apply:

(a) the members of the management body of the originator or original lender and the senior staff, other than the members of the management body, responsible for managing the originating of exposures of a similar nature to those securitised should have adequate knowledge and skills in the origination of exposures of a similar nature to those securitised;

(b) any of the following principles on the quality of the expertise should be taken into account:

(i) the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;

(ii) the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;

(iii) the involvement of the members of the management body and the senior staff within the governance structure of the function of originating the exposures should be appropriate;

(iv) in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to origination of exposures of a similar nature to those securitised.

35. An originator or original lender should be deemed to have the required expertise when either of the following applies:

(a) the business of the entity, or of the consolidated group to which the entity belongs for accounting or prudential purposes, has included the originating of exposures similar to those securitised, for at least five years;

(b) where the requirement referred to in point (a) is not met, the originator or original lender should be deemed to have the required expertise where they comply with both of the following:

(i) at least two of the members of the management body have relevant professional experience in the origination of exposures similar to those securitised, at a personal level, of at least five years;

(ii) senior staff, other than members of the management body, who are responsible for managing the entity's originating of exposures similar to those securitised, have relevant professional experience in the origination of exposures of a similar nature to those securitised, at a personal level, of at least five years.

36. For the purposes of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail and in accordance with the applicable confidentiality requirements to permit investors to carry out their obligations under Article 5(3)(c) of Regulation (EU) 2017/2402.

4.5 No exposures in default and to credit-impaired debtors/guarantors (Article 20(11))

Exposures in default

37. For the purposes of the first subparagraph of Article 20(11) of Regulation (EU) 2017/2402, the exposures in default should be interpreted in the meaning of Article 178(1) of Regulation (EU) 575/2013, as further specified by the Delegated Regulation on the materiality threshold for

credit obligations past due developed in accordance with Article 178 of that Regulation, and by the EBA Guidelines on the application of the definition of default developed in accordance with Article 178(7) of that regulation.

38. Where an originator or original lender is not an institution and is therefore not subject to Regulation (EU) 575/2013, the originator or original lender should comply with the guidance provided in the previous paragraph to the extent that such application is not deemed to be unduly burdensome. In that case, the originator or original lender should apply the established processes and the information obtained from debtors on origination of the exposures, information obtained from the originator in the course of its servicing of the exposures or in the course of its risk management procedure or information notified to the originator by a third party.

Exposures to a credit-impaired debtor or guarantor

39. For the purposes of Article 20(11) of Regulation (EU) 2017/2402, the circumstances specified in points (a) to (c) of that paragraph should be understood as definitions of credit-impairedness. Other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be considered to be excluded from this requirement.

40. The prohibition of the selection and transfer to SSPE of underlying exposures 'to a credit-impaired debtor or guarantor' as referred to in Article 20(11) of Regulation (EU) 2017/2402 should be understood as the requirement that, at the time of selection, there should be a recourse for the full securitised exposure amount to at least one non-credit-impaired party, irrespective of whether that party is a debtor or a guarantor. Therefore, the underlying exposures should not include either of the following:

    (a) exposures to a credit-impaired debtor, when there is no guarantor for the full securitised exposure amount;

    (b) exposures to a credit-impaired debtor who has a credit-impaired guarantor.

To the best of the originator's or original lender's knowledge

41. For the purposes of Article 20(11) of Regulation (EU) 2017/2402, the 'best knowledge' standard should be considered to be fulfilled on the basis of information obtained only from any of the following combinations of sources and circumstances:

    (a) debtors on origination of the exposures;

    (b) the originator in the course of its servicing of the exposures or in the course of its risk management procedures;

    (c) notifications to the originator by a third party;

(d) publicly available information or information on any entries in one or more credit registries of persons with adverse credit history at the time of origination of an underlying exposure, only to the extent that this information had already been taken into account in the context of (a), (b) and (c), and in accordance with the applicable regulatory and supervisory requirements, including with respect to sound credit granting criteria as specified in Article 9 of Regulation (EU) 2017/2402. This is with the exception of trade receivables that are not originated in the form of a loan, with respect to which credit-granting criteria do not need to be met.

Exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process

42. For the purposes of Article 20(11)(a) of Regulation (EU) 2017/2402, the requirement to exclude exposures to credit-impaired debtors or guarantors who have undergone a debt-restructuring process with regard to their non-performing exposures should be understood to refer to both the restructured exposures of the respective debtor or guarantor and those of its exposures that were not themselves subject to restructuring. For the purposes of this Article, restructured exposures which meet the conditions of points (i) and (ii) of that Article should not result in a debtor or guarantor becoming designated as credit-impaired.

Credit registry

43. The requirement referred to in Article 20(11)(b) of Regulation (EU) 2017/2402 should be limited to exposures to debtors or guarantors to which both of the following requirements apply at the time of origination of the underlying exposure:

(a) the debtor or guarantor is explicitly flagged in a credit registry as an entity with adverse credit history due to negative status or negative information stored in the credit registry;

(b) the debtor or guarantor is on the credit registry for reasons that are relevant to the purposes of the credit risk assessment.

Risk of contractually agreed payments not being made being significantly higher than for comparable exposures

44. For the purposes of Article 20(11)(c) of Regulation (EU) 2017/2402, the exposures should not be considered to have a 'credit assessment of a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised' when the following conditions apply:

(a) the most relevant factors determining the expected performance of the underlying exposures are similar;

(b) as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or applicable models, that, over the life of the transaction or over a maximum of four years, where the life of the transaction is longer than four years, their performance would not be significantly different.

45. The requirement in the previous paragraph should be considered to have been met where either of the following applies:

(a) the underlying exposures do not include exposures that are classified as doubtful, impaired, non-performing or classified to the similar effect under the relevant accounting principles;

(b) the underlying exposures do not include exposures whose credit quality, based on credit ratings or other credit quality thresholds, significantly differs from the credit quality of comparable exposures that the originator originates in the course of its standard lending operations and credit risk strategy.

4.6 At least one payment made (Article 20(12))

Scope of the criterion

46. For the purposes of Article 20(12) of Regulation (EU) 2017/2402, further advances in terms of an exposure to a certain borrower should not be deemed to trigger a new 'at least one payment' requirement with respect to such an exposure.

At least one payment

47. For the purposes of Article 20(12) of Regulation (EU) 2017/2402, the payment referred to in the requirement according to which 'at least one payment' should have been made at the time of transfer should be a rental, principal or interest payment or any other kind of payment.

4.7 No predominant dependence on the sale of assets (Article 20(13))

Predominant dependence on the sale of assets

48. For the purposes of Article 20(13) of Regulation (EU) 2017/2402, transactions where all of the following conditions apply, at the time of origination of the securitisation in cases of amortising securitisation or during the revolving period in cases of revolving securitisation, should be considered not predominantly dependent on the sale of assets securing the underlying exposures, and therefore allowed:

(a) the contractually agreed outstanding principal balance, at contract maturity of the underlying exposures that depend on the sale of the assets securing those underlying exposures to repay the principal balance, corresponds to no more than 50% of the total initial exposure value of all securitisation positions of the securitisation;

(b) the maturities of the underlying exposures referred to in point (a) are not subject to material concentrations and are sufficiently distributed across the life of the transaction;

(c) the aggregate exposure value of all the underlying exposures referred to in point (a) to a single obligor does not exceed 2% of the aggregate exposure value of all underlying exposures in the securitisation.

49. Where there are no underlying exposures in the securitisation that depend on the sale of assets to repay their outstanding principal balance at contract maturity, the requirements in paragraph 48 should not apply.

Exemption provided in the second subparagraph of Article 20(13) of Regulation (EU) 2017/2402

50. The exemption referred to in the second subparagraph of Article 20(13) of Regulation (EU) 2017/2402 with regard to the repayment of holders of securitisation positions whose underlying exposures are secured by assets, the value of which is guaranteed or fully mitigated by a repurchase obligation of either the assets securing the underlying exposures or of the underlying exposures themselves by another third party or parties, the seller or the third parties should meet both of the following conditions:

(a) they are not insolvent;

(b) there is no reason to believe that the entity would not be able to meet its obligations under the guarantee or the repurchase obligation.

5. Criteria related to standardisation

5.1 Appropriate mitigation of interest-rate and currency risks (Article 21(2))

Appropriate mitigation of interest-rate and currency risks

51. For the purposes of Article 21(2) of Regulation (EU) 2017/2402 in order for the interest-rate and currency risks arising from the securitisation to be considered 'appropriately mitigated', it should be sufficient that a hedge or mitigation is in place, on condition that it is not unusually limited with the effect that it covers a major share of the respective interest-rate or currency risks under relevant scenarios, understood from an economic perspective. Such a mitigation may also be in the form of derivatives or other mitigating measures including reserve funds, overcollateralisation, excess spread or other measures.

52. Where the appropriate mitigation of interest-rate and currency risks is carried out through derivatives, all of the following requirements should apply:

    (a) the derivatives should be used only for genuine hedging of asset and liability mismatches of interest rates and currencies, and should not be used for speculative purposes;

    (b) the derivatives should be based on commonly accepted documentation, including International Swaps or Derivatives Association (ISDA) or similar established national documentation standards;

    (c) the derivative documentation should provide, in the event of the loss of sufficient creditworthiness of the counterparty below a certain level, measured either on the basis of the credit rating or otherwise, that the counterparty is subject to collateralisation requirements or makes a reasonable effort for its replacement or guarantee by another counterparty.

53. Where the mitigation of interest-rate and currency risks referred to in Article 21(2) of Regulation (EU) 2017/2402 is carried out not through derivatives but by other risk-mitigating measures, those measures should be designed to be sufficiently robust. When such risk-mitigating measures are used to mitigate multiple risks at the same time, the disclosure required by Article 21(2) of Regulation (EU) 2017/2402 should include an explanation of how the measures hedge the interest-rate risks and currency risks on one hand, and other risks on the other hand.

54. The measures referred to in paragraphs 52 and 53, as well as the reasoning supporting the appropriateness of the mitigation of the interest-rate and currency risks through the life of the transaction, should be disclosed.

Derivatives

55. For the purpose of Article 21(2) of Regulation (EU) 2017/2402, exposures in the pool of underlying exposures that merely contain a derivative component exclusively serving the purpose of directly hedging the interest-rate or currency risk of the respective underlying exposure itself, which are not themselves derivatives, should not be understood to be prohibited.

Common standards in international finance

56. For the purposes of Article 21(2) of Regulation (EU) 2017/2402, common standards in international finance should include ISDA or similar established national documentation standards.

5.2 Referenced interest payments (Article 21(3))

Referenced rates

57. For the purposes of Article 21(3) of Regulation (EU) 2017/2402, interest rates that should be considered to be an adequate reference basis for referenced interest payments should include all of the following:

    (a) interbank rates including the Libor, Euribor and other recognised benchmarks;

    (b) rates set by monetary policy authorities, including FED funds rates and central banks' discount rates;

    (c) sectoral rates reflective of a lender's cost of funds, including standard variable rates and internal interest rates that directly reflect the market costs of funding of a bank or a subset of institutions, to the extent that sufficient data are provided to investors to allow them to assess the relation of the sectoral rates to other market rates.

Complex formulae or derivatives

58. For the purposes of Article 21(3) of Regulation (EU) 2017/2402, a formula should be considered to be complex when it meets the definition of an exotic instrument by the Global Association of Risk Professionals (GARP), which is a financial asset or instrument with features that make it more complex than simpler, plain vanilla, products. A complex formula or derivative should not be deemed to exist in the case of the mere use of interest-rate caps or floors.

5.3 Requirements in the event of enforcement or delivery of an acceleration notice (Article 21(4))

Exceptional circumstances

59. For the purposes of Article 21(4)(a) of Regulation (EU) 2017/2402, a list of 'exceptional circumstances' should, to the extent possible, be included in the transaction documentation.

60. Given the nature of 'exceptional circumstances' and in order to allow some flexibility with respect to potential unusual circumstances requiring that cash be trapped in the SSPE in the best interests of investors, where a list of 'exceptional circumstances' is included in the transaction documentation in accordance with paragraph 59, such a list should be non-exhaustive.

Amount trapped in the SSPE in the best interests of investors

61. For the purposes of Article 21(4)(a) of Regulation (EU) 2017/2402, the amount of cash to be considered as trapped in the SSPE should be that agreed by the trustee or other representative of the investors who is legally required to act in the best interests of the investors, or by the investors in accordance with the voting provisions set out in the transaction documentation.

62. For the purposes of Article 21(4)(a) of Regulation (EU) 2017/2402, it should be permissible to trap the cash in the SSPE in the form of a reserve fund for future use, as long as the use of the reserve fund is exclusively limited to the purposes set out in Article 21(4)(a) of Regulation (EU) 2017/2402 or to orderly repayment to the investors.

Repayment

63. The requirements in Article 21(4)(b) of Regulation (EU) 2017/2402 should be understood as covering only the repayment of the principal, without covering the repayment of interest.

64. For the purposes of Article 21(4)(b) of Regulation (EU) 2017/2402, non-sequential payments of principal in a situation where an enforcement or an acceleration notice has been delivered should be prohibited. Where there is no enforcement or acceleration event, principal receipts could be allowed for replenishment purposes pursuant to Article 20(12)) of that Regulation.

Liquidation of the underlying exposures at market value

65. For the purposes of Article 21(4)(d) of Regulation (EU) 2017/2402, the investors' decision to liquidate the underlying exposures at market value should not be considered to constitute an automatic liquidation of the underlying exposures at market value.

5.4 Non-sequential priority of payments (Article 21(5))

Performance-related triggers

66. For the purposes of Article 21(5) of Regulation (EU) 2017/2402, the triggers related to the deterioration in the credit quality of the underlying exposures may include the following:

    (a) with regard to underlying exposures for which a regulatory expected loss (EL) can be determined in accordance with Regulation (EU) 575/2013 or other relevant EU regulation, cumulative losses that are higher than a certain percentage of the regulatory one-year EL on the underlying exposures and the weighted average life of the transaction;

(b) cumulative non-matured defaults that are higher than a certain percentage of the sum of the outstanding nominal amount of tranche held by the investors and the tranches that are subordinated to them;

(c) the weighted average credit quality in the portfolio decreasing below a given pre-specified level or the concentration of exposures in high credit risk (probability of default) buckets increasing above a pre-specified level.

5.5 Early amortisation provisions/triggers for termination of the revolving period (Article 21(6))

Insolvency-related event with regard to the servicer

67. For the purposes of Article 21(6)(b) of Regulation (EU) 2017/2402, an insolvency-related event with respect to the servicer should lead to both of the following:

(a) it should enable the replacement of the servicer in order to ensure continuation of the servicing;

(b) it should trigger the termination of the revolving period.

5.6 Expertise of the servicer (Article 21(8))

Criteria for determining the expertise of the servicer

68. For the purposes of determining whether a servicer has expertise in servicing exposures of a similar nature to those securitised in accordance with Article 21(8) of Regulation (EU) 2017/2402, both of the following should apply:

(a) the members of the management body of the servicer and the senior staff, other than members of the management body, responsible for servicing exposures of a similar nature to those securitised should have adequate knowledge and skills in the servicing of exposures similar to those securitised;

(b) any of the following principles on the quality of the expertise should be taken into account in the determination of the expertise:

(i) the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;

(ii) the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;

(iii) the involvement of the members of the management body and the senior staff within the governance structure of the function of servicing the exposures should be appropriate;

(iv) in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to the servicing of similar exposures to those securitised.

69. A servicer should be deemed to have the required expertise where either of the following applies:

(a) the business of the entity, or of the consolidated group, to which the entity belongs, for accounting or prudential purposes, has included the servicing of exposures of a similar nature to those securitised, for at least five years;

(b) where the requirement referred to in point (a) is not met, the servicer should be deemed to have the required expertise where they comply with both of the following:

(i) at least two of the members of its management body have relevant professional experience in the servicing of exposures of a similar nature to those securitised, at personal level, of at least five years;

(ii) senior staff, other than members of the management body, who are responsible for managing the entity's servicing of exposures of a similar nature to those securitised, have relevant professional experience in the servicing of exposures of a similar nature to those securitised, at a personal level, of at least five years;

(iii) the servicing function of the entity is backed by the back-up servicer compliant with point (a).

70. For the purpose of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail and in accordance with the applicable confidentiality requirements to permit investors to carry out their obligations under Article 5(3)(c) of Regulation (EU) 2017/2402.

Exposures of similar nature

71. For the purposes of Article 21(8) of Regulation (EU) 2017/2402, interpretation of the term 'exposures of similar nature' should follow the interpretation provided in paragraph 23 above.

Well-documented and adequate policies, procedures and risk management controls

72. For the purposes of Article 21(8) of Regulation (EU) 2017/2402, the servicer should be considered to have well documented and adequate policies, procedures and risk management controls relating to servicing of exposures' where either of the following conditions is met:

(a) The servicer is an entity that is subject to prudential and capital regulation and supervision in the Union and such regulatory authorisations or permissions are deemed relevant to the servicing;

(b) The servicer is an entity that is not subject to prudential and capital regulation and supervision in the Union, and a proof of existence of well-documented and adequate policies and risk management controls is provided that also includes a proof of adherence to good market practices and reporting capabilities. The proof should be substantiated by an appropriate third party review, such as by a credit rating agency or external auditor.

5.7 Remedies and actions related to delinquency and default of debtor (Article 21(9))

Clear and consistent terms

For the purposes of Article 21(9) of Regulation (EU) 2017/2402, to 'set out clear and consistent terms' and to 'clearly specify' should be understood as requiring that the same precise terms are used throughout the transaction documentation in order to facilitate the work of investors.

5.8 Resolution of conflicts between different classes of investors (Article 21(10))

Clear provisions facilitating the timely resolution of conflicts between different classes of investors

73. For the purposes of Article 21(10) of Regulation (EU) 2017/2402, provisions of the transaction documentation that 'facilitate the timely resolution of conflicts between different classes of investors', should include provisions with respect to all of the following:

    (a) the method for calling meetings or arranging conference calls;

    (b) the maximum timeframe for setting up a meeting or conference call;

    (c) the required quorum;

    (d) the minimum threshold of votes to validate such a decision, with clear differentiation between the minimum thresholds for each type of decision;

    (e) where applicable, a location for the meetings which should be in the Union.

74. For the purposes of Article 21(10) of Regulation (EU) 2017/2402, where mandatory statutory provisions exist in the applicable jurisdiction that set out how conflicts between investors have to be resolved, the transaction documentation may refer to these provisions.

6. Criteria related to transparency

6.1 Data on historical default and loss performance (Article 22(1))

Data

75. For the purposes of Article 22(1) of Regulation (EU) 2017/2402, where the seller cannot provide data in line with the data requirements contained therein, external data that are publicly available or are provided by a third party, such as a rating agency or another market participant, may be used, provided that all of the other requirements of that article are met.

Substantially similar exposures

76. For the purposes of Article 22(1) of Regulation (EU) 2017/2402, the term 'substantially similar exposures' should be understood as referring to exposures for which both of the following conditions are met:

    (a) the most relevant factors determining the expected performance of the underlying exposures are similar;

    (b) as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or applicable models, that, over the life of the transaction, or over a maximum of four years, where the life of the transaction is longer than four years, their performance would not be significantly different.

77. The substantially similar exposures should not be limited to exposures held on the balance sheet of the originator.

6.2 Verification of a sample of the underlying exposures (Article 22(2))

Sample of the underlying exposures subject to external verification

78. For the purposes of Article 22(2) of Regulation (EU) 2017/2402, the underlying exposures that should be subject to verification prior to the issuance should be a representative sample of the provisional portfolio from which the securitised pool is extracted and which is in a reasonably final form before issuance.

Party executing the verification

79. For the purposes of Article 22(2) of Regulation (EU) 2017/2402, an appropriate and independent party should be deemed to be a party that meets both of the following conditions:

    (a) it has the experience and capability to carry out the verification;

(b) it is none of the following:

(i) a credit rating agency;

(ii) a third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402;

(iii) an entity affiliated to the originator.

Scope of the verification

80. For the purposes of Article 22(2) of Regulation (EU) 2017/2402, the verification to be carried out based on the representative sample, applying a confidence level of at least 95%, should include both of the following:

(a) verification of the compliance of the underlying exposures in the provisional portfolio with the eligibility criteria that are able to be tested prior to issuance;

(b) verification of the fact that the data disclosed to investors in any formal offering document in respect of the underlying exposures is accurate.

Confirmation of the verification

81. For the purposes of Article 22(2) of Regulation (EU) 2017/2402, confirmation that this verification has occurred and that no significant adverse findings have been found should be disclosed.

6.3 Liability cash flow model (Article 22(3))

Precise representation of the contractual relationship

82. For the purposes of Article 22(3) of Regulation (EU) 2017/2402, the representation of the contractual relationships between the underlying exposures and the payments flowing among the originator, sponsor, investors, other parties and the SSPE should be considered to have been done 'precisely' where it is done accurately and with an amount of detail sufficient to allow investors to model payment obligations of the SSPE and to price the securitisation accordingly. This may include algorithms that permit investors to model a range of different scenarios that will affect cash flows, such as different prepayment or default rates.

Third parties

83. For the purposes of Article 22(3) of Regulation (EU) 2017/2402, where the liability cash flow model is developed by third parties, the originator or sponsor should remain responsible for making the information available to potential investors.

6.4 Environmental performance of assets (Article 22(4))

Available information related to the environmental performance

84. This requirement should be applicable only if the information on the energy performance certificates for the assets financed by the underlying exposures is available to the originator, sponsor or the SSPE and captured in its internal database or IT systems. Where information is available only for a proportion of the underlying exposures, the requirement should apply only in respect of the proportion of the underlying exposures for which information is available.

4. Accompanying documents

4.1 Cost-benefit analysis/impact assessment

1. Article 16(2) of the EBA Regulation (Regulation (EU) No 1093/2010), guidelines developed by the EBA shall be, where appropriate, accompanied by an impact assessment which analyses the related potential related costs and benefits. This section provides an overview of such impact assessment, and the potential costs and benefits associated with the implementation of the guidelines.

Problem identification

2. The guidelines have been developed in accordance with the mandate assigned to the EBA in Article 19(2) of Regulation (EU) 2017/2402 (Regulation (EU) No 2017/2402), which requests the EBA to develop guidelines on the harmonised interpretation and application of the criteria on STS for the non-ABCP securitisation.

3. The guidelines are expected to play a crucial role in the consistent and correct implementation of the STS criteria, and the new EU securitisation framework in general. They should lead to consistent interpretation and application of the criteria by the originators, sponsors, SSPEs and investors involved in the STS securitisation, the competent authorities designated to supervise the compliance of the entities with the criteria, and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402. The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is a prerequisite for the application of preferential risk weights under the amended capital framework, as well as by severe sanctions imposed by Regulation (EU) 2017/2402 for negligence or intentional infringement of the STS criteria. The guidelines are also directly interlinked with ESMA mandates, such as with the ESMA RTS on the STS notifications. Lastly, the guidelines will be applied on a cross-sectoral basis, i.e. by different types of financial institutions that will act as originators, original lenders, investors, sponsors and SSPEs with respect to the STS securitisation) as well as by a large number of competent authorities that will be designed to supervise the compliance of such market participants with the STS criteria.

Policy objectives

4. The main objective of the guidelines is to ensure harmonised interpretation and application of the STS criteria, and a common and consistent understanding of the STS criteria throughout the Union.

5. The introduction of the simple, transparent and standardised securitisation product, and establishment of the criteria that such a product need to comply with, are a core pillar of the new EU securitisation framework, consisting of Regulation (EU) 2017/2402 and accompanying changes in the CRR for credit institutions and investment firms, which entered into force in the

EU in January 2018 (and in the Commission Delegated Regulation for insurance and reinsurance undertakings, which entered into force in June 2016).

6. The guidelines should therefore contribute to the original general objective of this reform, which is to revive a safe securitisation market by introducing STS securitisation instruments, which address the risks inherent in highly complex, opaque and risky securitisation instruments and are clearly differentiated from such complex structures. This should lead to improvement of the financing of the EU economy, weakening the link between banks deleveraging needs and credit tightening in the short run, and creating a more balanced and stable funding structure for the EU economy in the long run.

7. By playing an important role in the effective implementation of the new EU securitisation framework, the guidelines should also contribute to the general objective of the EBA, which is to ensure a high, effective and consistent level of EU regulation, and hence maintain the stability of the EU financial system.

Baseline scenario

8. The baseline scenario presumes the existence of no guidelines. It is expected that their absence would have a negative impact on the implementation of the new EU securitisation framework, given that potential ambiguities or uncertainties present in the STS criteria as specified in Regulation (EU) 2017/2402 would not be addressed, leading to a lack of convergence and to divergent approaches in the implementation of the criteria throughout the EU. This could increase the costs of compliance with the requirements, and result in origination of securitisation instruments with differing characteristics and risk profiles, resulting from different interpretation of the criteria set out in Regulation (EU) 2017/2402. In addition, this could disincentivise the originators from issuing STS securitisations, in particular in the light of severe sanctions that could be imposed in cases of breach of the obligations. Lastly, such divergent application of the criteria could create barriers for investments in such securitisation, and undermine the investors' confidence in the STS products. The lack of clear interpretation of the rules could also increase the scope for potential use of the binding mediation, if disagreements arose due to inconsistent understanding of the Level 1 requirements.

Assessment of the option adopted

9. The EBA has addressed the legal mandate by providing a detailed interpretation of all the STS criteria specified in Regulation (EU) 2017/2402. It should be taken into account that the STS criteria, as well as the EBA guidelines, are a binary system, i.e. each criterion and each interpretation in the EBA guidelines are equally important given that non-compliance with any criterion could potentially lead to losing the STS label. Although for internal purposes during the process of development of the guidance the EBA has categorised the STS criteria based on their perceived level of clarity/unclarity into three different groups, for the external entity to which the guidelines shall apply, all STS criteria are important for the purposes of eligibility for the STS label.

Cost-benefit analysis

10. It is expected that implementation of the guidelines will bring about substantial benefits for the originators, original lenders, investors, sponsors, SSPEs, competent authorities and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402, given that it should provide a single source of interpretation of the STS criteria and should therefore substantially facilitate their consistent adoption across the EU.

11. The guidelines should help achieve the objectives of the new EU securitisation framework as set out above, in a more efficient and effective way. They should help introduce an immediately recognisable STS product in EU securitisation markets, increase investors' trust in the STS products that will be eligible for a more risk sensitive capital treatment and thereby allow investors and originators to reap the benefits of simple, transparent and standardised instruments.

12. With respect to the costs, while it is expected that the implementation of the new EU securitisation framework itself will be accompanied by considerable administrative, compliance and operational costs for both market participants and competent authorities[10], the guidelines should contribute to the mitigation of such costs, by providing clarity on Level 1 requirements. Beyond the costs for market participants and competent authorities to adapt to the new regulatory framework, there should be no relevant social and economic costs.

13. It is assessed that the guidelines will affect a large number of stakeholder groups. Given the inherently cross-sectoral nature of the securitisation, different types of prudentially regulated and non-regulated institutions and other entities will be brought under the scope of Regulation (EU) 2017/2402 and the guidelines, on both the origination and investment sides. The guidelines will also need to be implemented by the competent authorities that will be designated to supervise the compliance of the market participants with the STS criteria. In addition, third parties that will be authorised to verify compliance with the STS criteria in accordance with Article 28 of Regulation (EU) 2017/2402 will need to rely on the interpretation provided in the guidelines.

14. It is expected that costs and benefits related to the implementation of the guidelines will be ongoing, and applicable for each single securitisation instrument issued.

[10] See the impact assessment accompanying the proposals on securitisation developed by the European Commission: https://ec.europa.eu/info/publications/impact-assessment-accompanying-proposals-securitisation_en

4.2 Feedback statement

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

The consultation period lasted for three months and ended on 20 July 2018. A total of 18 responses were received, of which 14 were published on the EBA website.

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

In many cases, several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments and EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

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

Summary of key issues and the EBA's response

The respondents generally welcomed and supported the guidelines, the approach to the interpretation of the STS criteria and the aspects that the guidance focuses on. The respondents provided a substantial number of technical comments on a number of specific technical issues in the guidance.

The following key comments have been made, and corresponding changes have been introduced in the guidelines:

- True sale, assignment or transfer with the same legal effect (Article 20(1)-(5)): in response to concerns about the requirement to provide the legal opinion to confirm the true sale in all cases, the guidance expects the legal opinions to be provided as a general rule and omission to be an exception.

- Underwriting standards (Article 20(10)): concerns were raised about the strict guidance with respect to the requirement to 'disclose material changes from prior underwriting standards', which would require disclosure of changes made up to five years prior to the securitisation. It was proposed that that this requirement should be only forward-looking, i.e. requiring disclosure of material changes only following the issuance of securitisation. Taking into account the existing disclosure requirement on the underwriting standards in prospectus, the guidance has been amended to refer to changes to underwriting standards only from the closing of the transaction.

- Exposures in default and to credit-impaired debtors/guarantors (Article 20(11)): concerns were raised about the guidance that only exposures where neither the debtor nor the guarantor is credit impaired can be included in the securitisation. The guidance has been

amended to acknowledge the role of the guarantor as a risk bearer. The amended guidance clarifies that the exposures are allowed in the STS securitisation as long as there is recourse for the full securitised exposure amount to at least one non-credit-impaired party (whether that is a debtor or guarantor).

- No predominant dependence on the sale of assets (Article 20(13)): concerns were raised about the conditions specified in the guidance that determine in which cases the repayment of investors 'predominantly' depends on the sale of assets (value of assets no more than 30% of the total exposure value, no material concentration of dates of sales, granularity more than 500 exposures). While the guidance keeps the requirement preventing the material concentration of dates of sale of assets unchanged, it includes an amended percentage to determine the 'predominant' dependence, which has been raised to 50%. The guidance has also been amended to ensure a maximum concentration limit for exposures to a single obligor of 2%.

- Appropriate mitigation of interest-rate and currency risks (Article 21(2)): the requirements with respect to the derivatives have been adjusted and simplified to ensure a balanced approach to interpretation of the term 'appropriate mitigation'.

The following table provides a complete summary of the comments received during the consultation, the EBA analysis of the comments and the corresponding amendments that have been introduced to the guidelines. The comments in the table also include comments received from stakeholders on the corresponding criteria in the consultation paper on guidelines on STS criteria for ABCP securitisation (EBA/CP/2018/04). To the extent possible, the corresponding amendments to the guidelines have been aligned with those introduced to the guidelines on STS criteria for ABCP securitisation. All the references to paragraphs refer to paragraphs in the Consultation Paper (not to the paragraphs in the final guidelines).

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2018/05			
GENERAL COMMENTS			
Disclosure	Some respondents proposed that the guidelines should provide a harmonised explanation of where all the information should be disclosed in order to comply with these criteria, based on the list of underlying documentation in Article 7.	The objective of the guidelines is to provide a harmonised interpretation of the content of the STS criteria. Specification of where the information should be disclosed to comply with the criteria is considered to be outside the scope of the guidelines. The general understanding is that the information on compliance with the STS criteria should be included in the STS notification and/or in the transaction documentation, as appropriate.	No change.
General Data Protection Regulation (GDPR)	Some respondents noted that some guidance in the guidelines is considered incompatible with the provisions of the GDPR, since it requires disclosing personal data. This has been noted for the following guidance and elsewhere: disclosure of material changes to the underwriting standards; disclosure of number of years of professional experience for the originator and the servicer; provision of proof of well-documented policies for the servicer; confirmation of the external verification of a sample of underlying exposures.	With respect to the requirement in the guidance to disclose the expertise for the purpose of demonstrating the number of years of professional experience of the originator/original lender and the servicer, the guidance now clarifies that the disclosure should be in accordance with the applicable confidentiality requirements (such as GDPR). It is understood that the comment with respect to the GDPR is irrelevant for other requirements highlighted by the respondents, given that they do not require disclosure of personal data.	Paragraphs 39 and 76 have been amended.
Applicability of STS criteria to unfunded exposures	One respondent asked for clarification of whether exposures which are transferred to but not eligible for funding by the SSPE should or should not have to comply with the STS criteria. This reflects existing practice, in particular in ABCP securitisation of trade finance exposures (where amount of funding provided by	Although in the context of ABCP this may make sense, as the investors are ultimately reliant on the credit protection provided by the sponsor, it is less clear that this makes sense for non-ABCP securitisations.	No change.

	the ABCP programme is based only on the amount of receivables meeting the eligibility criteria, less excess concentrations and required reserves).	In this context, the respondent appears to refer to a purchase price discount on the underlying portfolio (such that the amount paid by the SSPE and nominal value of the notes is less than the initial value of the collateral). Investors will therefore still consider the unfunded exposures as possible sources of credit enhancement (as overcollateralisation). Including, for example, credit-impaired loans as overcollateralisation would make it much more difficult to assess the credit enhancement available to notes. Therefore, it is not appropriate to suggest that 'unfunded exposures' should not be subject to the same criteria as 'funded' exposures, in the context of non-ABCP securitisation.	
Without undue delay	Some respondents proposed to clarify the term 'without undue delay' used throughout Regulation (EU) 2017/2402.	The term 'without undue delay' is a widely recognised legal term and therefore it is not considered necessary to provide an additional interpretation of it.	No change.
REQUIREMENTS RELATED TO SIMPLICITY			
True sale, assignment or transfer with the same legal effect (Article 20(1), 20(2), 20(3), 20(4) and 20(5))			
Q1. Do you agree with the interpretation of these criteria, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Legal opinion (paragraphs 10-13)	A number of respondents raised concerns about the requirement to provide a legal opinion in order to confirm the transfer of the title of the exposures to the SSPE. It was noted that, while a legal opinion is the most common mechanism to confirm the transfer, it is not the only possible mechanism. In addition, it was not seen as consistent with recital 23 of Regulation (EU) 2017/2402, which provides that a legal opinion 'could' be provided, and suggests that it should therefore not be mandatory.	The guidance has been amended to clarify how to substantiate the confidence of third parties (including the competent authorities) in meeting the relevant requirements set out in the relevant paragraphs of Regulation (EU) 2017/2402. While the guidance no longer explicitly requires the provision of a legal opinion in all cases, the guidance expects the provision of a legal opinion as a general rule and omission to be an exception. The background and rationale section provides a non-exhaustive list of examples of when	Paragraphs 10-13 of the consultation paper have been amended.

		such a legal opinion would be expected and should be provided.	
Accessibility of the legal opinion to third parties (paragraph 13)	A number of respondents raised concerns about the requirement that the legal opinion should be accessible and made available to third parties. Respondents argued that the legal opinions are in general subject to strict confidentiality requirements for a variety of commercial and liability reasons, and the EBA proposal widens the liability of the law institutions and exposes them to significant risks.	The guidance has been amended to clarify that the legal opinion should be accessible and made available to only competent authorities and third party certifiers.	Paragraph 13 has been amended.
Commingling risks and set-off risks (paragraph 10)	A number of respondents did not agree that the legal opinion should cover the assessment of commingling and set-off risks. It was argued that the main objective of the true sale legal opinion is to provide assurance that the transaction expressed to be a sale will not be re-characterised as a secured loan that is subject to the rules of insolvency as they relate to the originator (i.e. to essentially cover clawback and re-characterisation risks). Commingling risks and set-off risks are not related to true sale, as they are related to the asset-level risks.	The reference to commingling and set-off risks has been deleted. The legal opinion should, however, include assessment of the clawback risks and re-characterisation risks, as these are crucial for the assessment of the true sale.	Paragraph 10 has been amended.
Material obstacles (paragraph 11b)	A number of respondents did not agree with the requirement that, in cases of assignment perfected at a later stage, the legal opinion should provide evidence of material obstacles to perfection of true sale. It was argued this requirement is not substantiated in Level 1, is not typically included in legal opinions on securitisation and raises practical problems, as 'materiality' is a subjective term.	The reference was originally inspired by the Basel STC requirements. However, it is acknowledged that the Basel requirements do not specifically require the provision of such evidence in the legal opinion. The requirement to provide evidence of material obstacles to perfection of true sale has been deleted.	Paragraph 11b has been amended.
Definition of the same legal effect	A few respondents suggested explaining the meaning of 'same legal effect'.	The guidance now specifies the core concept of the true sale, which is the effective segregation of the underlying exposures from the seller, its creditors and its liquidators including in the event of the seller's insolvency.	Paragraph 11 has been amended.

Confirmation that the seller has had sight of the legal opinion (paragraph 13a)	A number of respondents raised concerns about the requirement for confirmation that the seller has had sight of the legal opinion, in cases where the seller is not the original lender and the true sale is effected through intermediate steps. It was noted that this would be difficult for a number of transactions, which were originated and then traded as unsecuritised loan portfolios, in some cases several times, before being securitised. It would therefore be complex or even not feasible to provide a legal opinion about true sales at each intermediate step.	Taking into account the legitimate complexities of provision of legal opinion at the intermediate steps, the requirement for confirmation that the seller has had sight of the legal opinion, in cases where the seller is not the original lender and the true sale is effected through intermediate steps, has been deleted.	Paragraph 13 has been amended.
Insolvency of the seller (paragraph 15)	Some respondents noted that reference to resolution, as defined in the Bank Recovery and Resolution Directive (BRRD) in the interpretation of the trigger 'insolvency of the seller' for the perfection of the assignment, is inappropriate, as it is inconsistent with Article 68(3) of the BRRD, which sets out that a resolution action under Article 32 may not, in and of itself, lead to certain consequences listed in Article 68(3) provided that the substantive obligations under the contract continue to be performed.	The reference to resolution as defined in the BRRD has been deleted. The guidance notes that the trigger of 'insolvency of the seller' should as a minimum refer to the events of legal insolvency as defined in national legal frameworks.	Paragraph 15 has been amended.
Q2. Do you agree with the clarification of the conditions to be applicable in case of use of methods of transfer of the underlying exposures to the SSPE other than the true sale or assignment? Should examples of such methods of such transfer be specified further?			
Methods of transfer	A few respondents proposed clarifying further the term 'assignment perfected at a later stage'. One of the respondents suggested that the definition of the assignments to be perfected at a later stage should not include un-notified assignments or equitable assignments under English or Irish law or other trust-like arrangements.	The objective of the guidance is to specify general principles to interpret Article 20(1)-(5), rather than to provide lists or examples of methods that should or should not be considered to have the same legal effect as true sale or assignment in individual jurisdictions.	No change.
Q3. Do you believe that in addition to the guidance provided, additional guidance should be provided on the application of Article 20(2)? If yes, please provide suggestions of such severe clawback provisions to be included in the guidance.			
Severe clawback provisions	Most respondents believed that the guidance on severe clawback provisions is sufficient.	The support for the existing guidance has been noted.	No change.

Clawback provision set out in Article 20(2)(a)	One respondent suggested clarifying in the guidelines the term 'within a certain period before the declaration of the seller's insolvency' as set out in Regulation (EU) 2017/2402 in Article 24(2)(a). In particular, the respondent requested clarification of what the acceptable period is before the declaration of the seller's insolvency, i.e. from when a provision allowing the liquidator of the seller to invalidate the sale of the underlying exposures would constitute a severe clawback provision.	The comment has not been taken on board. The purpose of the requirement is to ensure that a specific timeframe is set out in the provisions, rather than to lay down a concrete timeframe.	No change.
Q4. With respect to the interpretation of the criterion in Article 20(5), should the severe deterioration in the seller credit quality standing, and the measures identifying such severe deterioration, be further specified in the guidelines? Do you believe that the interpretation should refer to the state of technical insolvency (i.e. state where based on the balance sheet considerations the seller reaches negative net asset value with its the liabilities being greater than its assets, without taking into account cash flows or events of legal insolvency), and if yes, should it be specified whether it should or should not be considered as the trigger effecting perfection of transfer of underlying exposures to SSPE at a later stage?			
Technical insolvency (paragraph 15)	Only a few respondents commented on the technical insolvency and agreed that the guidance with respect to the insolvency of the seller should not refer to the state of technical insolvency.	The support for the existing guidance has been noted.	No change.
Credit quality thresholds (paragraph 14)	Some respondents commented that the reference to 'credit quality thresholds related to the financial health of the seller that are generally used and recognised by market participants' in the interpretation of the trigger 'severe deterioration in the seller credit quality standing' is too restrictive, as the credit ratings would probably be the only metric that would meet this description. Given that many sellers are not rated, it could make the use of this guidance more difficult.	The guidance has been amended and the reference to 'credit quality thresholds generally used and recognised by market participants' has been replaced with 'credit quality thresholds that are objectively observable'. This should cover triggers related to the credit ratings or other alternative triggers, as long as they are objectively observable.	Paragraph 14 has been amended.
Perfection triggers applied to mutual societies	Some respondents proposed clarifying in the guidance that, where the relevant seller is a mutual society and by its status should limit negative effects on its members' rights and where perfection of the assignment would result in cancellation of private membership rights, it shall not be necessary for the	The guidelines focus on providing general interpretation of the STS criteria, rather than on specifying exceptions from the applications of the STS criteria for specific types of entities.	No change.

	triggers in the transaction to include events corresponding to sub-paragraphs (a) and (c) of Article 20(5).		
Representations and warranties (Article 20(6))			
Q5. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Difficult or impossible to obtain representations and warranties (paragraph 16)	Several respondents expressed their concerns that the representations and warranties could not be provided in some situations, such as when there is no direct relationship between the seller and original lender as a result of multiple times of asset purchases and sales; or when the assets are acquired from insolvency officials or resolution authority. The guidance was also considered inconsistent with the Level 1 text, which is focused on provision of the representations and warranties by the seller.	It is noted that the guidance does not provide additional value to the Level 1 text, while it raises additional complexities, and it has therefore been deleted.	Paragraph 16 has been deleted.
Eligibility criteria for the underlying exposures/active portfolio management (Article 20(7))			
Q6. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Clear eligibility criteria (paragraph 20)	A few respondents suggested extending the interpretation of the term 'clear eligibility criteria' to clarify that the eligibility criterion is 'clear' if a court or other tribunal could determine whether the criterion was met or not, whether as a matter of fact or law or both.	The wording of the guidance has been enhanced to acknowledge that there may be questions of pure fact or mixed fact and law that are not appropriate for purely legal determination.	Paragraph 20 has been amended.
Eligibility criteria to be met for exposures transferred to the SSPE after the closing of the transaction (paragraph 21)	A number of respondents pointed out that the guidance should be clarified for the master trusts or other repeat issuance securitisation structures such that exposures transferred to the SSPE after any given closing of a transaction should have to meet the eligibility criteria applied as at the most recent closing, but that the eligibility criteria may be varied from closing to closing. Therefore, the consistency of the eligibility of criteria should be met at the level of each issuance so that if a new issuance occurs and new assets will	The guidance has been extended with respect to the repeat issuance structures and it clarifies that the eligibility criteria applied to exposures transferred to the SSPE after the closing should be no less strict than the eligibility criteria applied to the initial underlying exposures at the most recent issuance.	Paragraph 21 has been amended.

	be added or exchanged in respect of that issuance, the eligibility criteria for the new assets should be no less strict than the criteria that are applicable to that issuance only.		
Eligibility criteria applied at exposure level (paragraph 21)	One respondent proposed that the paragraph 21 refers to the eligibility criteria at pool level, rather than at exposure level, to align the guidance with the market practice (e.g. collateral pool level, cap on maximum weighted average loan-to-value (LTV) rate).	The intention of the guidance is to focus on exposure level eligibility criteria, which is consistent with the Level 1 text.	No change.
Q7. Do you agree with the techniques of portfolio management that are allowed and disallowed, under the requirement of the active portfolio management? Should other techniques be included or excluded?			
Purpose of the requirement (paragraphs 17-19)	A number of respondents commented on the list of techniques of active portfolio management as specified in paragraphs 17-19. They proposed that the guidelines should preferably set out the purpose of the requirement along with a series of illustrative examples of permitted techniques that are consistent with that purpose, rather than prescribe a prohibition of sale (in paragraph 19a)/list of exceptions (in paragraph 18). The respondents also argued that the non-exhaustive list of examples of techniques of allowed portfolio management should be widened to allow widely used practices (see the row below).	The guidance has been amended to focus on further clarifying the purpose of the requirement on portfolio management, and provision of examples of techniques which should not be regarded as active portfolio management.	Paragraphs 17 -19 have been amended.
Portfolio management techniques (paragraphs 18-19)	Respondents proposed a number of examples of portfolio management techniques that should not be regarded as active portfolio management and should therefore be allowed for STS purposes.	The non-exhaustive list of examples of allowed portfolio management techniques has been extended, to include a few more examples that have been assessed as consistent with the applicable Level 1 requirement and the guidance. Given that the list is non-exhaustive, other techniques may also eligible, as long as they comply with the applicable Level 1 requirement and the guidance.	Paragraph 18 has been amended.

Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 20(8))			
Q8. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Exposures with periodic payment streams	Some respondents proposed clarifying further that the list of examples of exposures with periodic payment streams is non-exhaustive. In addition, they provided examples of exposures that should be considered exposures with defined period payment streams.	The wording of the guidance (in particular the use of the term 'include') ensures that the list of examples is non-exhaustive. The non-exhaustive list of examples has been extended to include some specific types of exposures that are considered to have periodic payment streams consistently with the Level 1 requirements.	Paragraph 24 has been amended.
Contractually binding and enforceable obligations (paragraphs 22-23)	One respondent asked that the guidelines clarify that 'with full recourse to debtors' (Article 20(8)) should not be read as excluding leases where the lessee has the option to return the vehicle under certain conditions during the life of the lease or at maturity, or other specific limitations on recourse in certain jurisdictions, such as exposures with voluntary termination rights.	Following the legal review, and given the lack of clarity with respect to possible interpretations of the guidance in paragraph 23, paragraph 23 has been deleted.	Paragraph 23 has been deleted.
Q9. Do you believe that additional guidance should be provided in these guidelines with respect to the homogeneity requirement, in addition to the requirements specified in the Delegated Regulation (EU) 2018/.... further specifying which underlying exposures are deemed homogeneous?			
Further clarification of the homogeneity requirement	The majority of respondents agreed that no further clarification of the homogeneity requirement, in addition to that in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, was necessary. One respondent asked if the guidelines could provide examples of 'homogeneous' transactions.	Given that the majority of respondents supported no further clarifications on homogeneity in the STS guidelines, and that many of the concerns raised on this point have already been addressed in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, no further clarifications regarding the homogeneity requirement are made in the final guidelines.	No change.

Underwriting standards, originator's expertise (Article 20(10))			
Q10. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
No less stringent underwriting standards (paragraphs 26-27)	One respondent asked for further clarification on how to apply this criterion in the case, for example, of a mortgage origination platform where all (or all eligible) exposures originated are securitised, i.e. to clarify that, where the originator or original lender securitises all or substantially all of the exposures (or eligible exposures) it originates, this element of Article 20(10) does not apply.	It is understood that this example is consistent with the Level 1 requirement and the guidance.	No change.
Originators who purchase a third party's exposures on their own account and then securitise them	One respondent proposed that originators who, under Regulation (EU) 2017/2402 Article 2(3)(b), purchase a third party's exposures on their own account and then securitise them should meet the underwriting requirements as set out in Article 10 paragraph 1 by applying similar due diligence to exposures to be securitised to those which are not to be securitised.	The requirement set out in Article 10 paragraph 1 refers to 'the originator or original lender'. Therefore, in this case the original lender would need to meet the requirements set out under this paragraph.	No change.
Originator expertise regarding servicing and collection standards	One respondent suggested that the 'no less stringent underwriting standards' requirements should also refer to servicing and collections policies.	Quality of servicing is covered in the requirement for the servicer to have well-documented and adequate policies, procedures and risk management controls relating to the servicing of exposures in Article 21(8) of Regulation (EU) 2017/2402, and it is therefore not necessary to cover it here.	No change.
Disclosure of changes to underwriting standards (paragraphs 28-29)	A number of respondents argued that the requirement for the disclosure of changes to underwriting standards applied over a period of five years was unduly burdensome to the originators, with limited benefit for investors. A number of respondents proposed that the requirement to disclose material changes should be forward-looking only (from the date of establishment or last disclosure in an offering document). They argued that this, when combined with a summary description of the underwriting standards	The EBA acknowledges that this requirement is forward-looking only. The guidance has been amended to refer to changes to underwriting standards only from the closing of the transaction. Practically, this relates to underwriting standards of exposures that are transferred to securitisation after the closing in the context of portfolio management.	Paragraph 28a has been deleted.

	disclosed before closing (in the offering document, prospectus or similar), would achieve the relevant regulatory objectives.		
Definition of 'material' changes (paragraph 28)	Some respondents asked for a higher bar or further clarification with respect to the 'material changes' to be disclosed after the origination of the securitisation.	The guidance has been amended to provide further clarification on the material changes to the underwriting standards that should be disclosed. In this context, the interactions with the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402 should be highlighted. In particular, the Delegated Regulation requires that all the underlying exposures in securitisation be underwritten according to similar underwriting standards. The guidance therefore clarifies that the material changes include (i) changes which affect the requirement on the similarity of the underwriting standards in accordance with the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402; (ii) changes which, although they do not affect the similarity of the underwriting standards in accordance with the RTS on homogeneity, do materially affect the overall credit risk or expected average performance of the portfolio without resulting in substantially different approaches to the assessment of the credit risk associated with the underlying exposures (for example a move from minimum 80% LTV to minimum 90% LTV). For the purpose of STS compliance, however, it is understood that in practice any material changes to the underwriting standards would not be such that they do not affect their similarity as required by the Delegated	Paragraph 28 has been amended.

		Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402.	
Relevant information (paragraph 33)	A few respondents commented that the wording regarding the relevant information (in particular regarding income-producing residential mortgages) is too specific, as lenders can sometimes consider the income of the borrower in the event that it is considered sufficient to cover payments on the mortgage instead of rental income as relevant information.	The EBA accepts the comments. The guidance has been amended so that it outlines the type of information that should normally be considered relevant, but does not exclude other types of information from also being considered relevant.	Paragraph 33 has been amended.
Equivalent requirements in third countries (paragraphs 34-36)	A few respondents argued that it is not practicable for individual originators to make decisions (normally made by the Commission) on the equivalence of regulatory regimes. They proposed that 'equivalent requirements in third countries' is meant to reflect only a requirement that the relevant assessments of creditworthiness comply with local standards in the relevant country.	The EBA agrees that a full equivalence assessment of the legal framework in third countries may be unduly burdensome. The guidance has been amended to clarify that the assessment of the creditworthiness of the borrowers in third countries be based on the principles set out in the Directives 2008/48/EC and 2014/17/EC.	Paragraphs 34 -36 have been amended.
Trade receivables	One respondent proposed that recital 14 of the Securitisation Regulation excluded trade receivables from the criterion relating to underwriting standards in Article 20(10). Another respondent requested guidance to reflect the fact that, unlike financial receivables, trade receivables are not typically originated in accordance with 'underwriting standards', but reflect the types and diversity of customers that buy the corporate originator's products or services. The respondent argued that recital 14 of the Regulation reflects a recognition that the origination of trade receivables usually does not involve application of 'credit-granting criteria' and the standards that apply to such criteria should not apply. In relation to trade receivables, each reference in Article 20(10) to 'underwriting standards' should be interpreted as meaning the credit standards, if any, that the originator applies to sales on short-term credit of its products and services, generally of	Recital 14 appears to relate to Article 9 (credit granting criteria) only. Furthermore, for STS securitisations, the seller is still required to apply Article 20(10), i.e. to apply 'underwriting standards no less stringent' and have 'expertise in originating exposures'. However, the EBA agrees that the origination of trade receivables usually does not involve application of underwriting standards, and agrees that, in the specific case of trade receivables, the origination involves application of credit standards applied by the seller to the sales on short-term credit. The EBA does not, however, share the view that such credit standards should apply, 'if any'. Such credit standards need to be applied for the transaction to be considered STS, as required by Article 20(10).	New paragraph 28 has been added.

	the type that give rise to the securitised exposures, and if no such standards are used then the criterion should be treated as inapplicable.		
Q11. Do you agree with this balanced approach to the determination of the expertise of the originator? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?			
Definition of management body (paragraphs 37-39)	Some respondents suggested that the references to the management body could be further clarified in order to make it clear that not all members of the management body should be expected to hold relevant expertise, especially in larger financial institutions.	This interpretation is consistent with the original intention of the guidance. The guidance has been slightly amended to make this point clearer. While it is not desirable to provide a definition of 'management body' as it is assumed it is commonly understood, the guidance has been amended to clarify that, as a minimum, two members should have at least five years' experience.	Paragraph 38 has been amended.
Definition of 'senior staff'	Some respondents raised a concern that the definition of 'senior staff' could be subject to a wide range of interpretations.	Given that the definition of 'senior staff' will probably differ from institution to institution, it is not possible or desirable to define senior staff for all types of institution governance structure.	No change.
Prudentially regulated institutions (paragraph 37)	Several respondents asked whether paragraph 37(d) automatically allowed prudentially regulated institutions, with a licence deemed relevant to origination of similar exposures, to be considered to have expertise.	As paragraph 37 is a principles-based assessment of expertise, individual factors specified under letters (a) to (d) cannot be fully determinative in deciding whether an originator or original lender has expertise in originating similar assets to those securitised, but they should rather help the assessment of whether the originator or the original lender has the required expertise or not.	No change.
Five years' experience (paragraph 38)	Several respondents raised concerns regarding the difficulty of meeting or verifying the requirements in paragraph 38 in order to be deemed to have expertise in originating similar assets to those securitised.	The EBA does not propose that paragraph 38 be the only route to claiming 'expertise'. The specific criteria in paragraph 38 have been developed to facilitate the assessment of the expertise: if the conditions are met, the entity should be deemed to have the required expertise. In the event that institutions find it difficult to meet or verify meeting the criteria in paragraph 38, institutions	No change.

		can still argue they have 'expertise' based on the principles-based judgement in paragraph 37. In the event that this is also not possible, it is appropriate that the originator or original lender be considered to fail to meet the requirements of Article 20(10).	
Outsourcing of origination	One respondent asked whether the guidelines could confirm that if origination is outsourced to a sufficiently experienced third party, the criterion on expertise was met.	In the event that origination is outsourced, the entity to which the origination is outsourced would most likely be the originator of the transaction or the original lender. In which case, that entity must comply with the requirements of Article 20(10) subparagraph 4.	No change.
Cumulative experience	One respondent suggested clarifying in the STS guidelines whether experience could be considered cumulatively across the originator, original lender and sponsor.	The Level 1 text clearly states that the originator or original lender shall have expertise. Therefore, either the originator or original lender must meet the criteria, not cumulatively.	No change.
Sale of business line	One respondent asked whether paragraph 38(a) adequately captured situations in which a lending business is transferred from one entity to another while maintaining the same form.	The EBA considers that in such a case it is impossible to identify whether the organisation has genuinely maintained its 'expertise' given that it is subject to a new governance structure. Therefore, this example is not intended to be captured by paragraph 38(a).	No change.
Q12. Should alternative interpretation of the 'similar exposures' be provided, such as, for example, referencing the eligibility criteria (per Article 20(7)) that are applied to select the underlying exposures? Similar exposure under Article 20(10) could thus be defined as an exposure that would qualify for the portfolio, based on the exposure level eligibility criteria (not portfolio level criteria) which has not been selected for the pool and which was originated at the time of the securitised exposure (e.g. an exposure that has repaid/prepaid by the time of securitisation). Similar interpretation could be used for the term 'exposures of a similar nature' under Article 20(10), and 'substantially similar exposures' under Article 22(1). The eligibility criteria considered should take into account the timing of the comparison. Please provide explanations which approach would be more appropriate in providing a clear and objectively determined interpretation of the 'similarity' of exposures.			
Definition of 'similar exposures' for the purposes of determining expertise	The majority of respondents supported the existing definition of 'similar exposures' in the draft guidelines. A few respondents suggested including reference to underwriting standards as part of the definition.	The support for the existing interpretation of the similarity of exposures has been noted. The guidance has been slightly amended to align the wording with the final Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU)	Paragraph 25 has been amended.

		2017/2402. However, in order to avoid unnecessary complications of the definition, the reference to underwriting standards has not been included.	
Linkage of the similarity with the eligibility criteria	A large number of respondents supported the current proposal in the guidelines of 'similar exposures', and did not support the proposal regarding eligibility criteria. They argued that the eligibility criteria reflect a wide range of other factors such as investor preferences and funding needs. It was also argued that the eligibility criteria would introduce too detailed limitations, and change overtime, which would complicate and unnecessarily restrict the scope of assessment of the similarity of exposures. Therefore, it was argued that the eligibility criteria might not be suitable as a test for genuine 'expertise'.	Based on the responses from the stakeholders, the existing definition has been maintained instead of a definition which references the eligibility criteria of the transaction, i.e. refers to the asset category as specified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, with some minor amendments. Although including a reference to the underwriting criteria would promote more specific expertise in respect of the underlying exposures, the associated benefit appears to be outweighed by the additional burden on institutions in meeting the requirement.	No change.
No exposures in default and to credit-impaired debtors/guarantors (Article 20(11))			
Q13. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
To the best of the originator's or original lender's knowledge (paragraph 44)	A number of respondents argued that it is unduly burdensome to assume that information which is publicly available should be considered notified to the originator, which would require that the institutions should note all the publicly available information.	The EBA notes that it was not the original intention of the guidance to require that the originator check all the publicly available information. On the contrary, the intention of the guidance was to clarify that the publicly available information should be considered only to the extent that institutions already collect and consider that information as part of their origination, servicing and risk management processes. The guidance has been amended to clarify this further.	Paragraph 44 has been amended.
Credit registry (paragraphs 47-48)	Some respondents argued that institutions should check credit registry information about the obligors only at the time of origination of the assets, and not at the time of origination of the securitisation. It was argued that it is not currently	The comments with respect to the timing of the checking of the entries on the credit registries have been taken on board. The amended guidance requires checking the entries on the credit registry at the time of origination of	Paragraphs 47 -48 have been amended.

	common practice to check credit registry entries for obligors after the loan has been originated, and the requirement would cause an excessive burden on institutions. In addition, it was noted that Regulation (EU) 2017/2402 uses a different wording from the 'time of selection' in the opening passage of Article 20(11), which would indicate the intention to use a different timing from the time of securitisation. A number of respondents requested that the guidelines further explain how to determine whether an entry in a credit registry indicates an 'adverse credit history'. Some respondents pointed out that in some jurisdictions that do not have public credit registries, the registries contain both negative and positive information about the clients, which do not necessarily flag the borrowers with a negative credit status.	the exposures, which seems consistent with the intention and wording of Regulation (EU) 2017/2402. The guidance also aims to define further the term 'adverse credit status'. The intention of the amended guidance is to only capture those borrowers on the credit registries that are credit impaired, and not to unintentionally disqualify a significant number of borrowers, given that different practices exist between EU jurisdictions with respect to entry requirements to such credit registries, and that credit registries in some jurisdictions may contain both positive and negative information about the clients. The guidance should therefore enable the originators to discard minor occurrences or omissions by the obligor which have resulted in an entry in a credit registry but can be reasonably ignored for the purposes of a credit risk assessment.	
Significantly higher risk of contractually agreed payments not being made for comparable exposures (paragraphs 49-50)	A number of respondents raised concerns that the term 'significantly higher risk of contractually agreed payments not being made for comparable exposures' remained underdefined in the guidance. In particular, they raised concerns about the operational burden and uncertainty surrounding the proposed test. They also noted that applying a 'relative' test (i.e. where assets are compared with the 'average' credit riskiness of the pool or seller's assets) would lead to assets being unnecessarily ineligible. It was also perceived that the guidance is in disagreement with the intent of the article, which is to exclude loans that are credit impaired but not necessarily individually more risky than average loans. The respondents sought more objective criteria to define the term and proposed a variety of suggestions for the definition.	With the aim of providing further clarity on the requirement, the guidance has been structured in a clearer way, and aligned with the requirement on the prevention of the adverse selection of assets in the Delegated Regulation specifying in greater detail the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402 (the timing has also been aligned with the abovementioned Delegated Regulation on risk retention, which refers to the time of selection of exposures and not to the origination of securitisation). To further facilitate the interpretation of the requirement, a set of examples has been given of how the requirement could be met.	Paragraphs 49 -50 have been amended.

Q14. Do you agree with the interpretation of the criterion with respect to exposures to a credit-impaired debtor or guarantor?			
Debtor or guarantor (paragraphs 42-43)	A number of respondents raised concerns about the proposal that neither the debtor nor the guarantor be credit impaired, arguing that the requirement is excessive and illogical, and makes the addition of the guarantor in the legislation irrelevant.	The comment has been taken on board. The guidance has been amended to acknowledge the role of the guarantor as a risk bearer. It is also worth noting that not all loans with guarantors indicate credit-impairedness of the original obligor. The amended guidance clarifies that the exposures are allowed in the STS securitisation as long as there is recourse for the full securitised exposure amount to at least one non-credit-impaired party.	Paragraph 43 has been amended.
Q15. Do you agree with the interpretation of the requirement with respect to the exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process?			
Exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process (paragraph 46)	The majority of respondents agreed with the proposed interpretation of the criterion with respect to the exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process. Some respondents raised concerns that, by considering all exposures of the respective debtor or guarantor, the proposed guidance would be biased against remediated customers.	Given the support by the respondents, no substantial change has been made to the guidance. The wording has been amended slightly to clarify better that, where an obligor has restructured exposures, they are not considered credit impaired under Article 20(11)(a) provided that the restructured debt meets conditions (i) and (ii) of Article 20(11). This exception applies both to exposures to be included in the securitised portfolio and to other exposures of the obligor.	Paragraph 46 has been amended slightly.
At least one payment made (Article 20(12))			
Q16. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Exemptions from requirement to have made at least one payment at the time of transfer of the exposures	In general, respondents were supportive and agreed with the proposed guidance on this requirement. Some respondents commented that the exemption in Article 20(12) for revolving securitisations backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits, should be reiterated in the guidelines in order to avoid confusion.	The existence of an exemption for certain types of revolving securitisations is clear in the Level 1 criteria. The EBA does not see a benefit in repeating this criteria in the STS guidelines. The criterion in Article 20(12) is clear that at the time of transfer to the SSPE exposures must have made at least one payment, except in the specific cases described. Where 'ramp up' or warehousing structures are used, they must comply with	No change.

	One respondent commented that transactions with a 'ramp up' phase or that utilise a warehousing structure should be exempt from the requirement in Article 20(12) to have made at least one payment at the time of transfer of the exposures.	the STS requirements unless they are otherwise exempt under Article 20(12).	
No predominant dependence on the sale of assets (Article 20(13))			
Q17. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Q18. Do you agree with the interpretation of the predominant dependence with reference to 30% of total initial exposure value of securitisation positions? Should different percentage be set dependent on different asset category securitised?			
30% threshold for residual value (paragraph 53a)	The majority of respondents raised strong concerns against the 30% threshold. They argued that the 30% requirement is unduly restrictive and would rule out many existing/standard forms of auto and lease asset-backed securities (ABSs). It was also argued that 30% is not in line with the original intentions of the legislators, or with the general understanding of the term 'predominantly', and the market practice.	The comments have been taken on board. The percentage has been raised to 50%, which seems consistent with the intent of the legislators and the general understanding of the term 'predominant'. However, it is also noted that in a significant number of the auto ABSs the residual values are fully backed by repurchase obligations by the originator, the manufacturer or the dealer, and therefore the requirements in paragraph 53 would not apply to a number of these transactions.	Paragraph 53a has been amended.
Concentration of dates (paragraph 55b)	Some respondents raised concerns that the requirement needed further clarification regarding what is a 'material' concentration. It was also noted that this requirement could be difficult to satisfy, for example during a replenishment period, and that a few peaks in terms of sale of assets should be allowed (e.g. as a result of targeted commercial campaigns for selling new cars), as typically there would be additional protection in the transaction for this.	One of the main objectives of this requirement is to reduce the dependence of the repayment of holders of the securitisation positions on the sale of assets securing the underlying exposures. The dependence is increased when such exposures mature within a tight timeframe, as the maturity period can coincide with an economic downturn or adverse market conditions. This outweighs the arguments for the deletion of the requirement.	No change.
Granularity requirement (paragraph 53c)	Several respondents commented that the 500 exposure requirement was too high a threshold for a 'granular' portfolio and could have negative consequences for some types of portfolios, such as equipment leases and car floorplan deals).	While the guidance as such has been kept, it has been amended to ensure a concentration limit for exposures to a single obligor, to ensure a minimum granularity of the pool. This requirement is considered consistent with the	Paragraph 53c has been amended.

		Level 1 requirement; the main objective of the requirement in Article 20(13) is to decrease the dependence of the repayment of holders of the securitisation positions on the sale of assets securing the underlying exposures. A concentration limit for exposures to a single obligor is one of the conditions to interpret, enforce and help achieve this requirement.	
Interest-only mortgages/CMBS	Some respondents asked how interest-only mortgages were affected by this guidance, and how the treatment of interest-only mortgages and CMBS should differ, given that they are both subject to similar refinancing risk (i.e. similar bullet principal repayment profiles).	The background and rationale clarifies that no types of exposures should be excluded ex ante from compliance with this criterion as long as they meet the requirements specified in Regulation (EU) 2017/2402 and in the guidelines. However, it is expected that interest-only mortgages would normally meet the criteria, while CMBS transactions would not.	Further clarification to be provided in the background and rationale section.
Reference to CRR definition of eligible protection provider (paragraph 55)	Significant concerns have been raised by a number of respondents about the requirement for a third party who is providing a guarantee/repurchase obligation to meet the definition of an eligible provider of unfunded credit protection in the CRR. The following arguments have been made: (i) a number of the third parties would not be eligible under the CRR framework and credit risk mitigation requirements, in particular with the rating requirement; (ii) the requirement would have severe consequences on auto- and equipment-leasing receivables, as, for example, in auto transactions the guarantee/repurchase obligation is provided by the seller's parent company, its majority shareholder or some other affiliate; (iii) the requirement would cause practical issues with losing STS if ratings are downgraded.	The EBA acknowledges the valid concerns raised by the stakeholders. The reference to the CRR definition of eligible protection provided has been deleted. However, additional guidance has been introduced to ensure that the third party has a capacity to effectuate the guarantee/repurchase obligation.	Paragraph 55 has been amended.
Calculation of the value of assets (paragraph 53a)	Some respondents proposed that the numerator should be based on the total value subject to refinancing risk at transfer (i.e. the extent of the assumed cash flows which are dependent on the sale of assets), to better reflect the extent	The wording of the guidance has been amended to clarify that the calculation relies on the total contractually agreed outstanding principal balance at contract maturity	Paragraph 53a has been amended.

	of the reliance on the sale of assets upon sale proceeds. They argued that basing the calculation on the value of assets at the time of transfer is not appropriate given that the value can change. One respondent proposed that the denominator consider only securitisation positions held by investors.	of the underlying exposures that depend on the sale of the assets. The EBA disagrees with the proposal that the calculation should consider only retained securitisation positions. All notes in an STS securitisation receive preferential treatment, so all notes should be considered for the purposes of the STS criteria.	
Voluntary termination	One respondent asked that the guidelines confirm that exposures which may be subject to voluntary termination are not considered subject to refinancing risk that could arise out of a consumer exercising their termination rights.	It is understood that during a stress in market conditions it is more likely that individuals exercise their voluntary termination rights (as the value of their car or equipment has fallen), so they act in a similar way to other types of exposures where the principal depends on the sale of assets that are considered under Article 20(13). Therefore, exposures that are subject to voluntary termination should be considered under the scope of the requirement.	No change.
Timing of the requirement	One respondent requested clarification regarding whether the requirement applied at the initiation of the transaction/revolving period or on an ongoing basis.	The guidance has been amended to clarify that paragraph 53(a)-(c) is applicable (i) at the transaction inception, in cases of amortising securitisation, or (ii) during the revolving period for only replenishing transactions.	Paragraph 53 has been amended.
REQUIREMENTS RELATED TO STANDARDISATION			
Appropriate mitigation of interest-rate and currency risks (Article 21(2))			
Q19. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
No interest-rate and currency risks	Some respondents proposed clarifying if, in case the securitisation does not create interest-rate or currency risks, such as where the assets and liabilities of the securitisation are fully matched in terms of the interest rate and the currency, there need not be any mitigation of the interest-rate or currency risks.	It is understood that this reading is consistent with the Level 1 requirement.	No change.

Derivatives (paragraph 57)	A number of comments were received from some respondents on the paragraph with respect to derivatives, including disagreement with the limited list of counterparties, and a request to clarify that the measure of creditworthiness of the derivative counterparty does not need to be tied to a rating. In addition, several respondents found excessively burdensome the requirement to demonstrate the appropriateness of the mitigation of interest-rate and currency risk through derivatives in a sensitivity analysis illustrating the effectiveness of the hedge. They also requested more clarity on the scenarios to be used. It was also noted that the requirement would discourage the use of derivatives and make due diligence by investors more complex.	The requirements with respect to the derivatives have been adjusted to ensure a balanced approach to interpretation of the term 'appropriate mitigation'. The list of counterparties has been deleted and the focus is now on a general requirement for a sufficient creditworthiness of the counterparty, without imposing unnecessary limitations on the types of counterparties. The requirement for the sensitivity analysis has been deleted, also taking into account that no similar requirement exists for the non-derivative instruments.	Paragraph 57 has been amended.
Non-derivative instruments (paragraph 58)	A number of respondents argued that the requirement that non-derivative forms of mitigation should meet at least one of the criteria explained in points (a) and (b) is overly restrictive. It was requested that such non-derivative instruments should be able to cover multiple risks as long as the proportion used for hedging and the proportion used for other purposes is specified up front.	The guidance has been simplified and it was clarified that non-derivative forms of mitigation should be accepted if they are deemed to be sufficiently robust to cover the relevant risks. The guidance should allow for the non-derivative instruments to cover multiple risks as long as an explanation is provided of how the measures hedge the interest-rate risks and currency risks on one hand and other risks on the other hand.	Paragraph 58 has been amended.
Continuous disclosure (paragraph 59)	A number of respondents raised concerns about the requirement to disclose the measures, and the appropriateness of the mitigation of the interest-rate and currency risks, on a continuous basis, noting that this goes beyond the Level 1 requirement.	While the requirement for the disclosure has been kept, the requirement has been amended to no longer require such disclosure on a continuous basis. The guidance also no longer specifies where such disclosure should take place. This is consistent with the fact that specification of where the information should be disclosed to comply with the STS criteria is considered to be outside the scope of the guidelines.	Paragraph 59 has been amended.

Referenced interest payments (Article 21(3))			
Q20. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Referenced rates (paragraph 62)	Some respondents proposed that the standard variable rates that are widely used in the residential mortgage market should be allowed. Other respondents noted that successors of Libor and Euribor should also be allowed.	It is acknowledged that standard variable rates are commonly used and should be allowed, as long as sufficient data are provided to investors to allow them to assess their relation to other market rates. Taking into account that LIBOR and EURIBOR will soon be replaced, a reference to future recognised benchmarks has been included in the guidance.	Paragraph 62 has been amended.
Requirements in case of enforcement or delivery of an acceleration notice (Article 21(4))			
Q21. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Amount trapped in the SSPE in the best interests of investors (paragraph 67)	A few respondents proposed to remove the reference to 'in the next payment period' to allow the use of the reserve fund for as long as necessary in the best interests of investors. One respondent proposed clarifying that the money does not need to be held in a segregated account, but can be retained in the SSPE operating account and any balance included in available funds for the next period.	The reference to 'in the next payment period' has been removed to allow the use of a reserve fund for a longer period as long as the use of the reserve fund is exclusively limited to the purposes set out in Article 21(4)(a) or to the orderly repayment to the investors. The EBA does not agree with the interpretation that the money does not need to be held in a segregated account. The Level 1 text is clear in referring to a trapped amount.	Paragraph 67 has been amended.
Repayment (paragraph 68)	A number of respondents disagreed with the proposal that the sequential repayment should apply within sub-classes. It was argued that it is very common that contractual terms include non-sequential arrangements for sub-classes, with different variations between going-concern and post-enforcement/early amortisation scenarios. A number of respondents also noted that the introduction of a mandatory sequential redemption in Article 21(4) has led to some uncertainty about the requirements of such sequential redemption, as in practice transactions often provide for	It is acknowledged that the requirement with respect to sub-classes may pose complications, also taking into account differing terminologies between the transactions applied with respect to sub-classes. The reference to sub-classes has therefore been deleted. A new clarification has been included in the guidance that the requirements in Article 21(4)(b) cover only the repayment of the principal, without covering the payment of interests. In addition, it is clear that Article 21(4) covers only a phase of the transaction when	Paragraph 68 has been amended.

	different waterfalls for going-concern scenarios and enforcement scenarios.	an enforcement or an acceleration notice has been delivered and therefore does not cover going-concern phases of the transaction.	
Non-sequential priority of payments (Article 21(5))			
Q22. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Performance-related triggers (paragraph 71)	A number of respondents proposed clarifying that the list of performance-related triggers in the guidelines is illustrative and that other type of triggers might be used as well.	The wording of the guidance (in particular the use of the term 'include') ensures that the list of examples is non-exhaustive.	Paragraph 71 has been amended.
Early amortisation provisions/triggers for termination of the revolving period (Article 21(6))			
Q23. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Insolvency-related event with regard to the servicer (paragraph 72)	A number of respondents did not agree that the occurrence of an insolvency event with respect to the servicer should necessarily and automatically trigger the replacement of the servicer. It was noted that this requirement goes beyond what is required by Regulation (EU) 2017/2402. It was also noted that, as the transaction documentation always provides for the right to (i) notify debtors and (ii) replace the servicer immediately, allowing to achieve the commitment of the insolvency administrator, there is no need for a mandatory and immediate replacement.	The comment has been taken on board. The guidance has been amended taking into account that an insolvency-related event with respect to the servicer should not automatically lead to the replacement of the servicer, but it should enable the replacement of the servicer, consistently with the requirements of Regulation (EU) 2017/2402.	Paragraph 72 has been amended.
Early amortisation provisions/triggers for the termination of the revolving period	Some respondents proposed that the early amortisation provisions/triggers for the termination of the revolving period should be further specified.	Level 1 is considered clear and no further guidance is considered necessary.	No change.
Transaction documentation (Article 21(7))			
Q24. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			

Transaction documentation (paragraph 73)	A number of respondents proposed deleting the paragraph, as it was deemed confusing and already covered in transparency requirements under Article 7.	The original intention was to state that the objective of the requirement is to provide transparency and therefore is met if there are no other undisclosed documents setting out obligations relating to the functioning of the securitisation. However, taking into account the respondents' comments, it does not seem to provide important additional value to the Level 1 requirement and has therefore been deleted.	Paragraph 73 has been deleted.
Expertise of the servicer (Article 21(8))			
Q25. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Adequacy of policy, procedures and risk management controls for supervised entities (paragraph 78(a))	A number of respondents raised concerns about the requirements for EU-supervised entities, finding them redundant or burdensome. It was argued that, for supervised entities, it is not necessarily the case that the entities will have been assessed specifically in respect of their servicing, and that the competent authority will be willing to provide written confirmations.	It is noted that it might not be appropriate or feasible for the competent authorities to provide confirmation of the existence of well-documented and adequate policies. The guidance has been amended so that, for the regulated entities, the regulatory authorisation should suffice for the purpose of this requirement, as long as such authorisations are deemed relevant with respect to the servicing.	Paragraph 78(a) has been amended.
Adequacy of policy, procedures and risk management controls for non-supervised entities (paragraph 78(b))	A number of respondents noted that the existing guidance is too vague and asked for further clarification on the nature of the reviewer and the scope of the review.	The comments have been noted. The guidance now provides further specification with respect to the third party which should substantiate the proof of the existence of well-documented and adequate policies and risk management controls, and provides examples of third parties, which could be credit rating agencies or external auditors.	Paragraph 78(b) has been amended.

Q26. Do you agree with this balanced approach to the determination of the expertise of the servicer? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?			
Criteria for determining the experience of the servicer (paragraphs 74-76)	Several respondents supported the approach that the requirements for the determination of the expertise of the servicer should be aligned with those of the originator. Additional comments (from a limited number of respondents) included the following: (i) the requirements should be applicable only to servicers without experience or those not subject to prudential regulation requirements: (ii) five years' length of experience should be the minimum; (iii) the five years requirement could impact negatively on the diversification of the knowledge of the team; (iv) the terms 'management body' and 'senior staff' should be further defined.	Given the support, no major changes have been introduced in the guidance apart from aligning the guidance with the requirements applicable to originators.	Paragraphs 74 -76 have been slightly amended.
Back-up servicing function (paragraph 75(b)(iii))	One respondent did not agree with the requirement for the back-up servicing function.	It should be clarified that the back-up servicing function is required only in cases where the servicer is a newly established entity, to ensure that there is a minimum level of experience of newly constituted servicing entities. The back-up service function is not required for well-established servicers. In addition, the non-existence of a back-up servicer should not restrict the servicer from being assessed for the required expertise against the general principles mentioned in paragraph 74.	No change.
Remedies and actions related to delinquency and default of debtor (Article 21(9))			
Q27. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Clear and consistent terms (paragraph 70)	A few respondents noted that additional clarification would be welcome on the following points: (i) whether a generic description of the origination/servicing process is deemed sufficient; (ii) that the templates and processes may change over time, without the changes being necessarily material. It	The guidance is clear in specifying that 'clear' does not focus on the level of detail. In addition, the Level 1 text specifies that 'any change in the priorities of payments which will materially adversely affect the repayment shall be reported to investors', and therefore focuses on only	Minor amendment to paragraph 79.

	should be clarified that no update is necessary unless the change is significant.	material changes. No additional clarification is considered necessary.	
Resolution of conflicts between different classes of investors (Article 21(10))			
Q28. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Clear provisions facilitating the timely resolution of conflicts between different classes of investors (paragraph 80)	A few respondents suggested amending the guidance so that the required documentation provides for a maximum time for the organisation of a meeting and not the maximum time for the resolution of the conflict, as the latter is difficult to guarantee in advance. A few respondents highlighted that in a number of EU (civil law) jurisdictions there are mandatory legal provisions that set out how conflicts between investors have to be resolved. The guidelines should clarify that, where such provisions apply, it is sufficient for the documentation to refer to them.	The comments have been noted. The guidance has been amended so that it solely refers to the documentation, providing for a maximum time for the organisation of a meeting (and not the maximum time for the resolution of the conflict). In the same vein, the amended guidance also clarifies that, where legal provisions apply on how to resolve conflicts between investors, a reference to them should be deemed sufficient for the purpose of Article 21(10).	Paragraph 80 has been amended.
REQUIREMENTS RELATED TO TRANSPARENCY			
Data on historical default and loss performance (Article 22(1))			
Q29. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Data (paragraph 81)	A few respondents suggested clarifying that, when static and dynamic data are not both available, only one method should be required, depending on data availability (for instance, for securitisations of short-term receivables a static presentation is not possible). Other respondents suggested that, when an originator cannot provide at least five years of historical default data, the securitisation should not be considered STS. Moreover, they did not favour the use of external data for the purpose of STS.	Regulation (EU) 2017/2402 clearly says that the originator and the sponsor shall make available data on static 'and' dynamic historical default and loss performance.	No change.
Substantially similar exposures (paragraph 82)	A few respondents considered the cross-reference to the Delegated Regulation specifying in greater detail the risk retention requirement in accordance with Article 6(7) of	The inconsistency has been noted. To ensure the workability of the guidance, it has been clarified that the test is used only to identify which exposures are	Paragraph 82 has been amended.

	Regulation (EU) 2017/2402 too restrictive in the context of this requirement, given that it uses as a basis of comparison only assets that are held on the balance sheet of the originator and are not transferred to the SSPE, while the provision of Article 22(1) does not limit the substantially similar exposures to those held by the originator and not securitised. It was stated that the EBA guidance, which permits the use of external data, suggests this conclusion.	substantially similar, and that the historical data may relate to exposures regardless of whether they are held by the originator, securitised or indeed purchased from third parties.	
Verification of a sample of the underlying exposures (Article 22(2))			
Sample of the underlying exposures subject to external verification (paragraph 83)	A few respondents noted that it should be clarified that the sample should be taken from the provisional portfolio, so that there is no confusion that the pool audit is not performed on the actual securitised pool. A few respondents suggested clarifying how the requirement should be applied to securitisations with repeat issuances.	The comment has been taken on board. The guidance clarifies that the underlying exposures that should be subject to the verification prior to the issuance should be a representative sample of the provisional portfolio from which the securitised pool is extracted and which is in a reasonably final form before issuance. It has also been clarified that, for securitisations which issue multiple series' of securities, including master trusts, a new verification should be completed prior to the issuance in cases where one year has passed since the previous verification.	Paragraph 83 has been amended.
Scope of verification (paragraph 85)	A number of respondents raised concerns about the scope of the verification and considered the verification of all the eligibility criteria and all the data disclosed required by paragraph 85 as disproportionate compared with existing market practice. The respondents also highlighted that their understanding of Article 22(2) is that the sample verifications aim to test data quality only (i.e. to check the accuracy of the information in the loan database/data tape) and not compliance with eligibility criteria.	It is the understanding of the EBA that it is not inconsistent with market practice to execute the verification of the eligibility criteria, as part of the external verification. The guidance is also deemed fully consistent with Regulation (EU) 2017/2402, which states that the verification should 'include the verification that the data are accurate', which does not limit the verification to the assessment of the accuracy of the data.	No change.
Confirmation of the verification (paragraph 86)	A few respondents highlighted that requiring the offering document to include a confirmation of the external verification conducted by an auditor would entail that the	The guidance has been clarified to avoid misunderstanding that the confirmation needs to include confidential criteria that have been applied for	Paragraph 86 has been amended.

	originator disclose the confidential agreed-upon procedures of the auditor.	determining the representative sample. The confirmation is, however, required to disclose the fact that this verification has occurred and that no significant adverse findings have been found.	
Parties eligible to execute the external verification (paragraph 84)	One respondent proposed clarifying further which parties should be eligible to execute the external verification.	The guidance has been extended to clarify that the party executing the verification should be an entity other than the following: a credit rating agency, a third party verifying the STS compliance, or an entity affiliated to the originator.	Paragraph 84 has been amended.
Liability cash flow model (Article 22(3))			
Q31. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Precise representation of the contractual relationship (paragraph 87)	A few respondents suggested that the guidelines clarify that the term 'precisely' does not preclude cash flow models that allow for permutations – also through algorithms – regarding possible prepayment rates, defaults, interest and other factors that affect cash flows.	The guidance has been extended to clarify that precise representation of the contractual relationship may include algorithms that permit investors to model a range of different scenarios which will affect cash flows, such as different prepayment or default rates.	Paragraph 87 has been amended.
Third parties (paragraph 88)	A few respondents proposed amending the paragraph to ensure that the responsibility for the cash flow model stays with the arranger (or the other service provider) that developed the model, especially when the circumstance is communicated to investors.	The responsibility should remain with the originator/sponsor even when the development of the liability cash flow model is outsourced to a third party (arranger). This is considered consistent with the Level 1 requirement in order to secure a stronger alignment of interests between the originator/sponsor of the securitisation and the investors. The guidance has been amended slightly to clarify that the originator or sponsor should remain responsible for making the information available to potential investors.	Paragraph 88 has been amended.
Environmental performance of assets (Article 22(4))			
Q32. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			

Available information (paragraph 89)	The majority of respondents agreed with the interpretation provided in the guidelines, in particular with the exemption from the requirement to disclose the information when it is not available. A few respondents asked that some elements of the requirement be clarified, in particular, those related to (i) the information to be reported – whether a stratification of the pool by reference to, for example, energy performance rating is sufficient – and (ii) whether it is appropriate to disclose partial information (e.g. even when it is only available for some assets of the pool). Respondents also requested how this should be disclosed: either to the extent available (e.g. it might not be available for more seasoned exposures), or only if it is available for all exposures.	Additional minor clarification has been included in the guidelines that, when the information is not available for any of the underlying exposures, the requirement does not apply. Where information is available only for a proportion of the underlying exposures, the requirement shall apply only in respect of the proportion of the underlying exposures for which information is available.	Paragraph 89 has been amended.
Q33. Please provide further details and suggestions what type of information is available for residential loans and auto loans and leases, that could be provided under this requirement.			
Available information (paragraph 89)	Only one respondent answered this question, highlighting that several initiatives are being developed in Europe to increase the information on the environmental performance of buildings financed by mortgages.	For the purposes of Article 22(4), examples of 'energy performance certificates' may include, for example, an 'energy performance certificate' under Directive 2010/31 or the standardised mandatory label for energy-related products as described in Article 1(19) of Regulation 2017/1369.	No change.
Compliance with transparency requirements (Article 22(5))			
Q34. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Scope (paragraph 90)	A few respondents highlighted that the meaning of paragraph 90 is not clear. In particular it is not clear what the requirement and the guidance adds to Article 7. One respondent asked for clarification about the objective of Article 22(5): one possible reading is that the article provides for the identity of the parties responsible, in the case of an STS securitisation, for compliance with the Article 7 disclosures. According to this interpretation, what is required	The comments have been noted. The guidance has been deleted to avoid unnecessary confusion relating to its interpretation. It is understood that the objective of the requirement is to (i) specify the timing when the information required by points (a) to (c) of the first subparagraph of Article 7(1) and the final documentation should be made available; and (ii) specify the parties responsible for ensuring compliance with the	Paragraph 90 has been deleted.

	to be verified, as part of the STS process, is the identity of the person that assumes responsibility for the Article 7 disclosures. Another reading is that Article 22(5) imports into the STS criteria all the Article 7 disclosure requirements. According to this interpretation (importation of Article 7 requirements into STS), the issuer would need to certify the Article 7 disclosures and a third party verifying the STS compliance would need to verify all such disclosures. The interpretations differ in terms of the scope of work and liability.	transparency requirements as specified in Article 7, these being by the parties jointly responsible for STS notification in accordance with Article 27(1) of that regulation, i.e. the originator and the sponsor. With respect to the enquiry by the respondent, it is understood that the second reading (as mentioned in the comment from the respondent) is consistent with the Level 1 text.
Non-specified Articles of Regulation (EU) 2017/2402		
Q35. Do you agree that no other requirements are necessary to be specified further? If not, please provide reference to the relevant provisions of the STS Regulation and their aspects that require such further specification.		
	Proposed comments have been included under the questions above.	

EBA/GL/2018/08

12 December 2018

Final Report

on Guidelines

on the STS criteria for ABCP securitisation

Contents

1. Executive summary

The guidelines have been developed in accordance with Article 23(3) of Regulation (EU) 2017/2402, which requires the European Banking Authority (EBA) to provide a harmonised interpretation and application of the transaction-level and programme-level criteria applicable to asset-backed commercial paper (ABCP) securitisation, as set out in Articles 24 and 26 of that regulation.

The main objective of the guidelines is to provide a single point of consistent interpretation of the transaction-level and programme-level criteria for ABCP securitisation and ensure a common understanding of them by the originators, original lenders, sponsors, securitisation special purpose entities (SSPEs), investors, competent authorities and third parties verifying simple, transparent and standardised (STS) compliance in accordance with Article 28 of Regulation (EU) 2017/2402, throughout the Union.

The guidelines will be applied on a cross-sectoral basis throughout the Union with the aim of facilitating the adoption of the criteria, which is one of the prerequisites for the application of a more risk-sensitive regulatory treatment of exposures to securitisations compliant with such criteria, under the new EU securitisation framework.

The guidelines should thus play an important role in the new EU securitisation framework, which will become applicable from January 2019 and aim to build and revive a sound and safe securitisation market in the EU.

2. Background and rationale

1. In January 2018, the new EU securitisation framework, which comprises Regulation (EU) 2017/2402[1] (the Securitisation Regulation) and of the Regulation (EU) 2017/2401[2] containing targeted amendments to the Capital Requirements Regulation (CRR) with regards to capital treatment of securitisations held by credit institutions and investment firms, entered into force with the aim of building and reviving a sound and safe securitisation market in the EU. Regulation (EU) 2017/2402 establishes a set of criteria for identifying simple, transparent and standardised (STS) securitisation, while the amended CRR sets out a framework for a more risk-sensitive regulatory treatment of exposures to securitisations complying with such criteria. In June 2018, a Delegated Regulation entered into force which amends capital treatment of securitisations held by insurance and reinsurance undertakings.[3]

2. Regulation (EU) 2017/2402 establishes two sets of criteria for such STS securitisation, one for term (i.e. non-ABCP) securitisation, and one for short-term (i.e. ABCP) securitisation. The criteria are largely similar, with a few differences in the criteria for ABCPs, adapted to reflect the specificities of the short term securitisation: while the criteria for non- ABCP securitisation focus on the distinction between simplicity, transparency and standardisation, those for ABCP securitisation focus on the distinction between transaction, sponsor- and programme-level criteria. In addition, the ABCP criteria include some additional criteria that are not found in the criteria applicable to non-ABCP securitisation, and vice versa.

3. Regulation (EU) 2017/2402 assigns the EBA the mandate to develop, in close cooperation with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), two sets of guidelines and recommendations, by 18 October 2018: (i) guidelines and recommendations interpreting the criteria on simplicity, standardisation and transparency applicable to non- ABCP securitisation; and (ii) guidelines and recommendations interpreting the transaction-level and programme-level criteria applicable to ABCP securitisation (sponsor-level criteria are outside the scope of the EBA's mandate).

4. Concretely, Article 19(2) applicable to non-ABCP securitisation sets out that *'by 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised*

[1] Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012:: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2402&from=EN

[2] Regulation (EU) 2017/2401 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2401&from=EN

[3] Commission Delegated Regulation (EU) 2018/1221 amending Delegated Regulation (EU) 2015/35 as regards the calculation of regulatory capital requirements for securitisations and STS securitisations held by insurance and reinsurance undertakings: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1221

interpretation and application of the requirements set out in Articles 20 [Requirements related to simplicity], 21 [Requirements related to standardisation] and 22 [Requirements related to transparency]'.

5. Article 23(3) applicable to ABCP securitisation establishes a similar mandate for ABCP securitisation, according to which *'by 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised interpretation and application of the requirements set out in Articles 24 [Transaction-level requirements] and 26 [Programme-level requirements].*'

6. Recital 20 provides additional guidance for both non-ABCP and ABCP securitisation and specifies that *'implementation of the STS criteria throughout the EU should not lead to divergent approaches. Divergent approaches would create potential barriers for cross-border investors by obliging them to familiarise themselves with the details of the Member State frameworks*, thereby *undermining investor confidence in the STS criteria. The EBA should therefore develop guidelines to ensure a common and consistent understanding of the STS requirements throughout the Union, in order to address potential interpretation issues. Such a single source of interpretation would facilitate the adoption of the STS criteria by originators, sponsors and investors. ESMA should also play an active role in addressing potential interpretation issues.*'

7. Lastly, recital 37 specifies that *'The requirements for using the designation 'simple, transparent and standardised' (STS) are new and will be further specified by EBA guidelines and supervisory practice over time'.*

8. The present guidelines address the mandate under Article 23(3) of Regulation (EU) 2017/2402 to interpret transaction-level and programme-level criteria applicable to ABCP securitisation. The mandate under Article 19(2) to interpret the criteria with respect to the simplicity, transparency and standardisation of non-ABCP securitisation is addressed in separate guidelines.

9. In accordance with the mandate, the EBA has developed an interpretation of all transaction-level and programme-level criteria applicable to ABCP securitisation, while focusing on clarifying the main areas of potential unclarity and ambiguity in each criterion.

10. To the extent possible and where appropriate, the existing recommendations in the 'EBA report on the qualifying securitisation'[4] and 'Basel III revisions to the securitisation framework'[5] have been taken into account, when developing the interpretation.

11. The main objective of the guidelines is to ensure consistent interpretation and application of the STS criteria by the originators, sponsors, SSPEs and investors involved in the STS securitisation,

[4] EBA report on qualifying securitisation (July 2015): http://www.eba.europa.eu/documents/10180/950548/EBA+report+on+qualifying+securitisation.pdf

[5] Basel III Revisions to the securitisation framework (July 2016): http://www.bis.org/bcbs/publ/d374.pdf

the competent authorities designated to supervise the compliance of the entities with the criteria, and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402**.** The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is a prerequisite for the application of preferential risk weights under the amended capital framework, and by severe the sanctions imposed by Regulation (EU) 2017/2402 for negligence or intentional infringement of the STS criteria**.** In addition, given the inherent cross-sectoral nature of securitisation the guidelines will be applied on a cross-sectoral basis i.e. by different types of entities that will act as originators, original lenders, investors, sponsors, SSPEs and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402Regulation (EU) 2017/2402 with respect to the STS securitisation, as well as by a large number of competent authorities that will be designated to supervise the entities involved.

12. The guidelines are interlinked with the ESMA regulatory technical standards (RTS) and implementing technical standards (ITS) on STS notifications[6]. While these EBA guidelines are focused on providing guidance on the content of the STS criteria, the ESMA RTS and ITS are focused on specifying the format for notification of compliance with the STS criteria. It is expected that the guidance in the EBA guidelines for each single STS criterion should be appropriately reflected in the disclosures on the compliance with the STS criteria, in the STS notification, and/or in the transaction documentation, as appropriate.

13. The proposed guidelines aim to cover all the STS criteria in a comprehensive manner. Recommendations may be developed, if necessary, at a later stage to address particular aspects arising from the practical application of Regulation (EU) 2017/2402Regulation (EU) 2017/2402 and the EBA guidelines. This approach is also consistent with the legal nature of these two legal instruments (while in terms of their legal power they are both non-legally binding instruments subject to the comply or explain mechanism, guidelines are instruments of general application 'erga omnes' (towards all), while recommendations are instruments of specific application e.g. applying to a particular set of addressees or for a limited period of time only.

14. With respect to the structure of these guidelines, while the main interpretation of the STS criteria is provided in section 3, 'Guidelines on the STS criteria for ABCP securitisation', this section 2 'Background and rationale', includes additional information on the objectives and rationale of each single criterion and the interpretation that these guidelines focus on.

15. Unless otherwise stated, in this section all references to individual articles refer to articles of Regulation (EU) 2017/2402.

[6] ESMA RTS andITS on STS notifications: https://www.esma.europa.eu/press-news/esma-news/esma-defines-standards-implementation-securitisation-regulation

2.1 Background and rationale for general clarifications

16. It is acknowledged that in the context of ABCP securitisations, the STS criteria are relevant only for funded exposures, at both transaction and programme level, for legal, practical and operational reasons inherent in ABCP securitisations, where it is customary to purchase from the seller all receivables owed by a given debtor to the SSPE, whether or not past due or otherwise ineligible (while excluding past due or otherwise ineligible receivables from the pool eligible for funding). General clarification has been included in the guidance that the transaction and programme level requirements that refer to the underlying exposures should be applied only to underlying exposures that are compliant with the eligibility criteria in Regulation (EU) 2017/2402 and are funded by commercial paper, liquidity facility or other means.

17. It is understood that, for the purposes of the transaction-level criteriaspecified in Article 24 of Regulation (EU) 2017/2402, where the information is required to be made available or disclosed to investors or potential investors, unless otherwise specifically provided, it should be understood as to be made available or disclosed to the investors or potential investors at ABCP transaction level and other parties directly exposed to the credit risk of an ABCP transaction. A general clarification has been included in the guidance to clarify this point. This interpretation should not refer to disclosure of the transaction documentation, which is covered in Article 7 of that Regulation and is therefore outside the scope of the guidelines.

18. For the purposes of programme-level criteria specified Article 26 of Regulation (EU) 2017/2402, all ABCPs issued by an ABCP programme should meet the requirements specified in Articles 25 and 26 of that Rgulation in order to be considered STS. Therefore, in order to be considered STS, an ABCP programme should not issue two different types of ABCPs, some being STS compliant and some not being STS compliant. A general clarification has been included in the guidance to clarify this.

2.2 Background and rationale for the transaction-level criteria

True sale, assignment or transfer with the same legal effect, representations and warranties (Article 24(1) - 24(6))

19. The criterion specified in Article 24(1) aims to ensure that the underlying exposures are beyond the reach of, and are effectively ring-fenced and segregated from, the seller, its creditors and its liquidators, including in the event of the seller's insolvency, enabling an effective recourse to the ultimate claims for the underlying exposures.

20. As stated in recital 16 of Regulation (EU) 2017/2402, in an ABCP transaction, securitisation can be achieved through, - inter alia -, a co-funding structure, where notes, rather than the underlying exposures themselves, are transferred to the purchasing entity. Such co-funding structures comply with the requirements concerning the transfer of legal title, provided that the underlying exposures are transferred to the acquiring SSPE by means of true sale, assignment or a form of transfer with the same legal effect and that the SSPE issuing the commercial paper acquires full legal title in the notes.

21. The criterion in Article 24(2) is designed to ensure the enforceability of the transfer of legal title in the event of the seller's insolvency. More specifically, if the underlying exposures sold to the SSPE could be reclaimed for the sole reason that their transfer was effected within a certain period before the seller's insolvency or if the SSPE could prevent the reclaim only by proving that it was unaware of the seller's insolvency at the time of transfer, such clauses would expose investors to a high risk that the underlying exposures would not effectively back their contractual claims. For this reason, Article 24(2) specifies that such clauses constitute severe clawback provisions, which may not be contained in STS ABCP transactions.

22. Whereas, pursuant to Article 24(2), contractual terms and conditions attached to the transfer of title that expose investors to a high risk that the securitised assets will be reclaimed in the event of the seller's insolvency should not be permissible in STS ABCP transactions, such prohibition should not include the statutory provisions granting the right to a liquidator or a court to invalidate the transfer of title with the aim of preventing or combating fraud, as referred to in Article 24(3).

23. Article 24(4) specifies that, where the transfer of title occurs not directly between the seller and the SSPE but through one or more intermediary steps involving further parties, the requirements relating to the true sale, assignment or other transfer with the same legal effect apply at each step.

24. The objective of the criterion in Article 24(5) is to minimise legal risks related to unperfected transfers in the context of an assignment of the underlying exposures, by specifying a minimum set of events subsequent to closing that should trigger the perfection of the transfer of the underlying exposures.

25. The objective of the criterion in Article 24(6), which requires the seller to provide the representations and warranties confirming to the seller's best knowledge that the transferred exposures are neither encumbered nor otherwise in a condition that could potentially adversely affect the enforceability of the transfer of title, is to ensure that the underlying exposures are beyond the reach not only of the seller, but equally of its creditors, and to allocate the commercial risk of the encumbrance of the underlying exposures to the seller.

26. To facilitate consistent interpretation of these criteria, the following aspects should be clarified:

    (a) how to substantiate the confidence of third parties with respect to compliance with Article 20(1): it is understood that this should be achieved by providing a legal opinion. While the guidance does not explicitly require the provision of a legal opinion in all cases, the guidance expects a legal opinion to be provided as a general rule, and omission to be an exception;

    (b) the triggers to effect the perfection of the transfer if assignments are perfected at a later stage than at the closing of the transaction.

Eligibility criteria for the underlying exposures, active portfolio management (Article 24(7))

27. The objective of this criterion in Article 24(7) is to ensure that the selection and transfer of the underlying exposures in the ABCP transaction is done in a manner which facilitates in a clear and consistent fashion the identification of which exposures are selected for/transferred into the ABCP transaction, and enable the investors to assess the credit risk of the asset pool prior to their investment decisions.

28. Consistently with this objective, the active portfolio management of the underlying exposures in the ABCP transaction should be prohibited, given that it adds a layer of complexity and increases the agency risk arising in the ABCP transaction by making the ABCP transaction's performance dependent on both the performance of the underlying exposures and the performance of the management of the transaction. The payments of STS ABCP transactions should depend exclusively on the performance of the underlying exposures.

29. Revolving periods and other structural mechanisms resulting in the inclusion of exposures into the ABCP transaction after the closing of the transaction may introduce the risk that exposures of lesser quality can be transferred into the pool. For this reason it should be ensured that any exposure transferred into the ABCP transaction after the closing meets the eligibility criteria, which are no less strict than those used to structure the initial pool of exposures of the ABCP transaction.

30. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

    (a) the purpose of the requirement on the portfolio management, and the provision of examples of techniques which should not be regarded as active portfolio management: this criterion should be considered without prejudice to the existing

requirements with respect to the similarity of the underwriting standards in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, which requires that all the underlying exposures in a securitisation be underwritten according to similar underwriting standards;

(b) interpretation of the term 'clear' eligibility criteria;

(c) clarification with respect to the eligibility criteria that need to be met with respect to the exposures transferred to the SSPE after the closing.

No resecuritisation at ABCP transaction level (Article 24(8))

31. The objective of this criterion is to prohibit that STS ABCP transactions may qualify as a resecuritisation. This is a lesson learnt from the financial crisis, when resecuritisations were structured into highly leveraged structures in which notes of lower credit quality could be re-packaged and credit enhanced, resulting in transactions whereby small changes in the credit performance of the underlying assets had severe impacts on the credit quality of the resecuritisation bonds. The modelling of the credit risk arising in these bonds proved very difficult, also due to high levels of correlations arising in the resulting structures.

32. To facilitate consistent interpretationconsistent interpretation of this criterion, a specific clarification should be provided for ABCP transactions where the tranching (always required for a securitisation according to Article 2(1)) within the ABCP transaction (which is always a securitisation according to Article 2(8)) is achieved by the purchase of a senior note, consistently with the examples of transactions provided in recital 16 of Regulation (EU) 2017/2402. It is understood that, in such a case, issuance of junior and senior notes together with the purchase of the single senior note by the purchasing entity of the ABCP programme constitutes the ABCP transaction within the ABCP programme.

No exposures in default and to credit-impaired debtors/guarantors (Article 24(9))

33. The objective of the criterion in Article 24(9) is to ensure that STS ABCP transactions are not characterised by underlying exposures whose credit risk has already been affected by certain negative events such as disputes with credit-impaired debtors or guarantors, debt- restructuring processes or default events as identified by the EU prudential regulation. Risk analysis and due diligence assessments by investors become more complex whenever the ABCP transaction includes exposures subject to certain ongoing negative credit risk developments. For the same reasons, STS ABCP transactions should not include underlying exposures to credit impaired debtors or guarantors that have an adverse credit history. In addition, significant risk of default normally rises as rating grades or other scores are assigned that indicate highly speculative credit quality and high likelihood of default, i.e. the possibility that the debtor or guarantor is not able to meet its obligations becomes a real possibility. Such exposures to credit-impaired debtors or guarantors should therefore also not be eligible for STS purposes.

34. To facilitate consistent interpretationconsistent interpretation of this criterion, the following aspects should be further clarified:

(a) interpretation of the term 'exposures in default': given the differences in interpretation of the term 'default', the interpretation of this criterion should refer to additional guidance on this term provided in the existing delegated regulations and guidelines developed by the EBA, while taking into account the limitation of the scope of application of that additional guidance to institutions.

(b) interpretation of the term 'exposures to a credit-impaired debtor or guarantor': the interpretation should also take into account the interpretation provided in Recital 26 of Regulation (EU) 2017/2402, according to which the circumstances specified in points (a) to (c) of Article 24(9) of that Regulation are understood as specific situations of credit-impairedness to which exposures in an STS ABCP transaction may not be exposed. Consequently, other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be outside the scope of this requirement. Moreover, taking into account the role of the guarantor as a risk bearer, it should be clarified that the requirement to exclude 'exposures to a credit-impaired debtor or guarantor' is not meant to exclude (i) exposures to a credit-impaired debtor when it has a guarantor that is not credit-impaired; or (ii) exposures to a non-credit-impaired debtor when there is a credit-impaired guarantor.

(c) interpretation of the term 'to the best knowledge of': the interpretation should follow the wording of recital 26 of Regulation (EU) 2017/2402, according to which an originator or original lender is not required to take all legally possible steps to determine the debtor's credit status but is only required to take those steps that the originator/original lender usually takes within its activities in terms of origination, servicing, risk management and use of information that is received from third parties. This should not require the originator or original lender to check publicly available information to check entries in at least one credit registry, where an originator or original lender does not conduct such checks within its regular activities in terms of origination, servicing, risk management and use of information received from third parties, but rather relies, for example, on other information that may include credit assessments provided by third parties. Such clarification is important because corporates that are not subject to EU financial sector regulation and that are acting as sellers with respect to STS ABCP transactions may not always check entries in credit registries and in line with the best knowledge standard should not be obliged to perform additional checks at origination of any exposure exclusively for the purposes of later fulfilling this criterion in terms of any credit-impaired debtors or guarantors;

(d) interpretation of the criterion with respect to the debtors and guarantors found on the credit registry: it is important to interpret this requirement in a narrow sense to ensure that the existence of a debtor or guarantor on the credit registry of persons

with adverse credit history should not automatically exclude exposure to that debtor/guarantor, from compliance with this criterion. It is understood that this criterion should relate only to debtors and guarantors that are, at the time of origination of the exposure, considered as entities with adverse credit history. Existence on a credit registry at the time of origination of the exposure for reasons that can be reasonably ignored for the purposes of the credit risk assessment (for example due to missed payments which have been resolved in the next two payment periods) should not be captured by this requirement. Therefore, this criterion should not automatically exclude from the STS framework exposures to all entities that are on the credit registries, taking into account that this would unintentionally exclude a significant number of entities given that different practices exist across EU jurisdictions with respect to entry requirements of such credit registries, and the fact that credit registries in some jurisdictions may contain both positive and negative information about the clients;

(e) interpretation of the term 'significantly higher risk of contractually agreed payments not being made for comparable exposures': the term should be interpreted with a similar meaning to the requirement aiming to prevent adverse selection of assets referred to in Article 6(2) of Regulation (EU) 2017/2402Regulation (EU) 2017/2402, and further specified in Article 16(2) of the Delegated Regulation specifying in greater detail the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402Regulation (EU) 2017/2402[7], given that in both cases the requirement: (i) aims to prevent adverse selection of underlying exposures; and (ii) relates to the comparison of the credit quality of exposures transferred to the SSPE and comparable exposures that remain on the originator's balance sheet. To facilitate the interpretation, a list is given of examples of how to achieve compliance with the requirement.

At least one payment made (Article 24(10))

35. STS ABCP transactions should minimise the extent to which investors are required to analyse and assess fraud and operational risk. At least one payment should therefore be made by each underlying borrower at the time of transfer, since this reduces the likelihood of the loan being subject to fraud or operational issues, unless in the case of revolving ABCP transactions, in which the distribution of securitised exposures is subject to constant changes because the ABCP transaction relates to exposures payable in a single instalment or with an initial legal maturity of an exposure of below one year.

36. To facilitate consistent interpretation of this criterion, its scope the types of payments and the term 'maturity' referred to therein should be further clarified.

[7] Final draft regulatory technical standards that specify in greater detail the risk retention requirement: https://www.eba.europa.eu/regulation-and-policy/securitisation-and-covered-bonds/rts-on-risk-retention

No predominant dependence on the sale of assets (Article 24(11))

37. Dependence of the repayment of holders of the securitisation positions on the sale of assets securing the underlying exposures increases the liquidity risks, market risks and maturity transformation risks to which the ABCP transaction is exposed. It also makes the credit risk of the ABCP transaction more difficult for such parties to model and assess.

38. The objective of this criterion is to ensure that the repayment of the principal balance of exposures at the contract maturity – and therefore repayment of the holders of the securitisation positions – is not intended to be predominantly reliant on the sale of assets securing the underlying exposures, unless the value of the assets is guaranteed or fully mitigated by a repurchase obligation.

39. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

    (a) the term 'predominant dependence' on the sale of assets securing the underlying exposures should be further interpreted:

        (i) when assessing whether the repayment of the holders of the securitisation positions is or is not predominantly dependent on the sale of assets, the following three aspects should be taken into account: (i) the principle balance at contract maturity of underlying exposures that depend on the sale of assets securing those underlying exposures to repay the balance; (ii) the distribution of maturities of such exposures across the life of the transaction, which aims to reduce the risk of correlated defaults due to idiosyncratic shocks; and (iii) the concentration limits to single obligors, which aims to promote sufficient distribution in the sale dates and other characteristics that may affect the sale of the underlying exposures.

        (ii) no types of ABCP transactions should be excluded ex ante from compliance with this criterion and from STS ABCP transactions, as long as they meet all the requirements specified in the guidance. For example, this criterion does not aim to exclude leasing transactions from STS ABCP transactions, provided they comply with the guidance provided and all other applicable STS requirements. With respect to the exemption provided in the second subparagraph of Article 24(11) of Regulation (EU) 2017/2402, it should be ensured that the entity providing the guarantee or the repurchase obligation of the assets securing the underlying exposures is not an empty-shell or insolvent entity, so that it has sufficient loss absorbency to exercise the guarantee of the repurchase of the assets.

Appropriate mitigation of interest-rate and currency risks at ABCP transaction level (Article 24(12))

40. The objective of this criterion is to reduce any payment risk arising from different interest rate and currency profiles of assets and liabilities at the level of an ABCP transaction. Mitigating or hedging interest rate and currency risks arising in the transaction enhances the simplicity of the transaction since it helps parties directly exposed to the credit risk of an ABCP transaction to model those risks and their impact on the credit risk of the securitisation investment by.

41. It should be clarified that hedging (through derivative instruments) is only one possible way of addressing the risks mentioned. Whichever measure is applied for the risk mitigation, it should however be subject to specific conditions, so that it can be considered to appropriately mitigate the risks mentioned.

42. One of these conditions aims to prohibit that derivatives, that do not serve the purpose of hedging interest-rate or currency risk from being included in the pool of underlying exposures or entered into by the SSPE, given that derivatives add to the complexity of the ABCP transaction and of the risk and due diligence analysis to be carried out by the parties directly exposed to the credit risk of an ABCP transaction. Derivatives hedging interest-rate or currency risk enhance the simplicity of the transaction since hedged transactions do not require those parties to engage in the modelling of currency and interest rate risks.

43. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

    (a) conditions that the measures should comply with so that they can be considered to appropriately mitigate the interest-rate and currency risks;

    (b) clarification with respect to the scope of derivatives that should and should not be captured by this criterion;

    (c) clarification of the term ‘common standards in international finance’.

Remedies and actions related to delinquency and default of a debtor (Article 24(13))

44. Parties directly exposed to the credit risk of an ABCP transaction should be in a position to know, when they receive the transaction documentation, what procedures and remedies are planned in the event that adverse credit events affect the underlying exposures of the ABCP transaction. Transparency of remedies and procedures, in this respect, allows those parties to model the credit risk of the underlying exposures with less uncertainty. In addition, clear, timely and transparent information on the characteristics of the waterfall determining the payment priorities is necessary for those parties to correctly price the securitisation position.

45. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

    (a) the terms 'in clear and consistent terms' and 'clearly specify';

    (b) application of the requirement to report changes in the priorities of payments.

Data on historical default and loss performance (Article 24(14))

46. The objective is to provide potential investors with sufficient information on an asset class to conduct appropriate due diligence and to provide access to a sufficiently rich data set to enable a more accurate calculation of expected loss in different stress scenarios. This data is necessary for potential investors at ABCP transaction level to carry out proper risk analysis and due diligence, and they contribute to building confidence and reducing uncertainty regarding the market behaviour of the underlying asset class. New asset classes entering the securitisation market, for which a sufficient track record of performance has not yet been built up, may not be considered transparent in that they cannot ensure that potential investors at ABCP transaction level have appropriate tools and knowledge to carry out proper risk analysis.

47. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

    (a) its application to external data;

    (b) the term 'substantially similar exposures'.

Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 24(15))

48. The criterion on homogeneity as specified in the first subparagraph of Article 24(15) has been further clarified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402.

49. The objective of the limits on the remaining weighted average life of the pool of underlying exposures and the residual maturity of individual exposures within that pool is to constrain the degree of maturity mismatches between the maturity of the underlying exposures and the securities issued by the ABCP programme – the latter predominantly having an original maturity of one year or less, pursuant to the definition of an ABCP programme provided in point (7) of Article 2 of Regulation (EU) 2017/2402 and to thereby constrain the liquidity risks inherent in the ABCP programme and covered by the full support of the sponsor.

50. The objective of the criterion specified in the second sentence in the fourth subparagraph of Article 24(15) is to ensure that the underlying exposures contain valid and binding obligations of the debtor, including rights to payments or to any other income from assets supporting such

payments that result in a periodic and well defined stream of payments to parties directly exposed to the credit risk of the ABCP transaction.

51. The objective of the criterion specified in the fourth sentence of the fourth subparagraph is – inter alia - that the underlying exposures do not include transferable securities, as they may add to the complexity of the transaction and to the complexity of the risk and due diligence analysis to be carried out by parties directly exposed to the credit risk of the ABCP transaction.

52. To facilitate consistent interpretation of this criterion, a clarification should be provided with respect to:

(a) the calculation of weighted average life;

(b) the term 'contractually binding and enforceable obligations';

(c) a non-exhaustive list of examples of exposures that should be considered to have defined periodic payment streams. The individual examples are without prejudice to applicable requirements, such as the requirement with respect to the defaulted exposures in accordance with Article 20(11) of Regulation (EU) 2017/2402 and the requirement with respect to the residual value in accordance with Article 20(13) of that Regulation.

Referenced interest payments (Article 24(16))

53. The objective of this criterion is to prevent STS ABCP transactions from making reference to interest rates that cannot be observed in the commonly accepted market practice. The credit risk and cash flow analysis which parties directly exposed to the credit risk of the ABCP transaction must be able to carry out should not involve atypical, complex or complicated rates or variables which cannot be modelled on the basis of market experience and practice.

54. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

(a) the scope of the criterion by specifying the common types and examples of interest rates captured by this criterion;

(b) the term 'complex formulae or derivatives'.

Requirements in case of the seller's default or an acceleration event (Article 24(17))

55. The objective of this criterion is to prevent parties directly exposed to the credit risk of the ABCP transaction from being subjected to unexpected repayment profiles, following the seller's default or an acceleration event.

56. STS ABCP transactions should be such that the required risk analysis and due diligence to be conducted by parties directly exposed to the credit risk of the ABCP transaction does not have to factor in complex structures of the payment priority that are difficult to model, nor should those parties be exposed to complex changes in such structures throughout the life of the ABCP transaction. Therefore, it should be ensured that junior liabilities should not have payment preference over senior liabilities which are due and payable.

57. In addition, taking into account market risk on the underlying collateral constitutes an element of complexity in the risk and due diligence analysis to be carried out by parties directly exposed to the credit risk of the ABCP transaction, the objective is also to ensure that the performance of STS ABCP transactions does not rely, due to contractual triggers, on the automatic liquidation at market price of the underlying collateral.

58. To facilitate consistent interpretation of this requirement, the scope and operational functioning of conditions specified under letters (a), (b), and (c) should be specified further.

Underwriting standards (Article 24(18))

59. The objective of the criterion in Article 24(18) is to prevent 'cherry picking' and to ensure that the exposures that are to be securitised do not belong to exposure types that are outside the ordinary business of the seller, i.e. exposure types in which the seller may have less expertise and/or interest at stake. This criterion is focused on disclosure of changes to the underwriting standards and aims to help the sponsor and other parties directly exposed to the credit risk of the ABCP transaction assess the underwriting standards pursuant to which the exposures transferred into the ABCP transaction have been originated.

60. The criterion also aims to ensure that the seller has an established performance history for similar credit claims or receivables to those being securitised and for an appropriately long period of time.

61. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

    (a) the term 'similar exposures', with reference to requirements specified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402;

    (b) the term 'no less stringent underwriting standards': independently of the guidance provided in these guidelines, it is understood that in the spirit of restricting the 'originate-to-distribute' model of underwriting, where similar exposures exist on the seller's balance sheet, the underwriting standards that have been applied to the securitised exposures should also have been applied to similar exposures that have

not been securitized, i.e. the underwriting standards should have been applied not solely to securitised exposures;

(c) clarification of the requirement to disclose material changes from prior underwriting standards: the guidance clarifies that this requirement should be forward looking only, referring to material changes to the underwriting standards after the closing of the transaction. The guidance clarifies the interactions with the requirement for similarity of the underwriting standards set out in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, which requires that all the underlying exposures in securitisation be underwritten according to similar underwriting standards;

(d) identification of criteria based on which the expertise of the seller should be determined:

(i) when assessing whether the seller has the required expertise, some general principles should be set out against which the expertise should be assessed. The general principles have been designed to allow a robust qualitative assessment of the expertise. One of these principles is regulatory authorisation: this is to allow more flexibility in such qualitative assessment of the expertise if the seller is a prudentially regulated institution which holds regulatory authorisations or permissions that are relevant to origination of similar exposures. The regulatory authorisation in itself should, however, not be a guarantee that the seller has the required expertise;

(ii) irrespective of such general principles, specific criteria should be developed, based on specifying a minimum period for an entity to perform the business of originating similar exposures, compliance with which would enable the entity to always be considered to have a sufficient expertise. Such expertise should be assessed at the group level, so that possible restructuring at the entity level would not automatically lead to non-compliance with the expertise criterion. It is not the intention of such specific criteria to form an impediment to the entry of new participants to the market. Such entities should also be eligible for compliance with the expertise criterion, as long as their management body and senior staff with managerial responsibility for origination of similar exposures have sufficient experience over a minimum specified period;

(iii) it is expected that information on the assessment of the expertise should be provided in sufficient detail in the STS notification.

Triggers for termination of the revolving period in case of revolving ABCP transactions (Article 24(19))

62. The objective of this criterion is to ensure that, in the presence of a revolving period mechanism, parties directly exposed to the credit risk of the ABCP transaction are sufficiently protected from the risk that principal amounts may not be fully repaid. In all such transactions, irrespective of the nature of the revolving mechanism, such parties should be protected by a minimum set of triggers for termination of the revolving period that should be included in the documentation of the ABCP transaction.

63. In order to facilitate the consistent interpretation of this criterion, interactions of this criterion with the criterion under Article 26(7)(c) about an insolvency-related event with regard to the servicer, should be further clarified.

Transaction documentation (Article 24(20))

64. The objective of this criterion is to help provide full transparency to parties directly exposed to the credit risk of the ABCP transaction, assist those parties in the conduct of their due diligence and prevent them from being subject to unexpected disruptions in cash flow collections and servicing, as well as to provide them with certainty about the replacement of certain counterparties involved in the securitisation transaction.

65. To facilitate consistent interpretation of this criterion, clarification should be provided about the requirement specified in Article 24(20)(d) which requires the transaction documentation to clearly specify how the sponsor meets the requirements of Article 25(3): it is understood that, for the purpose of compliance with this requirement, the sponsor should not be required to provide any details on the content of the demonstration referred to in Article 25(3).

2.3 Background and rationale for the programme-level criteria

Limited temporary non-compliance with certain STS transaction-level criteria (Article 26(1))

66. The objective of Article 26(1) is to provide a level of assurance that the data on and reporting of the ABCP transactions within an ABCP programme are accurate and that all such ABCP transactions meet the STS criteria at transaction level in accordance with Article 24, by ensuring that an independent external entity, not affected by any potential conflict of interest, checks the data to be disclosed to the investors. There may however be some constraints with respect to checking the compliance of all of the underlying exposures with some STS criteria applicable at the level of individual ABCP transactions referred to in that article (i.e. STS criteria specified in paragraphs 9, 10 and 11 of Article 24), as such a checking process may be (i) overly burdensome (because this may be very time-consuming); (ii) not possible due to incomplete data; (iii) not relevant when relating to a very small fraction of the underlying exposures or; (iv) such compliance may change over time due to the dynamics of the status of the underlying exposures. Consequently, the second subparagraph of Article 26(1) allows for partial non-compliance with the aforementioned criteria and allows up to 5% of the aggregated amount of exposures funded by the ABCP programme to be temporarily non-compliant, without being detrimental to retaining STS status at ABCP programme level.

67. It is understood that the 5% amount of exposures that are allowed to be temporarily non-compliant should include each exposure that is non-compliant with one, some or all of paragraphs 9, 10 and 11. In other words, it is not the intention of the requirement to ensure that only exposures that are simultaneously in breach of paragraphs 9, 10 and 11 can count towards the 5% amount of exposures.

68. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

(a) the method of calculating the percentage of the aggregate exposure amount of incompliant exposures;

(b) the clarification of the term ‘temporary non-compliance with the requirement of Article 24(9), (10) or (11)’;

(c) the sample of the underlying exposures subject to external verification;

(d) the scope and minimum frequency of the external verification: it is assumed that the external verification for ABCP should cover only the requirements of paragraphs 9, 10 and 11 of Article 24, since the third subparagraph exclusively refers to the exemption clause in the second subparagraph (‘For the purpose of the second subparagraph of this paragraph…’);

(e) the parties eligible to execute the external verification;

(f) some additional clarifications with respect to this criterion, including on the method for increasing the accuracy of the verification.

Remaining weighted average life (Article 26(2))

69. While one of the objectives of Article 24(15) is to reduce the risk of maturity transformation for the parties directly exposed to the credit risk of an ABCP transaction, the requirement of Article 26(2) puts an additional limit to the risk of maturity transformation at ABCP programme level. Whereas the weighted average life (WAL) of individual ABCP transactions may be as long as three and a half years according to Article 24(15), the overall WAL at ABCP programme level may not surpass two years.

70. To ensure consistent interpretation of this requirement, the term 'remaining weighted average life of the underlying exposures of an ABCP programme', and how to calcule it, should be clarified.

Full support by the sponsor (Article 26(3))

71. The objective of the criterion in Article 26(3) is to ensure the full support of an ABCP programme by a sponsor in accordance with Article 25(2). This requirement is without prejudice to the definition of a 'fully-supported ABCP programme' provided in point (21) of Article 2.

72. The requirement is considered to be sufficiently clear and straightforward. No further guidance is considered necessary.

No resecuritisation at ABCP programme level (Article 26(4))

73. While Regulation (EU) 2017/2402 introduces the ban on resecuritisation, it allows for specific derogations from that ban, including for fully supported ABCP programmes, subject to their compliance with two conditions: 'A fully supported ABCP programme shall not be considered to be a resecuritisation for the purposes of this Article, provided that none of the ABCP transactions within that programme is a resecuritisation and that the credit enhancement does not establish a second layer of tranching at the programme level.' Therefore, if the underlying ABCP transactions are no resecuritisations and the credit enhancement of the ABCP programme does not establish a second layer of tranching at the programme level, such an ABCP programme should not be considered to be a resecuritisation.

74. Such a ban on resecuritisation (as well as derogation for some fully supported ABCP programmes) is established both generally (in Article 8 of Regulation (EU) 2017/2402), and for STS purposes (in Article 24(5) in conjunction with Article 26(1), and Article 26(4)). Additional guidance is provided by recital 8, which states that 'This Regulation introduces a ban on resecuritisation, subject to … clarifications as to whether asset-backed commercial paper (ABCP) programmes are considered to be resecuritisations. … In addition, it is important for the financing of the real economy that fully supported ABCP programmes that do not introduce any

re-tranching [i.e. that are not 'establishing a second layer of tranching'] on top of the transactions funded by the programme remain outside the scope of the ban on resecuritisation.'

75. In order to facilitate consistent interpretation of this criterion, it should be clarified further which credit enhancements do not establish such a second layer of tranching at the programme level. The interpretation is based on the BCBS „Revisions to the securitisation framework'(July 2016), paragraph 5, which identifies cases where there exist two distinct tranching mechanisms, that could economically be reduced to one single tranching mechanism (i.e. to one layer of tranching). The sub-section 'Examples' provides examples of credit enhancements that should and should not be considered compliant with the criterion in Article 26(4) of Regulation (EU) 2017/2402. The examples are also in line with the examples provided in the second paragraph of recital 16 of Regulation (EU) 2017/2402 of how to achieve the tranching required for establishing an ABCP transaction within the meaning of point (8) of Article 2, which sets out that the tranching may be achieved including in the following cases: (i) by the agreement on a variable purchase price discount on the pool of underlying exposures granted by the seller /original lender; or (ii) by the issuance of senior and junior notes by an SSPE in a co-funding structure, where the senior notes are then transferred to purchasing entities of one or more ABCP programmes.

No call options and other clauses (Article 26(5))

76. The objective of the criterion in Article 26(5) is to ensure that investors do not become exposed to higher risks (e.g. refinancing risk, liquidity risk) at the discretion of the seller, sponsor or SSPE, since this would complicate their due diligence and risk analysis.

77. This criterion is considered sufficiently clear and no further clarification is deemed necessary.

Appropriate mitigation of interest-rate and currency risks at ABCP programme level (Article 26(6))

78. While the objective of Article 24(12) is to reduce any payment risk arising from different interest-rate and currency profiles of assets and liabilities at ABCP transaction level, the objective of Article 26(6) is to reduce any payment risk arising from different interest rate and currency profiles across transactions or in comparison with the liabilities (commercial paper issued) at ABCP programme level.

79. Mitigating and/or hedging interest rate and currency risks arising at ABCP programme level enhances the simplicity of the ABCP programme since it facilitates the modelling of those risks and of their impact on the credit risk of the ABCP programme by investors.

80. A second objective of this requirement is to prohibit that derivatives, which are not serving the purpose of hedging interest-rate or currency risk, are entered into by the SSPE, given that derivatives add to the complexity of the transaction and to the complexity of the risk and due diligence analysis to be carried out by the investor. Derivatives hedging interest-rate or currency

risk enhance the simplicity of the ABCP programme, since hedged ABCP programmes do not require the investors to engage in the modelling of currency and interest-rate risks.

81. Taking into account that the wording of Article 26(6) is virtually identical with the wording of Article 24(12) at transaction level, the interpretation of both these criteria should be the same.

Documentation of the ABCP programme (Article 26(7))

82. The objectives and the legal text of these criteria at ABCP programme level are substantially similar to those of the requirements at ABCP transaction level pursuant to Article 24(20). The following table provides an overview of which requirements of Article 26(7) do not warrant further clarification beyond what is already clarified with respect to Article 24(20) (green), and which specific requirements do warrant further clarification (red):

Programme level, Article 26(7)	Transaction level, Article 24(20)	Assessment
The documentation relating to the ABCP programme shall clearly specify:	The transaction documentation shall clearly specify:	Identical, so no additional guidance needed
(a) the responsibilities of the trustee and other entities with fiduciary duties, if any, to investors;	The transaction documentation shall include clear provisions that facilitate […] the responsibilities of the trustee and other entities with fiduciary duties to investors shall be clearly identified. [Article 24(19)]	Very similar requirement to Article 24(10), so no additional guidance needed
(b) the contractual obligations, duties and responsibilities of the sponsor, who shall have expertise in credit underwriting, the trustee, if any, and other ancillary service providers;	(a) the contractual obligations, duties and responsibilities of the sponsor, the servicer and the trustee, if any, and other ancillary service providers;	Additional guidance needed concerning the 'sponsor, who shall have expertise in credit underwriting'. Such guidance should be analogous to that for the expertise of the seller.
(c) the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;	(b) the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing,	Identical, so no additional guidance needed
(d) the provisions for replacement of derivative counterparties,	(c) provisions that ensure the replacement of derivative counterparties and the	Identical, so no additional guidance needed

Programme level, Article 26(7)	Transaction level, Article 24(20)	Assessment
and the account bank at ABCP programme level upon their default, insolvency and other specified events, where the liquidity facility does not cover such events;	account bank upon their default, insolvency and other specified events, where applicable;	
(e) that, upon specified events, default or insolvency of the sponsor, remedial steps shall be provided for to achieve, as appropriate, collateralisation of the funding commitment or replacement of the liquidity facility provider; and	*No similar requirement at ABCP transaction level*	While there is no corresponding requirement at transaction level, the requirement is considered sufficiently clear and no additional guidance is deemed necessary.
(f) that the liquidity facility shall be drawn down and the maturing securities shall be repaid in the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry.	*No similar requirement at ABCP transaction level*	Requirement needs clarification on how to treat the case that a sponsor provides several liquidity facilities at transaction level.

83. Taking the above into account, to facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

(a) liquidity facility as mentioned in point (f) of Article 26(7): it should be noted that Article 25(2) describes how the sponsor should support the ABCP programme: 'The sponsor of an ABCP programme shall be a liquidity facility provider and shall support all securitisation positions on an ABCP programme level by covering all liquidity and credit risks and any material dilution risks of the securitised exposures as well as any other transaction- and programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP with such support. The sponsor shall disclose a description of the support provided at transaction level to the investors including a description of the liquidity facilities provided. 'It is a current market practice that a single sponsor provides several liquidity facilities at ABCP transaction level to provide full support to the ABCP programme. This is also captured by the last sentence of Article 25(2), according to which the sponsor provides support at transaction level by 'liquidity facilities' (pl.). In this regard, clarification is needed of how to interpret point (f) of Article 26(7), which refers to only 'the liquidity facility'.

(b) the expertise of the sponsor as mentioned in point (b) of Article 26(7): the guidance should be largely similar to the corresponding requirement of point (a) of Article 24(20) and should therefore be subject to similar clarifications.

Expertise of the servicer (Article 26(8))

84. The objective of this criterion is to ensure that all the conditions are in place for the proper functioning of the servicing function. It is understood that the servicer in the context of ABCP an programme is meant to refer to the administrator of the ABCP programme who fulfils various administrative duties in relation to the ABCP programme, rather than to the servicer in the strict sense.

85. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

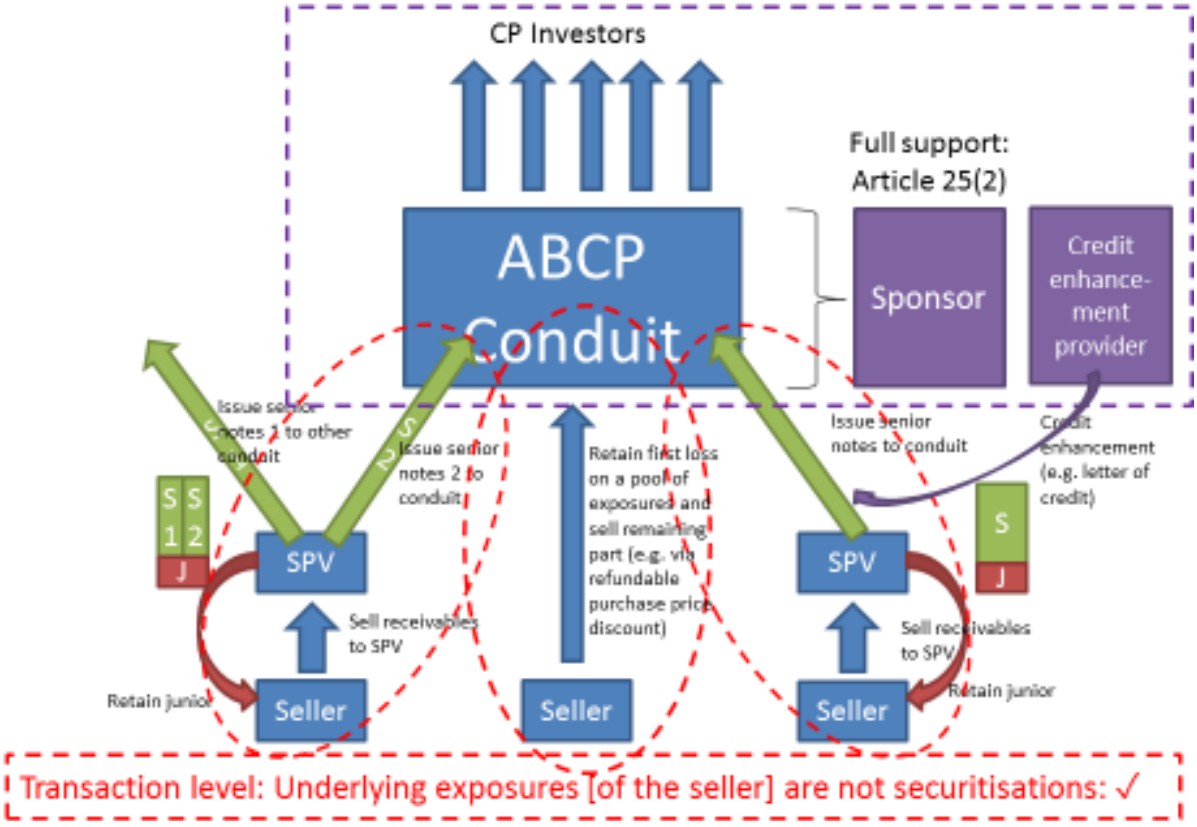
(a) criteria for determining the expertise of the servicer: it is expected that information on the assessment of the expertise should be provided in sufficient detail in the STS notification;

(b) criteria for determining well-documented policies, procedures and risk management controls of the servicer: it is to be noted that compared with the non-ABCP criterion, which refers to ‘well-documented and adequate policies’, the ABCP criterion simply refers to ‘well-documented policies’. In an ABCP context, however, the policies of the servicer should also be adequate, therefore, the interpretation of the criterion should be the same as for the non-ABCP securitisation.

Examples

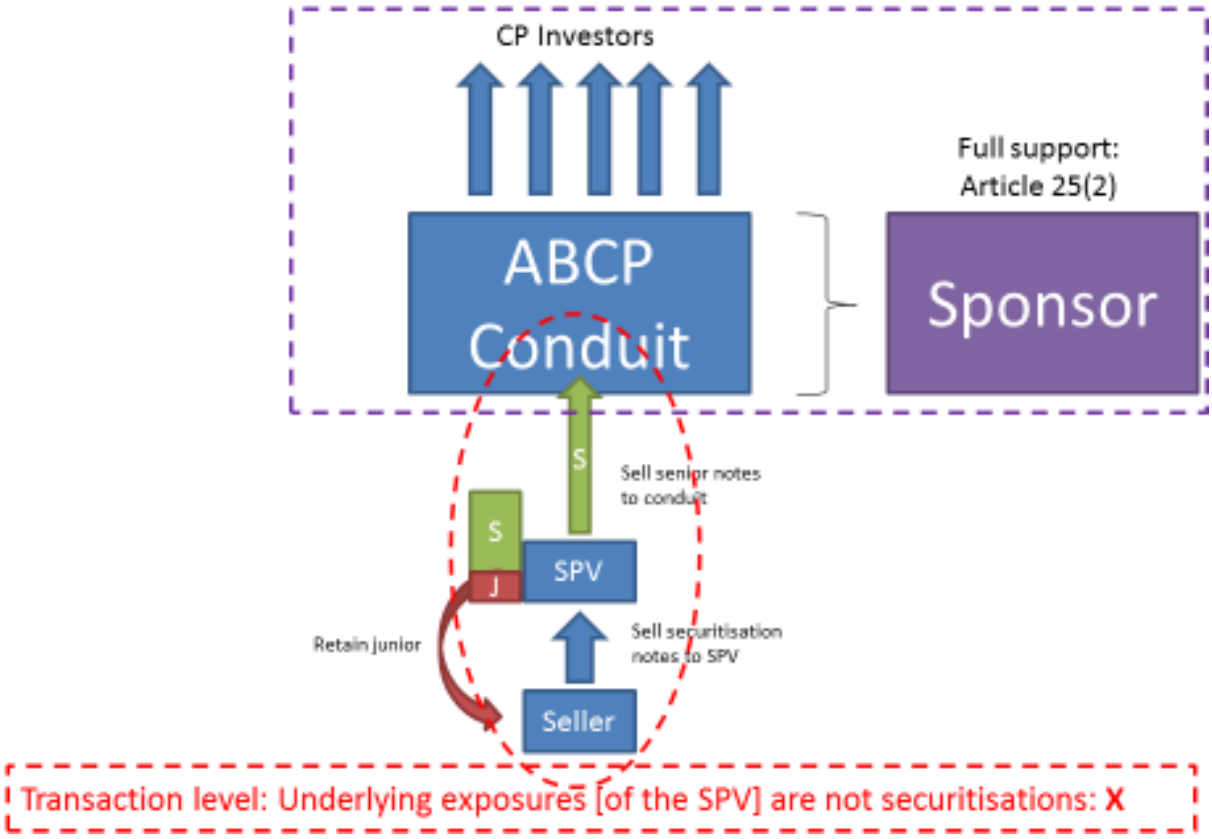
86. Figure 1 provides an example of ABCP transactions that should be deemed compliant with the requirements of Article 24(8) of Regulation (EU) 2017/2402.

Figure 1: Example of ABCP transactions the underlying exposures of which do not include securitisation positions



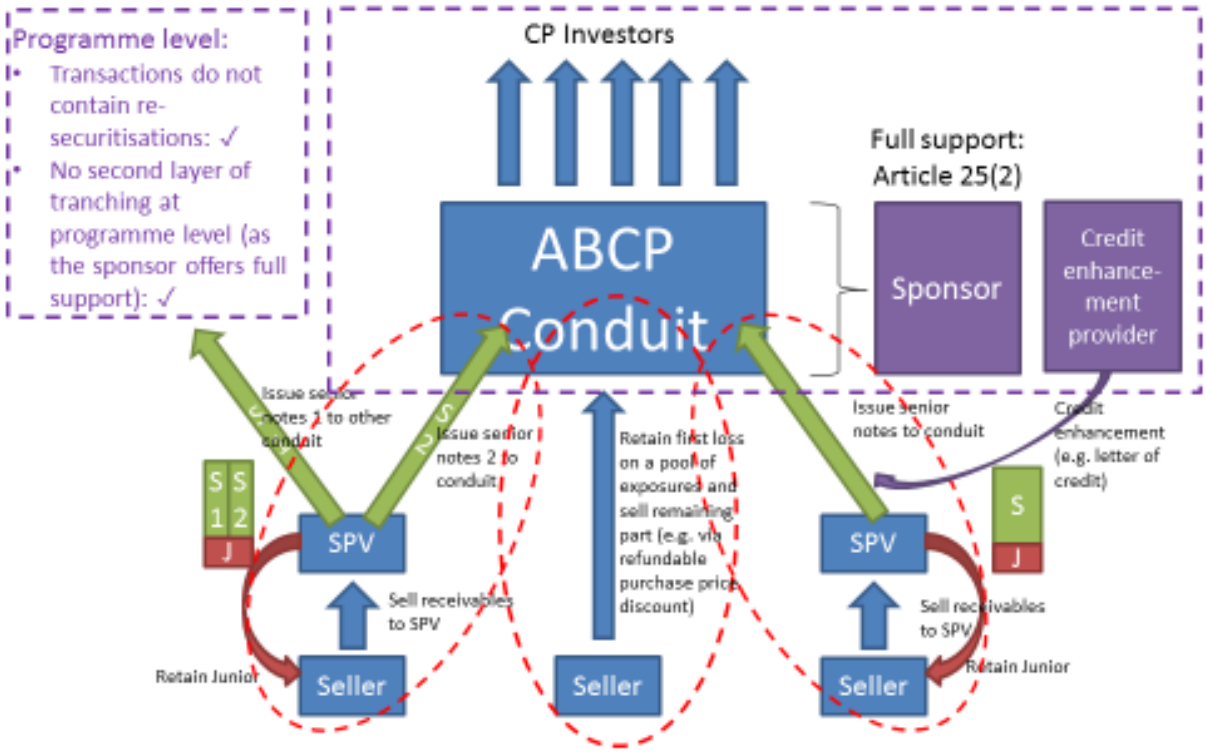
87. Figure 2 provides an example of an ABCP transaction that should not be deemed compliant with the criterion in Article 24(8), so that such an ABCP transaction may not be considered STS, as the exposures transferred by the seller to the SSPE, which constitute the underlying exposures of the junior and senior notes issued by the SSPE, are themselves securitisation positions.

Figure 2: Example of an ABCP transaction with underlying exposures including securitisation positions



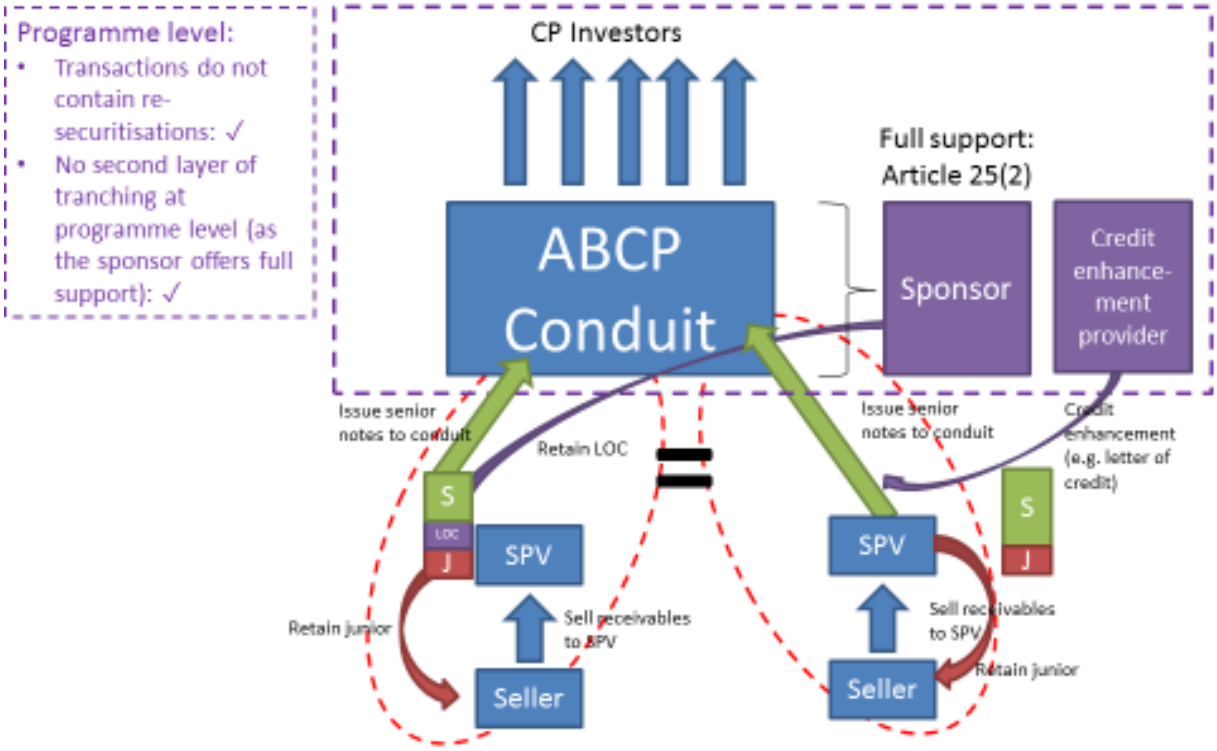
88. Figures 3 and 4 provide examples of credit enhancements that should be deemed compliant with the criterion in Article 26(4) of Regulation (EU) 2017/2402 as further interpreted in these guidelines and with the requirements set out in Article 8(4) of that Regulation. In the example provided in Figure 3, the application of the general principle laid down in these guidelines should mean that the third ABCP transaction displayed in the Figure is compliant with the criterion in Article 24(8) of Regulation (EU) 2017/2402, as the cash flows to and from the transaction can be replicated in all circumstances and conditions by an exposure to a securitisation with three tranches of a pool of exposures that contains no securitisation positions.

Figure 3: Example of credit enhancement not establishing a second layer of tranching at ABCP programme level



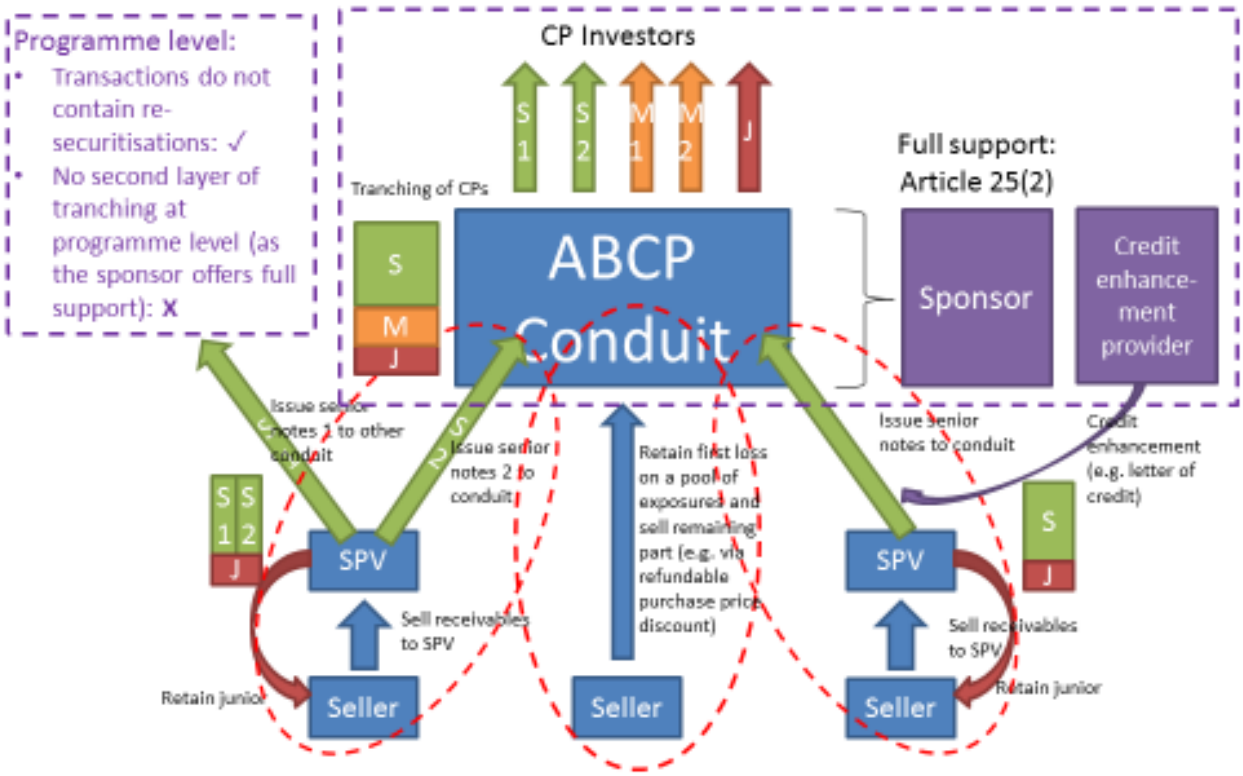
89. In the example provided in Figure 4, in both transactions the first loss - up to the amount of the junior tranche - is taken by the seller, and the second loss - up to the amount of the letter of credit - is taken by the provider of the letter of credit, while the senior loss is taken by the ABCP conduit which purchases the senior note. In the first transaction of Figure 4, the losses exceeding the junior tranche are directly taken by a mezzanine tranche before any losses can be allocated to the senior note. In the second transaction of Figure 4, the letter of credit guarantees a subordinated portion of the senior tranche and therefore has the same economic effect as the mezzanine tranche in the first transaction.

Figure 4: Example of a credit enhancement not establishing a second layer of tranching at ABCP programme level



90. Figure 5 provides an example of a credit enhancement that should not be deemed compliant with the criterion in Article 26(4) of Regulation (EU) 2017/2402 as interpreted in these guidelines as due to the additional tranching at ABCP programme level the cash flows to and from investors at ABCP programme level cannot be replicated in all circumstances and conditions by an exposure to a securitisation of a pool of exposures that contains no securitisation positions.

Figure 5: Example of a credit enhancement establishing a second layer of tranching at ABCP programme level



3. Guidelines on the STS criteria for ABCP securitisation

EBA/GL/2018/08

12 December 2018

Guidelines

on the STS criteria for ABCP securitisation

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010[8]. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and the other addresses of these guidelines referred to in paragraph 8 must make every effort to comply with the guidelines.

2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.

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

[8] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p. 12).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify the criteria relating to simplicity, standardisation and transparency for asset-backed commercial paper (ABCP) securitisations in accordance with Articles 24 and 26 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017[9].

Scope of application

6. These guidelines apply in relation to the transaction- and programme-level requirements of ABCP securitisations.

7. Competent authorities should apply these guidelines in accordance with the scope of application of Regulation (EU) 2017/2402 as set out in its Article 1.

Addressees

8. These guidelines are addressed to the competent authorities referred to in Article 29(1) and (5) of Regulation (EU) No 2017/2402 and to the other addresses under the scope of that Regulation.

[9] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L,347, 28.12.2017, p. 35).

3. Implementation

Date of application

9. These guidelines apply from 15.05.2019.

4. General

10. For the purposes of the requirements specified in Article 24 and Article 26 of Regulation (EU) 2017/2402, all the transaction- and programme-level requirements that refer to the underlying exposures should be applied only to underlying exposures that are compliant with the eligibility criteria as referred to in Article 24(7) of that Regulation and are funded by commercial paper, liquidity facility or other means.

11. For the purposes of the transaction-level requirements specified in Article 24 of Regulation (EU) 2017/2402, where the information is required to be made available or disclosed to investors or potential investors, unless otherwise specifically provided, it should be understood as to be made available or disclosed to the investors or potential investors at ABCP transaction level and other parties directly exposed to the credit risk of an ABCP transaction.

12. Where the information is nevertheless made available or disclosed to investors or potential investors at ABCP programme level, it may be made available or disclosed in aggregate and anonymised form.

13. For the purposes of Article 26, ABCP programmes issuing two different types of asset-backed commercial papers, some being STS compliant and some not being STS compliant, should not be considered STS securitisations.

5. Transaction-level criteria

True sale, assignment or transfer with the same legal effect, representations and warranties (Article 24(1) - 24(6))

True sale, assignment or transfer with the same legal effect

14. For the purposes of Article 24(1) of Regulation (EU) 2017/2402 and in order to substantiate the confidence of third parties, including third parties verifying STS compliance in accordance with Article 28 of that Regulation and competent authorities, in meeting the requirements specified therein, all of the following should be provided:

    (a) confirmation of the true sale or confirmation that, under the applicable national framework, the assignment or transfer segregate the underlying exposures from the seller, its creditors and its liquidators, including in the event of the seller's insolvency, with the same legal effect as that achieved by means of true sale;

    (b) confirmation of the enforceability of the true sale, assignment or transfer with the same legal effect referred to in point (a) against the seller or any other third party, under the applicable national legal framework;

    (c) assessment of clawback risks and re-characterisation risks.

15. The confirmation of the aspects referred to in paragraph 14 should be achieved by the provision of a legal opinion provided by qualified legal counsel for only the first ABCP transaction in an ABCP programme and which has been issued by the same seller, which uses the same legal mechanism for the transfer and to which the same legal framework applies.

16. The legal opinion referred to in paragraph 15 should be accessible and made available to any relevant third party verifying the STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402 and any relevant competent authority from among those referred to in Article 29 of that Regulation.

Severe deterioration in the seller credit quality standing

17. For the purposes of Article 24(5) of Regulation (EU) 2017/2402, the documentation of the ABCP transaction should identify, with regard to the trigger of 'severe deterioration in the seller credit quality standing' credit quality thresholds that are objectively observable and related to the financial health of the seller.

Insolvency of the seller

18. For the purposes of Article 24(5)(b) of Regulation (EU) 2017/2402, the trigger of 'insolvency of the seller' should refer at least to the events of legal insolvency as defined in national legal frameworks.

Eligibility criteria for the underlying exposures, active portfolio management (Article 24(7))

Active portfolio management

19. For the purposes of Article 24(7) of Regulation (EU) 2017/2402, active portfolio management should be understood as portfolio management to which either of the following applies:

    (a) the portfolio management makes the performance of the ABCP transaction dependent both on the performance of the underlying exposures and on the performance of the portfolio management of the ABCP transaction, thereby preventing the investor from modelling the credit risk of the underlying exposures without considering the portfolio management strategy of the portfolio manager;

    (b) the portfolio management is performed for speculative purposes aiming to achieve better performance, increased yield, overall financial returns or other purely financial or economic benefit.

20. The techniques of portfolio management that should not be considered active portfolio management include:

    (a) substitution or repurchase of underlying exposures due to the breach of representations or warranties;

    (b) substitution or repurchase of the underlying exposures that are subject to regulatory dispute or investigation to facilitate the resolution of the dispute or the end of the investigation;

    (c) replenishment of underlying exposures by adding underlying exposures as a substitute for amortised or defaulted exposures during the revolving period;

    (d) acquisition of new underlying exposures during the 'ramp up' period to line up the value of the underlying exposures with the value of the securitisation obligations;

    (e) repurchase of underlying exposures in the context of the exercise of clean-up call options, in accordance with Article 244(3)(g) of Regulation (EU) 2017/2401;

    (f) repurchase of defaulted exposures in order to facilitate the recovery and liquidation process with respect to those exposures;

(g) repurchase of underlying exposures under the repurchase obligation in accordance with Article 24(11) of Regulation (EU) 2017/2402.

Clear eligibility criteria

21. For the purposes of Article 24(7) of Regulation (EU) 2017/2402, the criteria should be understood to be 'clear' where compliance with them is possible to be determined by a court or tribunal, as a matter of law or fact or both.

Eligibility criteria to be met for exposures transferred to the SSPE after the closing of the transaction

22. For the purposes of Article 24(7) of Regulation (EU) 2017/2402, 'meeting the eligibility criteria applied to the initial underlying exposures' should be understood to mean eligibility criteria that comply with either of the following:

(a) with regard to ABCP transactions that do not issue multiple series of securities, they are no less strict than the eligibility criteria applied to the initial underlying exposures at the closing of the transaction;

(b) with regard to ABCP transactions that issue multiple series of securities including master trusts, they are no less strict than the eligibility criteria applied to the initial underlying exposures at the most recent issuance, with the results that the eligibility criteria may vary from closing to closing, with the agreement of securitisation parties and in accordance with the documentation of the ABCP transaction.

23. Eligibility criteria to be applied to the underlying exposures in accordance with paragraph 22 should be specified in the documentation of the ABCP transaction and should refer to eligibility criteria applied at exposure level.

No resecuritisation at ABCP transaction level (Article 24(8))

24. For the purposes of Article 24(8) of Regulation (EU) 2017/2402, the tranching within an ABCP transaction may be achieved by the issuance of senior and junior notes by an SSPE where a single senior note is transferred to a purchasing entity of an ABCP programme.

25. For the purposes of Article 24(8) of Regulation (EU) 2017/2402, the underlying exposures of an ABCP transaction where both junior and senior notes have been issued and a single senior note has been purchased by the purchasing entity of the ABCP programme should be understood as the underlying exposures of the single senior note that are subject to the securitisation within the ABCP programme, and not as the single senior note itself.

26. For the purposes of Article 24(8) of Regulation (EU) 2017/2402, where senior notes issued by an SSPE are split into two or more *pari passu* (pro-rata) notes within such a co-funding structure, they should be deemed not to establish an additional tranching and therefore the underlying exposures of such a securitisation should be deemed not to include any securitisation positions.

No exposures in default and to credit-impaired debtors/guarantors (Article 24(9))

Exposures in default

27. For the purposes of Article 24(9) of Regulation (EU) 2017/2402, the exposures in default should be interpreted in the meaning of Article 178(1) of Regulation (EU) 575/2013, as further specified by the Delegated Regulation on the materiality threshold for credit obligations past due developed in accordance with Article 178 of that Regulation, and by the EBA Guidelines on the application of the definition of default developed in accordance with Article 178(7) of that Regulation.

28. Where a seller is not an institution and is therefore not subject to Regulation (EU) 575/2013, the seller should comply with the guidance provided in the previous paragraph to the extent that such application is not deemed unduly burdensome. In that case, the seller should apply the established processes and the information obtained from debtors on origination of the exposures, information obtained from the originator in the course of its servicing of the exposures or in the course of its risk-management procedure or information notified to the seller by a third party.

Exposures to a credit impaired debtor or guarantor

29. For the purposes of Article 24(9) of Regulation (EU) 2017/2402, the circumstances specified in points (a) to (c) of that paragraph should be understood as definitions of credit- impairedness. Other possible circumstances of credit-impairedness of debtor or guarantor that are not captured in points (a) to (c) should be considered to be excluded from this requirement.

30. The prohibition of the selection and transfer to SSPE of underlying exposures 'to a credit-impaired debtor or guarantor' as referred to in Article 24(9) of Regulation (EU) 2017/2402 should be understood as the requirement that, at the time of selection, there should be recourse for the full securitised exposure amount to at least one non-credit impaired party, irrespective of whether that party is a debtor or a guarantor. Therefore, the underlying exposures should not include either of the following:

    (a) exposures to a credit-impaired debtor, when there is no guarantor for the full securitised exposure amount;

    (b) exposures to a credit-impaired debtor who has a credit-impaired guarantor.

To the best of the originator's or original lender's knowledge

31. For the purposes of Article 24(9) of Regulation (EU) 2017/2402, the 'best knowledge' standard should be considered to be fulfilled on the basis of information obtained only from any of the following combinations of sources and circumstances:

    (a) debtors on origination of the exposures;

(b) the originator in the course of its servicing of the exposures or in the course of its risk-management procedures;

(c) notifications to the originator by a third party;

(d) publicly available information or information on any entries in one or more credit registries of persons with adverse credit history at the time of origination of an underlying exposure, only to the extent that this information had already been taken into account in the context of (a), (b) and (c), and in accordance with the applicable regulatory and supervisory requirements, including with respect to sound credit granting criteria as specified in Article 9 of Regulation (EU) 2017/2402. This is with the exception of trade receivables that are not originated in the form of a loan, with respect to which credit granting criteria do not need to be met.

Exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process

32. For the purposes of Article 24(9)(a) of Regulation (EU) 2017/2402, the requirement to exclude exposures to credit-impaired debtors or guarantors who have undergone a debt-restructuring process with regard to their non-performing exposures should be understood to refer to both the restructured exposures of the respective debtor or guarantor and those of its exposures that were not themselves subject to restructuring. For the purposes of this Article, restructured exposures which meet the conditions of points (i) and (ii) of that Article should not result in a debtor or guarantor becoming designated as credit-impaired.

Credit registry

33. The requirement referred to in Article 24(9)(b) of Regulation (EU) 2017/2402 should be limited to exposures to debtors or guarantors for to which both of the following requirements apply at the time of origination of the underlying exposure:

(a) the debtor or guarantor is explicitly flagged in a credit registry as an entity with adverse credit history due to negative status or negative information stored in the credit registry;

(b) the debtor or guarantor is on the credit registry for reasons that are relevant for the purposes of the credit risk assessment.

Risk of contractually agreed payments not being made being significantly higher than for comparable exposures

34. For the purposes of Article 24(9)(c) of Regulation (EU) 2017/2402, the exposures should not be considered to have a ‘credit assessment of a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised’ when the following conditions apply:

(a) the most relevant factors determining the expected performance of the underlying exposures are similar;

(b) as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or applicable models, that, over the life of the transaction or over a maximum of four years, where the life of the transaction is longer than four years, their performance would not be significantly different.

35. The requirement in the previous paragraph should be considered to have been met including where either of the following applies:

(a) the underlying exposures do not include exposures that are classified as doubtful, impaired, non-performing or classified to the similar effect under the relevant accounting principles;

(b) the underlying exposures do not include exposures whose credit quality, based on credit ratings or other credit quality thresholds, significantly differs from the credit quality of comparable exposures that the originator originates in the course of its standard lending operations and credit risk strategy.

At least one payment made (Article 24(10))

Scope of the criterion

36. For the purposes of Article 24(10) of Regulation (EU) 2017/2402, further advances in terms of an exposure to a certain borrower should not be deemed to trigger a new 'at least one payment' requirement with respect to such an exposure.

At least one payment

37. For the purposes of Article 24(10) of Regulation (EU) 2017/2402, the payment referred to in the requirement according to which at 'at least one payment' should have been made at the time of transfer should bea rental, principal or interest payment or any other kind of payments.

Relevant maturity

38. The requirement of Article 24(10) of Regulation (EU) 2017/2402 that the maturity be of less than one year should be understood as referring to the initial legal maturity of an exposure and not to the residual maturity of an exposure.

No predominant dependence on the sale of assets (Article 24(11))

Predominant dependence on the sale of assets

39. For the purposes of Article 24(11) of Regulation (EU) 2017/2402, transactions where all of the following conditions apply, at the time of origination of the transaction in cases of amortising securitisation or during the revolving period in cases of revolving securitisation, should be considered not predominantly dependent on the sale of assets securing the underlying exposures, and therefore being allowed:

    (a) the contractually agreed outstanding principal balance at contract maturity, of the underlying exposures that depend on the sale of the assets securing those underlying exposures to repay the principal balance, corresponds to no more than 50 % of the total initial exposure value of all securitisation positions of the securitisation;

    (b) the maturities of the underlying exposures referred to in point (a) are not subject to material concentrations and are sufficiently distributed across the life of the transaction;

    (c) the aggregate exposure value of all the underlying exposures referred to in point (a) to a single obligor does not exceed 2% of the aggregate exposure value of all underlying exposures in the securitisation.

40. Where there are no underlying exposures in the securitisation that depend on the sale of assets to repay their outstanding principal balance at contract maturity, the requirements in paragraph 33 should not apply.

Exemption provided in the second subparagraph of Article 24(11) of Regulation (EU) 2017/2402

41. For the purpose of the exemption referred to in the second subparagraph of Article 24(11) of Regulation (EU) 2017/2402 with regard to the repayment of holders of securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation of either the assets securing the underlying exposures or of the underlying exposures themselves by another third party or parties, the seller or the third parties should meet both of the following conditions:

    (a) they are not insolvent;

    (b) there is no reason to believe that the entity would not be able to meet their obligations under the guarantee or the repurchase obligation.

Appropriate mitigation of interest-rate and currency risks at ABCP transaction level (Article 24(12))

Appropriate mitigation of interest rate and currency risks

42. For the purposes of Article 24(12) of Regulation (EU) 2017/2402 in order for the interest-rate and currency risks arising from the securitisation to be considered 'appropriately mitigated', it should be sufficient that a hedge or mitigation is in place, on condition that it is not unusually limited with the effect that it covers a major share of the interest-rate or currency risks under relevant scenarios, understood from an economic perspective. Such a mitigation may also be in the form of derivatives or other mitigating measures including reserve funds, overcollateralisation, excess spread or other measures.

43. Where the appropriate mitigation of interest-rate and currency risks is carried out through derivatives, all of the following requirements should apply:

    (a) the derivatives should be used only for genuine hedging of asset and liability mismatches of interest rates and currencies, and should not be used for speculative purposes;

    (b) the derivatives should be based on commonly accepted documentation including International Swaps and Derivatives Association (ISDA) or similar established national documentation standards;

    (c) the derivative documentation should provide, in the event of the loss of sufficient creditworthiness of the counterparty below a certain level, measured either on the basis of the credit rating or otherwise, that the counterparty is subject to collateralisation requirements or makes a reasonable effort for its replacement or guarantee by another counterparty.

44. Where the mitigation of interest rate and currency risks referred to in Article 24(12) of Regulation (EU) 2017/2402 is carried out not through derivatives but by other risk-mitigating measures, those measures should be designed to be sufficiently robust. When such risk-mitigating measures are used to mitigate multiple risks at the same time, the disclosure required by Article 24(12) of Regulation (EU) 2017/2402 should include an explanation of how the measures hedge the interest rate risks and currency risks on one hand, and other risks on the other hand.

45. The measures referred to in paragraphs 43 and 44, as well as the reasoning supporting the appropriateness of the mitigation of the interest rate and currency risks through the life of the transaction, should be disclosed.

Derivatives

46. For the purpose of Article 24(12) of Regulation (EU) 2017/2402, exposures in the pool of underlying exposures that merely contain a derivative component exclusively serving the

purpose of directly hedging the interest-rate or currency risk of the respective underlying exposure itself, which are not themselves derivatives, should not be understood to be prohibited.

Common standards in international finance

47. For the purposes of Article 24(12) of Regulation (EU) 2017/2402, common standards in international finance should include ISDA or similar established national documentation standards.

Remedies and actions related to delinquency and default of debtor (Article 24(13))

Clear and consistent terms

48. For the purposes of Article 24(13) of Regulation (EU) 2017/2402, to 'set out clear and consistent terms' and to 'clearly specify' should be understood as requiring that the same precise terms are used throughout the documentation of the ABCP transactionin order to facilitate the work of the sponsor and other parties directly exposed to the credit risk of the ABCP transaction.

Reporting of changes in the priorities of payments

49. The requirement pursuant to Article 24(13) of Regulation (EU) 2017/2402 to report to investors without undue delay all changes in the priorities of payments which will materially adversely affect the repayment of the securitisation position should apply with regard to all parties directly exposed to credit risk of the ABCP transaction as well as with regard to investors at ABCP programme level.

Data on historical default and loss performance (Article 24(14))

External data

50. For the purposes of Article 24(14) of Regulation (EU) 2017/2402, where the seller cannot provide data in line with the data requirements contained therein, external data which are publicly available, or data provided by a third party such as a rating agency or another market participant, may be used, provided that all of the other requirements of that Article are met.

Substantially similar exposures

51. For the purposes of Article 24(14) of Regulation (EU) 2017/2402, the term 'substantially similar exposures' should be understood as referring to exposures for which both of the following conditions are met:

    (a) the most relevant factors determining the expected performance of the underlying exposures are similar;

    (b) as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or applicable models, that, over the

life of the transaction, or over a maximum of four years, where the life of the transaction is longer than four years, their performance would not be significantly different.

52. The substantially similar exposures should not be limited to exposures held on the balance sheet of the originator.

Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 24(15))

Calculation of the weighted average life of the pool of underlying exposures

53. For the purposes of Article 24(15), the weighted average life (WAL) of the pool of underlying exposures should be calculated by time-weighting only the repayments of principal amounts and should not take into account any prepayment assumptions or any payments relating to fees or interest to be paid by the obligors of the underlying exposures.

54. When determining the remaining WAL of the pool of underlying exposures of an ABCP transaction, sellers and sponsors may use the maximum maturity or the maximum WAL of the underlying exposures in the pool as defined in the documentation of the ABCP transaction instead of the actual residual maturity of individual underlying exposures.

Contractually binding and enforceable obligations

55. For the purposes of Article 24(15) of Regulation (EU) 2017/2402, 'obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors' should be understood to refer to all obligations contained in the contractual specification of the underlying exposures that are relevant to investors because they affect any obligations by the debtor and, where applicable, the guarantor to make payments or provide security.

Exposures with periodic payment streams

56. For the purposes of Article 24(15) of Regulation (EU) 2017/2402, exposures with defined periodic payment streams should include:

(a) exposures payable in a single instalment in the case of revolving securitisation, as referred to in Article 24(10) of Regulation (EU) 2017/2402;

(b) exposures related to credit cards facilities;

(c) exposures with instalments consisting of interest and where the principal is repaid at the maturity, including interest-only mortgages;

(d) exposures with instalments consisting of interest and repayment of a portion of the principal, where either of the following conditions is met:

(i) the remaining principal is repaid at the maturity;

(ii) the repayment of the principal is dependent on the sale of assets securing the exposure, in accordance with Article 24(11) of Regulation (EU) 2017/2402 and paragraphs 39 to 40;

(e) exposures with temporary payment holidays as contractually agreed between the debtor and the lender.

Referenced interest payments (Article 24(16))

Referenced rates

57. For the purposes of Article 24(16) of Regulation (EU) 2017/2402, interest rates that should be considered to be an adequate reference basis for referenced interest payments should include all of the following:

(a) interbank rates including Libor, Euribor, their successors and other recognised benchmarks;

(b) rates set by monetary policy authorities, including FED funds rates, and central bank's discount rates;

(c) sectoral rates reflective of a lender's cost of funds including standard variable rates and internal interest rates that directly reflect the market costs of funding of a bank or a sub-set of institutions, to the extent that sufficient data are provided to investors to allow them to assess the relation of the sectoral rates to other market rates;

(d) with respect to referenced interest payments under the ABCP transaction's liabilities, interest rates reflective of an ABCP programme's cost of funds.

Complex formulae or derivatives

58. For the purposes of Article 24(16) of Regulation (EU) 2017/2402, a formula should be considered to be complex when it meets the definition of an exotic instrument by the Global Association of Risk Professionals (GARP), which is a financial asset or instrument with features that make it more complex than simpler, plain vanilla, products. A complex formula or derivative should not be deemed to exist in the case of the mere use of interest-rate caps or floors.

Requirements in the event of the seller's default or an acceleration event (Article 24(17))

Exceptional circumstances

59. For the purposes of Article 24(17)(a) of Regulation (EU) 2017/2402, a list of 'exceptional circumstances' should, to the extent possible, be included in the documentation of the ABCP transaction.

Given the nature of the 'exceptional circumstances' and in order to allow some flexibility with respect to potential unusual circumstances requiring that cash be trapped in the SSPE in the

best interests of investors, where a list of 'exceptional circumstances' is included in the documentation of the ABCP transaction in accordance with paragraph 59, such a list should be non-exhaustive.

Amount trapped in the SSPE in the best interests of investors

60. For the purposes of Article 24(17)(a) of Regulation (EU) 2017/2402, the amount of cash to be considered trapped in the SSPE should be that agreed by the trustee or other representative of the investors who is legally required to act in the best interests of the investors, or by the investors in accordance with the voting provisions set out in the documentation of the ABCP transaction.

61. For the purposes of Article 24(17)(a) of Regulation (EU) 2017/2402, it should be permissible to trap the cash in the SSPE in the form of a reserve fund for future use, as long as the use of the reserve fund is exclusively limited to the purposes set out in Article 24(17)(a) of Regulation (EU) 2017/2402 or to orderly repayment to the investors.

Repayment

62. The requirements in Article 24(17)(b) of Regulation (EU) 2017/2402 should be understood as covering only the repayment of the principal, without covering the repayment of interests.

63. For the purposes of Article 24(17)(b) of Regulation (EU) 2017/2402, non-sequential payments of principal in a situation where an enforcement or an acceleration notice has been delivered should be prohibited. Where there is no enforcement or acceleration event, principal receipts could be allowed for replenishment purposes pursuant to Article 24(10)) of that Regulation.

Liquidation of the underlying exposures at market value

64. For the purposes of Article 24(17)(c) of Regulation (EU) 2017/2402, the decision of the investors at ABCP transaction level or at ABCP programme level to liquidate the underlying exposures at market value should not be considered to constitute an automatic liquidation of the underlying exposures at market value.

Underwriting standards, seller's expertise (Article 24(18))

Similar exposures

65. For the purposes of Article 24(18) of Regulation (EU) 2017/2402, exposures should be considered to be similar where one of the following conditions is met:

    (a) the exposures belong to one of the following asset categories referred to in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous for the purposes of Articles 20(8) and 24(15) of Regulation (EU) 2017/2402:

(i) residential loans secured with one or several mortgages on residential immovable property, or residential loans fully guaranteed by an eligible protection provider among those referred to in Article 201(1) of Regulation (EU) No 575/2013 qualifying for credit quality step 2 or above as set out in Part Three, Title II, Chapter 2 of that Regulation;

(ii) commercial loans secured with one or several mortgages on commercial immovable property or other commercial premises;

(iii) credit facilities provided to individuals for personal, family or household consumption purposes;

(iv) auto loans and leases;

(v) credit card receivables;

(vi) trade receivables.

(b) the exposures fall under the asset category of credit facilities provided to micro-, small-, medium-sized and other types of enterprises and corporates including loans and leases, as referred to in Article 2(d) of the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, as underlying exposures of a certain type of obligor;

(c) where they do not belong to any of the asset categories referred to in points (a) and (b) of this paragraph and as referred to in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordancve with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, the underlying exposures share similar characteristics with respect to the type of obligor, ranking of security rights, type of immovable property and/or jurisdiction.

No less stringent underwriting standards

66. For the purpose of Article 24(18) of Regulation (EU) 2017/2402, the underwriting standards applied to securitised exposures should be compared to the underwriting standards applied to similar exposures at the time of origination of the securitised exposures.

67. Compliance with this requirement should not require either the originator or the original lender to hold similar or any other exposures on its balance sheet at the time of the selection of the securitised exposures or at the exact time of their securitisation, nor should it require that similar or any exposures were actually originated at the time of origination of the securitised exposures.

Disclosure of material changes from prior underwriting standards

68. For the purposes of Article 24(18) of Regulation (EU) 2017/2402, material changes to the underwriting standards that are required to be fully disclosed should be understood to be those material changes to the underwriting standards that are applied to the exposures that are transferred to, or assigned by, the SSPE after the closing of the transaction in the context of portfolio management as referred to in paragraphs 19 and 20.

69. Changes to such underwriting standards should be deemed material where they refer to either of the following types of changes to the underwriting standards:

    (a) changes which affect the requirement of the similarity of the underwriting standards further specified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402;

    (b) changes which materially affect the overall credit risk or expected average performance of the portfolio of underlying exposures without resulting in substantially different approaches to the assessment of the credit risk associated with the underlying exposures.

70. The disclosure of all changes to underwriting standards should include an explanation of the purpose of such changes.

71. With regard to trade receivables that are not originated in the form of a loan, reference to underwriting standards in Article 24(18) should be understood to refer to credit standards applied by the seller to the short-term credit generally of the type giving rise to the securitised exposures and proposed to its customers in relation to the sales of its products and services.

Criteria for determining the expertise of the seller

72. For the purposes of determining whether the seller has expertise in originating exposures of a similar nature to those securitised in accordance with Article 24(18) of Regulation (EU) 2017/2402, both of the following should apply:

    (a) the members of the management body of the seller and the senior staff, other than the members of the management body, responsible for managing the originating exposures of a similar nature should have adequate knowledge and skills in the origination of exposures of a similar nature to those securitised;

    (b) any of the following principles on the quality of the expertise should be taken into account:

        (i) the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;

(ii) the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;

(iii) the involvement of the members of the management body and the senior staff within the governance structure of the function of originating the exposures should be appropriate;

(iv) in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to origination of exposures of a similar nature to those securitised.

73. A seller should be deemed to have the required expertise where either of the following applies:

(a) the business of the entity, or of the consolidated group to which the entity belongs for accounting or prudential purposes, has included the originating of exposures similar to those securitised, for at least five years;

(b) where the requirement referred to in point (a) is not met, the seller should be deemed to have the required expertise where they comply with both of the following:

(i) at least two of the members of the management body have relevant professional experience in the origination of exposures similar to those securitised at a personal level, of at least five years;

(ii) senior staff, other than members of the management body, who are responsible for managing the entity's originating of exposures similar to those securitised, have relevant professional experience in the origination of exposures of a similar nature to those securitised, at a personal level, of at least five years.

74. For the purposes of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail and in accordance with the applicable confidentiality requirements to permit investors to carry out their obligations under Article 5(3)(c) of Regulation (EU) 2017/2402.

Triggers for termination of the revolving period in case of a revolving ABCP transaction (Article 24(19))

Insolvency-related event with regard to the servicer

75. For the purposes of Article 24(19)(b) of Regulation (EU) 2017/2402, an insolvency-related event with respect to the servicer should do both of the following:

(a) enable the replacement of the servicer in order to ensure continuation of the servicing;

(b) trigger the termination of the revolving period.

Transaction documentation (Article 24(20))

Disclosure of how the sponsor meets the requirements of Article 25(3)

76. For the purposes of Article 24(20)(d) of Regulation (EU) 2017/2402, clarification that the sponsor has met the requirements of Article 25(3) and that the competent authority did not object to the credit institution acting as a sponsor of an ABCP programme should suffice to deem that this disclosure requirement is complied with.

6. Programme-level criteria

Limited temporary non-compliance with certain STS transaction-level criteria (Article 26(1))

Method of calculating the percentage of the aggregate exposure amount of non-compliant exposures

77. For the purposes of the second subparagraph of Article 26(1) of Regulation (EU) 2017/2402, the percentage of the aggregate exposure amount of non-compliant exposures should be determined as the ratio of a to b where:

– *a*= aggregate amount of the exposures underlying the ABCP transactions net any purchase price discounts which are funded by commercial paper, liquidity facility or other means, and are in breach of paragraph 9 or 10 or 11 of Article 24 of Regulation (EU) 2017/2402;

– *b*= the aggregate amount of the exposures underlying the ABCP transactions net any purchase price discounts which are funded by commercial paper, liquidity facility or other means.

Temporary non-compliance

78. For the purposes of the second subparagraph of Article 26(1) of Regulation (EU) 2017/2402, 'temporarily' should be understood to refer to a period of no more than six months from the date on which the sponsor became aware of the non-compliance.

When at least one underlying exposure is in breach of paragraph 9 or 10 or 11 of Article 24 of Regulation (EU) 2017/2402 for longer than six months, or when the percentage of the aggregate exposure amount of non-compliant exposures calculated in accordance with paragraph 77 surpasses 5% at any time, the requirement of the second subparagraph of Article 26(1) of Regulation (EU) 2017/2402 should be considered not met.

Sample of the underlying exposures subject to external verification

79. For the purposes of the third subparagraph of Article 26(1) of Regulation (EU) 2017/2402, the sample of underlying exposures subject to the external verification should be representative of the portfolio of exposures belonging to all transactions funded by the ABCP programme.

Scope and regularity of the external verification

80. For the purposes of the third subparagraph of Article 26(1) of Regulation (EU) 2017/2402, the external verification should cover only the transaction-level requirements referred to in paragraphs 9, 10 and 11 of Article 24 of that Regulation.

81. The external verification should be carried out at least annually.

Parties eligible to execute the external verification

82. For the purposes of the third subparagraph of Article 26(1) of Regulation (EU) 2017/2402, an appropriate and independent party should be deemed to be a party that meets both of the following conditions:

(a) it has the experience and capability to carry out the verification;

(b) it is none of the following:

(i) a credit rating agency;

(ii) a third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402;

(iii) an entity affiliated to the sponsor.

Method for increasing the accuracy of the verification

83. For the purposes of Article 26(1) of Regulation (EU) 2017/2402, the sponsor should:

(a) take appropriate steps to ensure that the percentage of the aggregate exposure amount of non-compliant exposures as determined in paragraph 77 does not surpass 5%, including by substituting the underlying exposures that are non-compliant;

(b) instruct the party carrying out the external verification in accordance with the third subparagraph of Article 26(1) of that Regulation that, where the initial result of the verification referred to in paragraph 82 is that the share of non-compliant exposures in the initial sample is above 5%, that external verifying party should apply one of the following:

(i) increase the sample size in order to materially improve the confidence level and then repeat the verification;

(ii) perform a verification of all of the exposures within the ABCP programme net any purchase price discounts, that are funded by commercial paper, liquidity facility or other means.

84. Where the conditions referred to in points (a) and (b) are not met, the sponsor should immediately notify ESMA and inform its competent authority in accordance with Article 27(4) of Regulation (EU) 2017/2402 that the requirements of Article 26(1) of that Regulation are no longer met, and the ABCP programme should no longer be considered STS.

Remaining weighted average life (Article 26(2))

85. For the purposes of Article 26(2) of Regulation (EU) 2017/2402, the WAL of the underlying exposures of an ABCP programme should be calculated as the exposure-weighted average of the WALs of the pool of underlying exposures at ABCP transaction level, calculated in accordance with paragraphs 53 and 54. The dates of calculations of the WALs of the pool of underlying exposures at ABCP transaction level may differ provided that the difference between the calculation dates is less than one month.

No resecuritisation (Article 26(4))

Second layer of tranching established by the credit enhancement

86. For the purposes of Article 26(4) of Regulation (EU) 2017/2402, a credit enhancement should not be considered to establish a second layer of tranching if the cash flows to and from the ABCP programme can be replicated in all circumstances and conditions by an exposure to a securitisation of a pool of exposures that contains no securitisation positions.

Appropriate mitigation of interest-rate and currency risks at ABCP programme level (Article 26(6))

87. The requirement should be applied in the manner specified in paragraphs 42 to 47 adapted to refer to any interest rate and currency risks at ABCP programme level.

Documentation of the ABCP programme (Article 26(7))

Expertise of the sponsor in credit underwriting

88. For the purposes of determining whether a sponsor has expertise in credit underwriting in accordance with Article 26(7)(b) of Regulation (EU) 2017/2402, both of the following should apply:

(a) the members of the management body of the sponsor and the senior staff, other than members of the management body, responsible for managing the credit underwriting should have adequate knowledge and skills in credit underwriting;

(b) any of the following principles on the quality of the expertise should be taken into account:

(i) the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;

(ii) the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;

(iii) the involvement of the members of the management body and the senior staff within the governance structure of the function of credit underwriting should be appropriate;

(iv) in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to credit underwriting.

89. A sponsor should be deemed to have the required expertise where either of the following applies:

(a) the business of the entity, or of the consolidated group to which the entity belongsfor accounting or prudential purposes, has included the credit underwriting for at least five years;

(b) where the requirement referred to in point (a) is not met, the sponsor should be deemed to have the required expertise where they comply with both of the following:

(i) at least two of the members of the management body have relevant professional experience in credit underwriting, at s personal level, of at least five years;

(ii) senior staff, other than members of the management body, who are responsible for managing the entity's credit underwriting have relevant professional experience in the credit underwriting, at a personal level, of at least five years.

90. For the purposes of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail and in accordance with the applicable confidentiality requirements to permit investors to carry out their obligations under Article 5(3)(c) of Regulation (EU) 2017/2402.

Liquidity facility

91. The requirement in point (f) of Article 26(7) of Regulation (EU) 2017/2402 that the ABCP programme documentation must provide for the drawing down of the liquidity facility and the repayment of the maturing securities in the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry, should be understood to apply only to cases where the sponsor of an ABCP programme supports all securitisation positions on an ABCP programme level by a single liquidity facility. Where, instead, this support is provided by distinct liquidity facilities for each ABCP transaction and the non-renewal of the funding commitment relates to just one specific liquidity facility for a particular ABCP transaction before its expiry, there should be no requirement for the documentation to provide for the drawing down of the other liquidity facilities provided for the other ABCP transactions within the ABCP programme.

Expertise of the servicer (Article 26(8))

92. For the purposes of determining whether a servicer has expertise in servicing exposures of a similar nature to those securitised in accordance with Article 26(8) of Regulation (EU) 2017/2402, both of the following should apply:

(a) the members of the management body of the servicer and the senior staff, other than members of the management body, responsible for administering the ABCP programme, should have adequate knowledge and skills in the administration of ABCP programmes which finance exposures of a similar nature to those securitised, including knowledge and skills in reviewing the quality of the underwriting, origination and servicing of the exposures of a similar nature to those securitised;

(b) any of the following principles on the quality of the expertise should be taken into account in the determination of the expertise:

(i) the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;

(ii) the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;

(iii) the involvement of the members of the management body and the senior staff within the governance structure of the function of the administration of the ABCP programmes which finance exposures of a similar nature to those securitised should be appropriate;

(iv) in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to the administration of the ABCP programmes which finance exposures of a similar nature to those securitised.

93. A servicer should be deemed to have the required expertise where either of the following applies:

(a) the business of the entity, or of the consolidated group to which the entity belongs for accounting or prudential purposes, has included the administration of the ABCP programmes which finance exposures of a similar nature to those securitised, for at least five years;

(b) where the requirement referred to in point (a) is not met, the servicer should be deemed to have the required expertise where they comply with both of the following:

(i) at least two of the members of its management body have relevant professional experience in the administration of the ABCP programmes which

finance exposures of a similar nature to those securitised, at personal level, of at least five years;

(ii) senior staff, other than members of the management body, who are responsible for managing the entity's servicing of exposures of a similar nature to those securitised, have relevant professional experience in the administration of the ABCP programmes which finance exposures of a similar nature to those securitised, at a personal level, of at least five years;

94. For the purpose of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail and in accordance with the applicable confidentiality requirements to permit investors to carry out their obligations under Article 5(3)(c) of Regulation (EU) 2017/2402.

Well documented policies, procedures and risk management controls

95. For the purposes of Article 26(8) of Regulation (EU) 2017/2402, the servicer should be considered to have 'well documented and adequate policies, procedures and risk management controls relating to servicing of exposures' where either of the following conditions is met:

(a) the servicer is an entity that is subject to prudential and capital regulation and supervision in the Union and such regulatory authorisations or permissions are deemed relevant to the administration of ABCP programmes which finance exposures of a similar nature to those securitised, including knowledge and skills in reviewing the quality of the underwriting, origination and servicing of exposures of a similar nature to those securitised;

(b) the servicer is an entity that is not subject to prudential and capital regulation and supervision in the Union, and a proof of existence of well documented and adequate policies and risk management controls is provided that also includes a proof of adherence to good market practices and reporting capabilities. The proof should be substantiated by a third party review, such as by a credit rating agency or external auditor.

4. Accompanying documents

4.1 Cost-benefit analysis / impact assessment

1. As per Article 16(2) of the EBA Regulation (Regulation (EU) No 1093/2010), guidelines developed by the EBA shall be, where appropriate, accompanied by an impact assessment which analyses the related potential related costs and benefits. This section provides an overview of such impact assessment, and the potential costs and benefits associated with the implementation of the guidelines.

Problem identification

2. The guidelines have been developed in accordance with the mandate assigned to the EBA in Article 23(3) of Regulation (EU) 2017/2402 (Regulation (EU) No 2017/2402), which requests the EBA to develop guidelines on the harmonised interpretation and application of the transaction-level and programme-level criteria for the ABCP securitisation.

3. The guidelines are expected to play a crucial role in the consistent and correct implementation of the STS criteria, and the new EU securitisation framework in general. They should lead to consistent interpretation and application of the criteria by the originators, sponsors, SSPEs and investors involved in the STS securitisation, the competent authorities designated to supervise the compliance of the entities with the criteria, and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402**.** The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is prerequisite for the application of preferential risk weights under the amended capital framework, as well as by severe sanctions imposed by Regulation (EU) 2017/2402 for negligence or intentional infringement of the STS criteria**.** The guidelines are also directly interlinked with ESMA mandates such as the ESMA RTS on STS notifications. Lastly, the guidelines will be applied on a cross-sectoral basis, i.e. by different types of financial institutions and other entities that will act as originators, original lenders, investors, sponsors and SSPEs with respect to the STS securitisation, as well as a large number of competent authorities that will be designed to supervise the compliance of such market participants with the STS criteria.

Policy objectives

4. The main objective of the guidelines is to ensure harmonised interpretation and application of the STS criteria, and a common and consistent understanding of the STS criteria throughout the Union.

5. The introduction of the simple, transparent and standardised securitisation product, and establishment of the criteria that such a product needs to comply with, are a core pillar of the new EU securitisation framework, consisting of Regulation (EU) 2017/2402 and accompanying changes in the CRR for credit institutions and investment firms which entered into force in the

EU in January 2018 (and in the Commission Delegated Regulation for insurance and reinsurance undertakings which entered into force in June 2016).

6. The guidelines should therefore contribute to the original general objective of this reform, which is to revive a safe securitisation market by introducing STS securitisation instruments, which address the risks inherent in highly complex, opaque and risky securitisation instruments and are clearly differentiated from such complex structures. This should lead to improvement of the financing of the EU economy, weakening the link between banks deleveraging needs and credit tightening in the short run, and creating a more balanced and stable funding structure for the EU economy in the long run.

7. By playing an important role in the effective implementation of the new EU securitisation framework, the guidelines should also contribute to the general objective of the EBA which is to ensure a high, effective and consistent level of EU regulation, and hence maintain the stability of the EU financial system.

Baseline scenario

8. The baseline scenario presumes the existence of no guidelines. It is expected that their absence would have a negative impact on the implementation of the new EU securitisation framework, given that potential ambiguities or uncertainties present in the STS criteria as specified in Regulation (EU) 2017/2402 would not be addressed, leading to a lack of convergence and to divergent approaches in the implementation of the criteria throughout the EU. This could increase the costs of compliance with the requirements, and result in origination of STS securitisation instruments with differing characteristics and risk profiles, resulting from different interpretation of the criteria set out in Regulation (EU) 2017/2402. In addition, this could disincentivise the originators from issuing STS securitisations, in particular in the light of severe sanctions that could be imposed in cases of breach of the obligations. Lastly, such divergent application of the criteria could create barriers for investments in such securitisation, and undermine the investors' confidence in the STS products. The lack of clear interpretation of the rules could also increase the scope for potential use of the binding mediation, if disagreements arose due to inconsistent understanding of the Level 1 requirements.

Assessment of the option adopted

9. The EBA has addressed the legal mandate by providing a detailed interpretation of all the STS criteria specified in Regulation (EU) 2017/2402. It should be taken into account that the STS criteria, as well as the EBA guidelines, are a binary system i.e. each criterion and each interpretation in the EBA guidelines are equally important given that non-compliance with any criterion could potentially lead to losing the STS label. Although for the internal purposes during the process of development of the guidance the EBA has categorised the STS criteria based on their perceived level of clarity/unclarity into three different groups, for the external entity to which the guidelines shall apply, all STS criteria are important for the purposes of eligibility for the STS label.

Cost-benefit analysis

10. It is expected that implementation of the guidelines will bring about substantial benefits for the originators, original lenders, investors, sponsors, SSPEs, competent authorities and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402, given that it should provide a single source of interpretation of the STS criteria and should therefore substantially facilitate their consistent adoption across the EU.

11. The guidelines should help achieve the objectives of the new EU securitisation framework as set out above, in a more efficient and effective way. They should help introduce an immediately recognisable STS product in EU securitisation markets, increase the investors' trust in the STS products that will be eligible for a more risk sensitive capital treatment and thereby allowing investors and originators to reap the benefits of simple, transparent and standardised instruments.

12. With respect to the costs, while it is expected that the implementation of the new EU securitisation framework itself will be accompanied by considerable administrative, compliance and operational costs for both market participants and competent authorities10, the guidelines should contribute to mitigation of such costs, by providing clarity on Level 1 requirements. Beyond the costs for market participants and competent authorities to adapt to the new regulatory framework, there should be no relevant social and economic costs.

13. It is assessed that the guidelines will affect a large number of stakeholder groups. Given the inherently cross sectoral nature of securitisation, different types of prudentially regulated and non-regulated institutions and other entities will be brought under the scope of Regulation (EU) 2017/2402 and the guidelines, on both the origination and investment side. The guidelines will also need to be implemented by the competent authorities that will be designated to supervise the compliance of the market participants with the STS criteria. In addition, third parties that will be authorised to verify compliance with the STS criteria in accordance with Article 28 of Regulation (EU) 2017/2402 will need to rely on the interpretation provided in the guidelines.

14. It is expected that costs and benefits related to the implementation of the guidelines will be on-going, and applicable for each single securitisation instrument issued

[10] See the impact assessment accompanying the proposals on securitisation developed by the European Commission: https://ec.europa.eu/info/publications/impact-assessment-accompanying-proposals-securitisation_en

4.2 Feedback statement

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

The consultation period lasted for three months and ended on 20 July 2018. A total of 12 responses were received, of which 11 were published on the EBA website.

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

In many cases several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments, and EBA analysis are included in the section of this paper where EBA considers them most appropriate.

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

Summary of key issues and the EBA's response

The respondents generally welcomed and supported the guidelines, the approach to the interpretation of the STS criteria and the aspects that the guidance focuses on. The respondents provided a substantial number of technical comments on a number of specific technical issues in the guidance.

With respect to the transaction-level criteria, the following key comments have been made, and corresponding changes have been introduced in the guidelines:

- True sale, assignment or transfer with the same legal effect (Article 24(1) – (5)): in response to concerns about the requirement to provide the legal opinion to confirm the true sale in all cases, the guidance expects the legal opinions to be provided as a general rule and omission to be an exception;

- Exposures in default and to credit impaired debtors/ guarantors (Article 24(9)): concerns were raised about the guidance that only exposures where neither the debtor nor the guarantor is credit impaired, can be included in the securitisation. The guidance has been amended to acknowledge the role of the guarantor as a risk bearer. The amended guidance clarifies that the exposures are allowed in the STS securitisation as long as there is a recourse for the full securitised exposure amount to at least one non-credit impaired party (whether that is a debtor or a guarantor);

- No predominant dependence on the sale of assets (Article 24(11)): concerns were raised about the conditions specified in the guidance that determine in which cases the repayment

of investors is 'predominantly' depends on the sale of assets (value of assets no more than 30% of the total exposure value, no material concentration of dates of sales, granularity more than 500 exposures). While the guidance keeps the requirement preventing the material concentration of dates of sale of assets unchanged, it includes an amended percentage to determine 'predominant' dependence, which has been raised to 50%. The guidance has also been amended to ensure a maximum concentration limit for exposures to a single obligor of 2%;

- Appropriate mitigation of interest rate and currency risks (Article 24(12)): the requirements with respect to the derivatives have been adjusted and simplified to ensure a balanced approach to interpretation of the term 'appropriate mitigation';

- Underwriting standards (Article 24(18)): concerns were raised about the strict guidance with respect to the requirement to 'disclose material changes from prior underwriting standards', which would require disclosure of changes made up to five years prior to the securitisation. It was proposed that that this requirement should be only forward looking i.e. requiring disclosure of material changes only following the issuance of securitisation. Taking into account the existing disclosure requirement on the underwriting standards in prospectus, the guidance has been amended to refer to changes to underwriting standards only from the closing of the transaction.

With respect to the programme-level criteria, the following key comments have been made, and corresponding changes have been introduced in the guidelines:

- Limited temporary non-compliance with some requirements (Article 26(1)): in response to comments that the period of three months allowed for the temporary non-compliance with certain criteria was too short, the period has been extended to six months;

- External verification of a sample of the underlying exposures (Article 26(1)): in response to comments that a repetition of external verification every time 75% of the underlying receivables had been replaced or substituted was overly excessive, the guidance has been amended to ensure that the external verification is repeated at least annually;

- Calculation on the remaining weighted average life of exposures of an ABCP programme (Article 26(2)): the guidance has been extended to clarify how to calculate the WAL at ABCP programme level and how this calculation relates to the WAL at transaction level;

- Expertise of the servicer (Article 26(8)): it is understood that 'the servicer' in the context of an ABCP programme is meant to refer to the administrator of the ABCP programme who fulfils various administrative duties in relation to the ABCP programme, rather than to the servicer in the strict sense. The guidance has been clarified to that respect.

The following table provides a complete summary of the comments received during the consultation, the EBA analysis of the comments, and the corresponding amendments that have been introduced to the guidelines. The comments in the table also include comments received from stakeholders on the corresponding criteria in the consultation paper on guidelines on STS criteria for non-ABCP securitisation (EBA/CP/2018/05). To the extent possible, the corresponding amendments to the guidelines have been aligned with those introduced to the guidelines on STS criteria for non-ABCP securitisation. All the references to paragraphs refer to paragraphs in the consultation paper (not to the paragraphs in the final guidelines).

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2018/04			
GENERAL COMMENTS			
Disclosure	Some respondents proposed that the guidelines should provide a harmonised explanation of where all the information should be disclosed in order to comply with these criteria, based on the list of underlying documentation in Article 7.	The objective of the guidelines is to provide a harmonised interpretation of the content of the STS criteria. Specification of where the information should be disclosed to comply with the criteria is considered to be outside the scope of the guidelines. The general understanding is that the information on compliance with the STS criteria should be included in the STS notification and/or in the transaction documentation, as appropriate.	No change.
General Data Protection Regulation (GDPR)	Some respondents noted that some guidance in the guidelines is considered incompatible with the provisions of the GDPR, since it requires disclosing personal data. This has been noted for the following guidance and elsewhere: disclosure of material changes to the underwriting standards; disclosure of number of years of professional experience for the seller and the servicer; provision of proof of well-documented policies for the servicer; confirmation of the external verification of a sample of underlying exposures.	With respect to the requirement in the guidance to disclose the expertise for the purpose of demonstrating the number of years of professional experience of the seller and the servicer, the guidance now clarifies that the disclosure should be in accordance with the applicable confidentiality requirements (such as GDPR). It is understood that the comment with respect to the GDPR is irrelevant for other requirements highlighted by the respondents, given that they do not require disclosure of personal data.	Paragraphs 74 and 101 have been amended.
Applicability of STS criteria to unfunded exposures	Some respondents asked for clarification of whether exposures which are transferred to but not eligible for funding by the SSPE should or should not have to comply with the STS criteria. This reflects existing practice, in particular in ABCP securitisation of trade finance exposures, dealer receivables and other short-term receivables (where for legal or practical	It is acknowledged that, in the context of ABCP securitisations, the STS criteria are relevant only for funded exposures, at both transaction and programme levels, for legal, practical and operational reasons inherent in ABCP securitisation, where it is customary to purchase from the seller all receivables owed by a given	General clarification has been included in paragraph 11.

	reasons the amount of funding provided by the ABCP programme is based only on the amount of receivables meeting the eligibility criteria, less excess concentrations and required reserves).	debtor, whether or not past due or otherwise ineligible, to ensure that the purchaser acquires all the receivables owed by that debtor (while excluding past due or otherwise ineligible receivables from the pool eligible for funding). General clarification has been included in the guidance that the transaction- and programme-level requirements that refer to the underlying exposures should be applied only to underlying exposures that are compliant with the eligibility criteria as referred to in Article 24(7) of that regulation and are funded by commercial paper, liquidity facility or other means. It is to be noted that this guidance is specific to ABCP securitisation and is not reflected in the guidelines on non-ABCP securitisation.	
Disclosure to ABCP transaction parties	Some respondents proposed clarifying in the guidelines that disclosure and reporting requirements with respect to any ABCP transaction, except where otherwise specifically provided, refer to disclosure or reporting to the parties exposed directly to the credit risk of the securitised exposures in the ABCP transaction, and do not require disclosure to investors in the ABCP issued by the programme.	The EBA agrees with this comment. Although the previous EBA guidance already acknowledged and specified this in the interpretation of one specific requirement (with respect to the requirement to make available data on historical default and loss performance in accordance with Article 24(14)), that specific guidance has been replaced with general guidance applicable to all relevant requirements. It is understood that this should include, but should not be limited to, the following requirements: (i) requirement to disclose measures taken to appropriately mitigate interest-rate and currency risks in accordance with Article 24(12); (ii) requirement to report to investors without undue delay change in priorities of payments which will materially adversely affect the repayment of the securitisation position in accordance with Article 24(13); (iii) requirement to make available to potential investors data on historical default and loss	General clarification has been included in paragraph 12.

		performance in accordance with Article 24(14); (iv) requirement to fully disclose any material changes from prior underwriting standards in accordance with Article 24(18).	
Transactions within an STS ABCP programme being not securitisations	Some respondents emphasised that it would be useful to clarify that, reflecting current market practices, an STS ABCP programme may include some underlying transactions which are not themselves securitisations, and therefore are not 'ABCP transactions' as defined in the regulation.	The EBA agrees that Article 2(7) of Regulation (EU) 2017/2402 defines an ABCP programme as 'a programme of securitisations' and that Article 2(8) of Regulation (EU) 2017/2402 defines an ABCP transaction as 'a securitisation within an ABCP programme'. An ABCP transaction must therefore be a securitisation, although the regulation seems silent on the issue of whether/which other exposures/transactions may be part of an ABCP programme. While no guidance has been included in the guidelines to interpret this question for ABCP programmes in general, for the ABCP programmes for STS purposes (i.e. for the ABCP programmes to be considered STS compliant), it is understood that all transactions in the ABCP programme need to be securitisations and all transactions need to be STS compliant. This interpretation is considered consistent with the general understanding of the STS initiative.	No change.
Without undue delay	Some respondents proposed to clarify the term 'without undue delay' used throughout Regulation (EU) 2017/2402.	The term 'without undue delay' is widely recognised and therefore it is not considered necessary to provide an additional interpretation of it.	No change.
TRANSACTION-LEVEL CRITERIA			
True sale, assignment or transfer with the same legal effect (Article 24(1), 24(2), 24(3), 24(4) and 24(5))			
Q1. Do you agree with the interpretation of these criteria, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Legal opinion (paragraphs 10-13)	A number of respondents raised concerns about the requirement to provide a legal opinion in order to confirm the transfer of the title of the exposures to the SSPE. It was noted that, while a legal opinion is the most common mechanism to	The guidance has been amended to clarify how to substantiate the confidence of third parties (including the competent authorities) in meeting the relevant requirements set out in the relevant paragraphs of	Paragraphs 10-13 have been amended.

	confirm the transfer, it is not the only possible mechanism. In addition, it was not seen as consistent with recital 23 of Regulation (EU) 2017/2402, which provides that a legal opinion 'could' be provided, and suggests that it should therefore not be mandatory.	Regulation (EU) 2017/2402. While the guidance no longer explicitly requires the provision of a legal opinion in all cases, the guidance expects the provision of a legal opinion as a general rule and omission to be an exception.	
Accessibility of the legal opinion to third parties (paragraph 13)	A number of respondents raised concerns about the requirement that the legal opinion should be accessible and made available to third parties. Respondents argued that the legal opinions are in general subject to strict confidentiality requirements, for a variety of commercial and liability reasons, and the EBA proposal widens the liability of the law institutions and exposes them to significant risks.	The guidance has been amended to clarify that the legal opinion should be accessible and made available to only competent authorities and third party certifiers.	Paragraph 13 has been amended.
Commingling risks and set-off risks (paragraph 10)	A number of respondents did not agree that the legal opinion should cover the assessment of commingling and set-off risks. It was argued that the main objective of the true sale legal opinion is to provide assurance that the transaction expressed to be a sale will not be re-characterised as a secured loan that is subject to the rules of insolvency as they relate to the originator (i.e. to essentially cover clawback and re-characterisation risks). Commingling risks and set-off risks are not related to true sale, as they are related to the asset-level risks.	The reference to commingling and set-off risks has been deleted. The legal opinion should, however, include assessment of the clawback risks and re-characterisation risks, as these are crucial for the assessment of the true sale.	Paragraph 10 has been amended.
Material obstacles (paragraph 11b)	A number of respondents did not agree with the requirement that, in cases of assignment perfected at a later stage, the legal opinion should provide evidence of material obstacles to perfection of true sale. It was argued this requirement is not substantiated in Level 1, is not typically included in legal opinions on securitisation and raises practical problems, as 'materiality' is a subjective term.	The reference was originally inspired by the Basel STC requirements. However, it is acknowledged that the Basel requirements do not specifically require the provision of such evidence in the legal opinion. The requirement to provide evidence of material obstacles to perfection of true sale has been deleted.	Paragraph 11b has been amended.
Definition of the same legal effect	A few respondents suggested explaining the meaning of 'same legal effect'.	The guidance now specifies the core concept of the true sale, which is the effective segregation of the underlying exposures from the seller, its creditors and	Paragraph 11 has been amended.

		its liquidators including in the event of the seller's insolvency.	
Confirmation that the seller has had sight of the legal opinion (paragraph 13a)	A number of respondents raised concerns about the requirement for confirmation that the seller has had sight of the legal opinion, in cases where the seller is not the original lender and the true sale is effected through intermediate steps. It was noted that this would be difficult for a number of transactions, which were originated and then traded as unsecuritised loan portfolios, in some cases several times, before being securitised. It would therefore be complex or even not feasible to provide a legal opinion about true sale at each intermediate step.	Taking into account the legitimate complexities of provision of legal opinion at the intermediate steps, the requirement for confirmation that the seller has had sight of the legal opinion, in cases where the seller is not the original lender and the true sale is effected through intermediate steps, has been deleted.	Paragraph 13 has been amended.
Insolvency of the seller (paragraph 15)	Some respondents noted that reference to resolution, as defined in the BRRD in the interpretation of the trigger 'insolvency of the seller' for the perfection of the assignment, is inappropriate, as it is inconsistent with Article 68(3) of the BRRD, which sets out that a resolution action under Article 32 may not, in and of itself, lead to certain consequences listed in Article 68(3) provided that the substantive obligations under the contract continue to be performed.	The reference to resolution as defined in the BRRD has been deleted. The guidance notes that the trigger of 'insolvency of the seller' should as a minimum refer to the events of legal insolvency as defined in national legal frameworks.	Paragraph 15 has been amended.
Q2. Do you agree with the clarification of the conditions to be applicable in case of use of methods of transfer of the underlying exposures to the SSPE other than the true sale or assignment? Should examples of such methods of such transfer be specified further?			
Methods of transfer	A few respondents proposed clarifying further the term 'assignment perfected at a later stage'. One of the respondents suggested that the definition of the assignments to be perfected at a later stage should not include un-notified assignment or equitable assignments under English or Irish law or other trust-like arrangements.	The objective of the guidance is to specify general principles to interpret Article 24(1)-(5), rather than to provide the lists or examples of methods that should or should not be considered to have the same legal effect as true sale or assignment in individual jurisdictions.	No change.
Q3. Do you believe that in addition to the guidance provided, additional guidance should be provided on the application of Article 24(2)? If yes, please provide suggestions of such severe clawback provisions to be included in the guidance.			
Severe clawback provisions	Most respondents believe that the guidance on severe clawback provisions is sufficient.	The support for the guidance has been noted.	No change.

Clawback provision set out in Article 24(2)(a)	One respondent suggested clarifying in the guidelines the term 'within a certain period before the declaration of the seller's insolvency' as set out in Regulation (EU) 2017/2402 in Article 24(2)(a). In particular, the respondent requested clarification of what the acceptable period is before the declaration of the seller's insolvency, i.e. from when a provision allowing the liquidator of the seller to invalidate the sale of the underlying exposures would constitute a severe clawback provision.	The comment has not been taken on board. The purpose of the requirement is to ensure that a specific timeframe is set out in the provisions, rather than to lay down a concrete timeframe.	No change.
Q4. With respect to the interpretation of the criterion in Article 24(5), should the severe deterioration in the seller credit quality standing, and the measures identifying such severe deterioration, be further specified in the guidelines? Do you believe that the interpretation should refer to the state of technical insolvency (i.e. state where based on the balance sheet considerations the seller reaches negative net asset value with its the liabilities being greater than its assets, without taking into account cash flows or events of legal insolvency), and if yes, should it be specified whether it should or should not be considered as the trigger effecting perfection of transfer of underlying exposures to SSPE at a later stage?			
Technical insolvency (paragraph 15)	Only a few respondents commented on the technical insolvency and agreed that the guidance with respect to the insolvency of the seller should not refer to the state of technical insolvency.	The support for the existing guidance has been noted.	No change.
Credit quality thresholds (paragraph 15)	Some respondents commented that the reference to 'credit quality thresholds related to the financial health of the seller that are generally used and recognised by market participants' in the interpretation of the trigger 'severe deterioration in the seller credit quality standing' is too restrictive, as the credit ratings would probably be the only metric that would meet this description. Given that many sellers are not rated, it could make the use of this guidance more difficult.	The guidance has been amended and the reference to 'credit quality thresholds generally used and recognised by market participants' has been replaced with 'credit quality thresholds that are objectively observable'. This should cover triggers related to the credit ratings or other alternative triggers, as long as they are objectively observable.	Paragraph 14 has been amended.
Representations and warranties (Article 24(6))			
Q5. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Difficult or impossible to obtain	Several respondents expressed their concerns that the representations and warranties could not be provided in some situations, such as when there is no direct relationship	It is noted that the guidance does not provide additional value to the Level 1 text, while it raises additional complexities, and it has therefore been deleted.	Paragraph 16 has been deleted.

representations and warranties (paragraph 16)	between the seller and original lender as a result of multiple times of asset purchases and sales; or when the assets are acquired from insolvency officials or resolution authority. Moreover, in the case of a securitisation of a portfolio of purchased loans or receivables, or in a transaction where a seller purchases receivables from other companies in the same corporate group, the ABCP programme sponsor and other transaction parties may be able to obtain representations from an 'originator' of the securitised exposures', but not always from the 'original lender'.		
Eligibility criteria for the underlying exposures/active portfolio management (Article 24(7))			
Q6. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Clear eligibility criteria (paragraph 20)	A few respondents suggested extending the interpretation of the term 'clear eligibility criteria' to clarify that the eligibility criterion is 'clear' if a court or other tribunal could determine whether the criterion was met or not, whether as a matter of fact or law or both.	The wording of the guidance has been enhanced to acknowledge that there may be questions of pure fact or mixed fact and law that are not appropriate for purely legal determination.	Paragraph 20 has been amended.
Eligibility criteria to be met for exposures transferred to the SSPE after the closing of the transaction (paragraph 21)	A number of respondents pointed out that the guidance should be clarified for the master trusts or other repeat issuance securitisation structures such that exposures transferred to the SSPE after any given closing of a transaction should have to meet the eligibility criteria applied as at the most recent closing, but that the eligibility criteria may be varied from closing to closing. Therefore, the consistency of the eligibility of criteria should be met at the level of each issuance so that, if a new issuance occurs and new assets will be added or exchanged in respect of that issuance, the eligibility criteria for the new assets should be no less strict than the criteria applicable to that issuance only.	The guidance has been extended with respect to the repeat issuance structures and it clarifies that the eligibility criteria applied to exposures transferred to the SSPE after the closing should be no less strict than the eligibility criteria applied to the initial underlying exposures at the most recent issuance.	Paragraph 21 has been amended.

Eligibility criteria applied at exposure level (paragraph 21)	One respondent proposed that paragraph 21 refer to the eligibility criteria at pool level, rather than at exposure level, to align the guidance with the market practice (e.g. collateral pool level, cap on maximum weighted average loan-to-value (LTV) rate).	The intention of the guidance is to focus on exposure level eligibility criteria, which is consistent with the Level 1 text.	No change.
Q7. Do you agree with the techniques of portfolio management that are allowed and disallowed, under the requirement of the active portfolio management? Should other techniques be included or excluded?			
Purpose of the requirement (paragraphs 17-19)	A number of respondents commented on the list of techniques of active portfolio management as specified in paragraphs 17-19. They proposed that the guidelines should preferably set out the purpose of the requirement along with a series of illustrative examples of permitted techniques that are consistent with that purpose, rather than prescribe a prohibition of sale (in paragraph 19a)/list of exceptions (in paragraph 18). The respondents also argued that the non-exhaustive list of examples of techniques of allowed portfolio management should be widened to allow widely used practices (see below).	The guidance has been amended to focus on further clarifying the purpose of the requirement on portfolio management, and provision of examples of techniques which should not be regarded as active portfolio management.	Paragraphs 17 -19 have been amended.
Portfolio management techniques (paragraphs 18-19)	Respondents proposed a number of examples of portfolio management techniques that should not be regarded as active portfolio management and should therefore be allowed for STS purposes. A specific example has been provided of repurchase/replace during the revolving period of underlying exposures up to a certain percentage of the total portfolio to take out badly performing underlying exposures from the transaction and to increase the credit quality of the portfolio of underlying exposures (and thereby a form of credit enhancement).	The non-exhaustive list of examples of allowed portfolio management techniques has been extended, to include a few more examples that have been assessed as consistent with the applicable Level 1 requirement and the guidance. Given that the list is non-exhaustive, other techniques may also eligible, as long as they comply with the applicable Level 1 requirement and the guidance (it is understood that the example provided would be allowed, as long as it complies with the general principles set out in the guidance).	Paragraph 18 has been amended.
No resecuritisation at ABCP transaction level (Article 24(8))			
No resecuritisation at	A number of respondents provided support for the guidance in paragraph 22. In particular, they supported the clarification	The support for the guidance has been noted.	No change.

ABCP transaction level (paragraph 22)	in the guidelines that the reference to underlying exposures not constituting securitisation positions refers to the securitised exposures transferred by the seller to the asset-purchasing SSPE and not to the notes or other interests acquired by the ABCP programme. One respondent requested clarification that, consistent with recital 16 of Regulation (EU) 2017/2402, tranching achieved by the purchase of a senior note is only one possible way to constitute the ABCP transaction, and recital 16 leaves room for other structures to comply with the definition of tranching.	We agree that recital 16 provides examples of how to achieve tranching and does not set out a conclusive list. The guidance is consistent with this interpretation.	
No exposures in default and to credit-impaired debtors/guarantors (Article 24(9))			
Q8. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Exposures in default (paragraphs 25-26)	One respondent noted that reference to the definition of default set out in Article 178(1) of the CRR would make it difficult for a number of ABCP transactions to achieve STS status. ABCP programmes are primarily designed to provide financing to corporate sellers that are not subject to the CRR. More than 50% of outstanding assets financed by ABCP programmes in Europe are made of trade receivables, and few ABCP transactions are set up for financial companies subject to the CRR. The respondent argued that originators other than regulated financial institutions should be able to assess whether a debtor is in default based on applicable accounting rules, and programme sponsors and investors should be able to use those assessments for the purposes of STS qualification.	The guidance has been slightly amended to clarify that, where a seller is not an institution, and when the application of the CRR as further specified in the Delegated Regulations of EBA or the EBA Guidelines on definition of default is deemed unduly burdensome, the seller should comply with the guidance to the extent that such application is not deemed unduly burdensome.	Paragraph 26 has been amended.
To the best of the originator's or original lender's knowledge (paragraph 29)	A number of respondents argued that it is unduly burdensome to assume that information which is publicly available should be considered notified to the originator, which would require that the institutions should note all the publicly available information.	The EBA notes that it was not the original intention of the guidance to require that the originator check all the publicly available information. On the contrary, the intention of the guidance was to clarify that the publicly available information should be considered only to the	Paragraph 29 has been amended.

		extent that institutions already collect and consider that information as part of their origination, servicing and risk management processes. The guidance has been amended to clarify this further.	
Credit registry (paragraphs 32-33)	Some respondents argued that institutions should check credit registry information about the obligors only at the time of origination of the assets, and not at the time of origination of the securitisation. It was argued that it is not currently common practice to check credit registry entries for obligors after the loan has been originated, and the requirement would cause an excessive burden on institutions. In addition, it was noted that Regulation (EU) 2017/2402 uses different wording from the 'time of selection' in the opening passage of Article 24(9), which would indicate the intention to use a different timing from the time of securitisation. A number of respondents requested that the guidelines explain further how to determine whether an entry in a credit registry indicates an 'adverse credit history'. Some respondents pointed out that in some jurisdictions that do not have public credit registries the registries contain both negative and positive information about the clients, which do not necessarily flag the borrowers with a negative credit status.	The comments with respect to the timing of the checking of the entries on the credit registries have been taken on board. The amended guidance requires checking the entries on the credit registry at the time of origination of the exposures, which seems consistent with the intention and wording of Regulation (EU) 2017/2402. The guidance also aims to define further the term 'adverse credit status'. The intention of the amended guidance is to only capture those borrowers on the credit registries that are credit impaired, and not to unintentionally disqualify a significant number of borrowers, given that different practices exist between EU jurisdictions with respect to entry requirements to such credit registries, and that credit registries in some jurisdictions may contain both positive and negative information about the clients. The guidance should therefore enable the originators to discard minor occurrences or omissions by the obligor which have resulted in an entry in a credit registry but can be reasonably ignored for the purposes of a credit risk assessment.	Paragraphs 32 -33 have been amended.
Significantly higher risk of contractually agreed payments not being made for comparable exposures	A number of respondents raised concerns that the term 'significantly higher' remained underdefined in the guidance. In particular, they raised concerns about the operational burden and uncertainty surrounding the proposed test. They also noted that applying a 'relative' test (i.e. where assets are compared with the 'average' credit riskiness of the pool or the seller's assets) would lead to assets being unnecessarily ineligible. It was also perceived that the guidance is in	With the aim of providing further clarity on the requirement, the guidance has been structured in a clearer way, and aligned with the requirement on the prevention of the adverse selection of assets in the Delegated Regulation specifying in greater detail the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402 (the timing has also been aligned with the abovementioned Delegated Regulation	Paragraphs 34 -35 have been amended.

(paragraphs 34-35)	disagreement with the intent of the article, which is to exclude loans that are credit impaired but not necessarily individually more risky than average loans. The respondents sought more objective criteria to define the term and proposed a variety of suggestions for the definition. One respondent noted that, according to its understanding of trade receivables of non-financial corporates, no credit score or credit assessment is available, so paragraph 35 of the guidelines is not applicable to such securitisations.	on risk retention, which refers to the time of selection of exposures and not to the origination of securitisation). To further facilitate the interpretation of the requirement, a set of examples has been given of how the requirement could be met. Trade receivables of non-financial corporates as provided in the example by the respondent fall within the scope, and need to comply with the amended guidance.	
Q9. Do you agree with the interpretation of the criterion with respect to exposures to a credit-impaired debtor or guarantor?			
Debtor or guarantor (paragraphs 27-28)	A number of respondents raised concerns about the proposal that neither the debtor nor the guarantor be credit impaired, arguing that the requirement is excessive and illogical, and makes the addition of the guarantor in the legislation irrelevant.	The comment has been taken on board. The guidance has been amended to acknowledge the role of the guarantor as a risk bearer. It is also worth noting that not all loans with guarantors indicate credit-impairedness of the original obligor. The amended guidance clarifies that the exposures are allowed in the STS securitisation as long as there is recourse for the full securitised exposure amount to at least one non-credit-impaired party.	Paragraphs 27 -28 have been amended.
Q10. Do you agree with the interpretation of the criterion with respect to the exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process?			
Exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process (paragraph 31)	The majority of respondents agreed with the proposed interpretation of the criterion with respect to the exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process. Some respondents raised concerns that, by considering all exposures of the debtor or guarantor, the proposed guidance would be biased against remediated customers.	Given the support by the respondents, no substantial change has been made to the guidance. The wording has been amended slightly to clarify better that, where an obligor has restructured exposures, they are not considered credit impaired provided that the restructured debt meets conditions (i) and (ii) of Article 24(9). This exception applies both to exposures to be included in the securitised portfolio and to other exposures of the obligor.	Paragraph 31 has been amended slightly.

At least one payment made (Article 24(10))			
Q11. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Exemptions from requirement to have made at least one payment at the time of transfer of the exposures	In general, respondents were supportive and agreed with the proposed guidance on this requirement. One respondent commented that transactions with a 'ramp up' phase or utilising a warehousing structure should be exempt from the requirement in Article 24(10) to have made at least one payment at the time of transfer of the exposures.	The criterion in Article 24(10) is clear that, at the time of transfer to the SSPE, exposures must have made at least one payment, except in the specific cases described. Where 'ramp up' or warehousing structures are used, they must comply with the STS requirements unless they are otherwise exempt under Article 24(10).	No changes.
No predominant dependence on the sale of assets (Article 24(11))			
Q12. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Q13. Do you agree with the interpretation of the predominant dependence with reference to 30% of total initial exposure value of securitisation positions? Should different percentage be set dependent on different asset category securitised?			
30% threshold for residual value (paragraph 39a)	The majority of respondents raised strong concerns against 30% threshold. They argued that the 30% requirement is unduly restrictive and would rule out many existing/standard asset classes. It was also argued that 30% is not in line with the original intentions of the legislators, or with the general understanding of the term 'predominantly', and the market practice.	The comments have been taken on board. The percentage has been raised to 50%, which seems consistent with the intent of the legislators and the general understanding of the term 'predominant'. However, It is also noted that, in a significant number of auto securitisations, for example, the residual values are fully backed by repurchase obligations on the originator, the manufacturer or the dealer, and therefore the requirements in the paragraph 39 would not apply to a number of these transactions.	Paragraph 39a has been amended.
Concentration of dates (paragraph 39b)	Some respondents raised concerns that the requirement needed further clarification regarding what is a 'material' concentration. It was also noted that this requirement could be difficult to satisfy, for example during a replenishment period, and that a few peaks in terms of sale of assets should be allowed (e.g. as a result of targeted commercial campaigns	One of the main objectives of this requirement is to reduce the dependence of the repayment of holders of the securitisation positions on the sale of assets securing the underlying exposures. The dependence is increased when such exposures mature within a tight timeframe, as the maturity period can coincide with an economic	No change.

	for selling new cars), as typically there would be additional protection in the transaction for this.	downturn or adverse market conditions. This outweighs the arguments for the deletion of the requirement.	
Granularity requirement (paragraph 39c)	Several respondents commented that the 500 exposure requirement was too high a threshold for a 'granular' portfolio and could have negative consequences for some types of portfolios such as equipment leases and car floorplan deals. One respondent noted that, for ABCP transactions, granularity requirements are set at ABCP programme level (Article 243 of the CRR).	While the guidance as such has been kept, it has been amended to ensure a concentration limit for exposures to a single obligor, to ensure a minimum granularity of the pool. This requirement is considered consistent with the Level 1 requirement; the main objective of the requirement in Article 24(11) is to decrease the dependence of the repayment of holders of the securitisation positions on the sale of assets securing the underlying exposures. A concentration limit for exposures to a single obligor is one of the conditions to interpret, enforce and help achieve this requirement.	Paragraph 39c has been amended.
Reference to CRR definition of eligible protection provider (paragraph 44)	Significant concerns have been raised by a number of respondents about the requirement for a third party who is providing a guarantee/repurchase obligation to meet the definition of an eligible provider of unfunded credit protection in the CRR. The following arguments have been made: (i) a number of the third parties would not be eligible under the CRR framework and credit risk mitigation requirements, in particular the rating requirement; (iii) the requirement would have severe consequences on auto- and equipment-leasing receivables, as, for example, in auto transactions the guarantee/repurchase obligation is provided by the seller's parent company, its majority shareholder or some other affiliate; (iv) the requirement would cause practical issues with losing STS if ratings are downgraded. It was also noted that it was not clear to whom, in the context of ABCP transactions, the admissibility of an external rating should apply.	The EBA acknowledges the valid concerns raised by the stakeholders. The reference to the CRR definition of 'eligible protection provider' has been deleted. However, additional guidance has been introduced to ensure that the third party has a capacity to effectuate the guarantee/repurchase obligation.	Paragraph 44 has been amended.
Calculation of the value of assets (paragraph 39a)	Some respondents proposed that the numerator should be based on the total value subject to refinancing risk at transfer (i.e. the extent of the assumed cash flows which are	The wording of the guidance has been amended to clarify that the calculation relies on the total contractually agreed outstanding principal balance at contract maturity	Paragraph 39a has been amended.

	dependent on the sale of assets), to better reflect the extent of the reliance on the sale of assets upon sale proceeds. They argued that basing the calculation on the value of assets at the time of transfer is not appropriate given that the value can change. One respondent proposed that the denominator consider only securitisation positions held by investors.	of the underlying exposures that depend on the sale of the assets to repay the balance. The EBA disagrees with the proposal that the calculation should consider only retained securitisation positions. All notes in an STS securitisation receive preferential treatment, so all notes should be considered for the purposes of the STS criteria.	
Voluntary termination	One respondent asked that the guidelines confirm that exposures which may be subject to voluntary termination are not considered subject to refinancing risk that could arise out of a consumer exercising their termination rights.	It is understood that during a stress in market conditions it is more likely that individuals exercise their voluntary termination rights (as the value of their car or equipment has fallen), so they act in a similar way to other types of exposures where the principal depends on the sale of assets that are considered under Article 24(11). Therefore, exposures that are subject to voluntary termination should be considered under the scope of the requirement.	No change.
Timing of the requirement	One respondent requested clarification regarding whether the requirement applied at the initiation of the transaction/revolving period or on an ongoing basis.	The guidance has been amended to clarify that paragraph 39(a)-(c) is applicable (i) at the transaction's inception, in cases of amortising securitisation, or (ii) during the revolving period for only replenishing transactions.	Paragraph 39 has been amended.
Appropriate mitigation of interest-rate and currency risks (Article 24(12))			
Q14. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
No interest-rate and currency risks	Some respondents proposed clarifying if, in case the securitisation does not create interest-rate or currency risks, such as where the assets and liabilities of the securitisation are fully matched in terms of the interest rate and the currency, there need not be any mitigation of the interest-rate or currency risks.	It is understood that this reading is consistent with the Level 1 requirement.	No change.

Derivatives (paragraph 43)	A number of comments have been received by some respondents on the paragraph with respect to derivatives, including disagreement with the limited list of counterparties, and a request to clarify that the measure of creditworthiness of the derivative counterparty does not need to be tied to a rating. In addition, several respondents found excessively burdensome the requirement to demonstrate the appropriateness of the mitigation of interest-rate and currency risk through derivatives in a sensitivity analysis illustrating the effectiveness of the hedge. They also requested more clarity on the scenarios to be used. It was also noted that the requirement would discourage the use of derivatives and make due diligence by investors more complex.	The requirements with respect to the derivatives have been adjusted to ensure a balanced approach to interpretation of the term 'appropriate mitigation'. The list of counterparties has been deleted and the focus is now on a general requirement for sufficient creditworthiness of the counterparty, without imposing unnecessary limitations on the types of counterparties. The requirement for the sensitivity analysis has been deleted, also taking into account that no similar requirement exists for the non-derivative instruments.	Paragraph 43 has been amended.
Non-derivative instruments (paragraph 44)	A number of respondents argued that the requirement that non-derivative forms of mitigation should meet at least one of the criteria explained in points (a) and (b) is overly restrictive. It was requested that such non-derivative instruments should be able to cover multiple risks as long as the proportion used for hedging and the proportion used for other purposes is specified up front.	The guidance has been simplified and it was clarified that non-derivative forms of mitigation should be accepted if they are deemed to be sufficiently robust to cover the relevant risks. The guidance should allow the non-derivative instruments to cover multiple risks as long as an explanation is provided of how the measures hedge the interest-rate risks and currency risks on one hand and other risks on other hand.	Paragraph 44 has been amended.
Continuous disclosure (paragraph 45)	A number of respondents raised concerns about the requirement to disclose the measures, and the appropriateness of the mitigation of the interest-rate and currency risks, on a continuous basis, noting that this goes beyond the Level 1 requirement. One respondent noted that, in the event of an ABCP transaction funded by two or more ABCP programmes with different sponsor banks, different sponsor banks may not have the same approach to interest-rate and currency risk stresses and mitigation according to their internal	While the requirement for the disclosure has been kept, the requirement has been amended to no longer require such disclosure on a continuous basis. The guidance also no longer specifies where such disclosure should take place. This is consistent with the fact that specification of where the information should be disclosed to comply with the STS criteria is considered to be outside the scope of the guidelines.	Paragraph 45 has been amended.

	methodologies. Having the hedging strategies and stress factors defined in documentation may be confusing, as the stress factors may not be the same as those the banks use for internal risk assessment.		
Remedies and actions related to delinquency and default of debtor (Article 24(13))			
Q15. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Clear and consistent terms (paragraph 48)	A few respondents noted that additional clarification would be welcome on the following points: (i) whether a generic description of the origination/servicing process is deemed sufficient; and (ii) that the templates and processes may change over time, without the changes being necessarily material. It should be clarified that no update is necessary unless the change is significant.	The guidance is clear in specifying that 'clear' does not focus on the level of detail. In addition, the Level 1 text specifies that 'any change in the priorities of payments which will materially adversely affect the repayment shall be reported to investors', and therefore focuses on only material changes. No additional clarification is considered necessary.	Minor amendment to paragraph 48.
Reporting of changes in the priorities of payments (paragraph 49)	A number of respondents noted their disagreement with the requirement to report all changes in the priorities of payment to the investors in commercial paper holding a securitisation position at the level of the ABCP programme. It was argued that this is not necessary, as the investors in ABCPs receive a liquidity line providing full support from the sponsor, and the ABCP transaction waterfall should therefore have no impact on the repayment of the ABCPs. Furthermore, the sponsors carry out liquidity stress scenarios to ensure that the liquidity line should effectively guarantee the repayment of the ABCPs.	The comments have not been accepted. Consistently with the guidelines, any change in the priorities of payments which will materially adversely affect the repayments at programme level needs to be disclosed to investors.	No change.
Data on historical default and loss performance (Article 24(14))			
Q16. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
External data (paragraph 50)	One respondent noted, that in practice, an originator may not be able to provide data in respect of three years, but may be able to provide data in respect of one or two years. The respondent asked for clarification that, if a third party (e.g. a rating agency or another market party) is not willing to	The EBA does not agree with this interpretation. Level 1 is clear in specifying that the data to be made available shall cover a period no shorter than five or three years.	No change.

	provide data and such data are not publicly available in respect of the required three years, Article 24(14) of Regulation (EU) 2017/2402 has nevertheless been fulfilled by the originator and the sponsor.		
Data (paragraph 50)	A few respondents suggested clarifying that, when static and dynamic data are not both available, only one method should be required, depending on data availability (for instance, for securitisations of short-term receivables a static presentation is not possible).	Regulation (EU) 2017/2402 clearly says that the originator and the sponsor shall make available data on static 'and' dynamic historical default and loss performance.	No change.
Scope of availability of data (paragraph 51)	A number of respondents strongly supported the guidance.	The support for the guidance has been noted. The guidance on this specific requirement has been transformed into general guidance, to also cover other specific requirements dealing with the disclosure/reporting.	General clarification has been included in paragraph 12.
Substantially similar exposures (paragraph 52)	A few respondents considered the cross-reference to the Delegated Regulation specifying in greater detail the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402 too restrictive in the context of this requirement, given that it uses as a basis of comparison only assets that are held on the balance sheet of the originator and are not transferred to the SSPE, while the provision of Article 22(1) does not limit the substantially similar exposures to those held by the originator and not securitised. It was stated that the EBA guidance, which permits the use of external data, suggests this conclusion.	The inconsistency has been noted. To ensure the workability of the guidance, it has been clarified that the test is used only to identify which exposures are substantially similar, and that the historical data may relate to exposures regardless of whether they are held by the originator, securitised or indeed purchased from third parties.	Paragraph 52 has been amended.
Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 24(15))			
Q17. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Calculation of WAL (paragraph 53)	One respondent argued that the WAL calculation should be aligned with the calculation of tranche maturity in Article 257 of the CRR and in particular to take into account expected prepayments.	The EBA is of the opinion that the WAL of the STS criteria and the tranche maturity of Article 257, among other factors, do not serve the same purpose, so there are no convincing reasons why the methodologies should be	No change.

		aligned. Therefore, this comment has not been taken on board.	
Maximum maturity of the underlying exposures (paragraph 53)	One respondent noted that the requirement of 'appropriate safeguards for avoiding breaches' is unclear. Another respondent noted that it is unclear why sellers or sponsors would want to use the maximum maturity of underlying exposures rather than actual remaining maturity to determine WAL.	The reference to appropriate safeguards has been deleted. As regards the second point, the guidance is reflective of Basel requirements, and it is presumed that this option could be used as simplification.	Paragraph 53 has been amended.
Exposures with periodic payment streams (paragraph 56)	Some respondents proposed clarifying further that the list of examples of exposures with periodic payment streams is non-exhaustive. In addition, they provided examples of exposures that should be considered exposures with defined period payment streams.	The wording of the guidance (in particular the use of the term 'include') ensures that the list of examples is non-exhaustive. The non-exhaustive list of examples has been extended to include some specific types of exposures that are considered to have periodic payment streams consistently with the Level 1 requirements.	Paragraph 56 has been amended.
Contractually binding and enforceable obligations (paragraphs 54-55)	One respondent asked that the guidelines clarify that 'with full recourse to debtors' should not be read as excluding leases where the lessee has the option to return the vehicle under certain conditions during the life of the lease or at maturity, or other specific limitations on recourse in certain jurisdictions such as exposures with voluntary termination rights.	Following the legal review, and given the unclarity with respect to possible interpretations of the guidance in paragraph 55, the paragraph has been deleted.	Paragraph 55 has been deleted.
Q18. Do you believe that additional guidance should be provided in these guidelines with respect to the homogeneity requirement, in addition to the requirements specified in the Delegated Regulation (EU) 2018/.... further specifying which underlying exposures are deemed homogeneous?			
Further clarification of the homogeneity requirement	The majority of respondents agreed that no further clarification of the homogeneity requirement, in addition to that in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, was necessary. One respondent asked if the guidelines could provide examples of 'homogeneous' transactions.	Given that the majority of respondents supported no further clarifications on homogeneity in the STS guidelines, and that many of the concerns raised on this point have already been addressed in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, no further clarifications regarding the homogeneity requirement are made in the final guidelines.	No change.

Referenced interest payments (Article 24(16))			
Q19. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Referenced rates (paragraph 57)	Some respondents proposed that the standard variable rates that are widely used in the residential mortgage market should be allowed. Other respondents noted that successors of LIBOR and EURIBOR should also be allowed.	It is acknowledged that standard variable rates are commonly used and should be allowed, as long as sufficient data are provided to investors to allow them to assess their relation to other market rates. Taking into account that LIBOR and EURIBOR will soon be replaced, a reference to future recognised benchmarks has been included in the guidance.	Paragraph 57 has been amended.
Requirements in case of enforcement or delivery of an acceleration notice (Article 24(17))			
Q20. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Amount trapped in the SSPE in the best interests of investors (paragraph 62)	A few respondents proposed to remove the reference to 'in the next payment period' to allow the use of the reserve fund for as long as necessary in the best interests of investors. One respondent proposed clarifying that the money does not need to be held in a segregated account, but can be retained in the SSPE operating account and any balance included in available funds for the next period.	The reference to 'in the next payment period' has been removed to allow the use of a reserve fund for a longer period as long as the use of the reserve fund is exclusively limited to the purposes set out in Article 21(4)(a) or to orderly repayment to the investors. The EBA does not agree with the interpretation that the money does not need to be held in a segregated account. The Level 1 text is clear in referring to a trapped amount.	Paragraph 62 has been amended.
Repayment (paragraph 63)	Some respondents noted that paragraph 63 is not relevant to ABCP and can be deleted. Some respondents also noted that the introduction of a mandatory sequential redemption in Article 24(17) has led to some uncertainty about the requirements of such sequential redemption, as in practice transactions often provide for different waterfalls for going-concern scenarios and enforcement scenarios.	It is acknowledged that the requirement with respect to sub-classes may pose complications, also taking into account differing terminologies between the transactions applied with respect to sub-classes. The reference to sub-classes has therefore been deleted. A new clarification has been included in the guidance that the requirements in Article 24(17)(a) cover only the repayment of the principal, without covering the payment of interest. In addition, it is clear that Article 24(17) covered only a phase of the transaction when an enforcement or an acceleration notice has been	Paragraph 63 has been amended.

		delivered and therefore does not cover going-concern phases of the transaction.	
Underwriting standards, seller's expertise (Article 24(18))			
Q21. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Trade receivables	One respondent argued that recital 14 of the Securitisation Regulation excluded trade receivables from the criterion relating to underwriting standards in Article 24(18). Another respondent requested guidance to reflect the fact that, unlike financial receivables, trade receivables are not typically in accordance with 'underwriting standards', but reflect the types and diversity of customers that buy the corporate originator's products or services. The respondent argues that recital 14 of the regulation reflects a recognition that origination of trade receivables usually does not involve application of 'credit-granting criteria' and the standards that apply to such criteria should not apply. In relation to trade receivables, each reference in Article 24(18) to 'underwriting standards' should be interpreted as meaning the credit standards, if any, that the originator applies to sales on short-term credit of its products and services generally of the type giving rise to the securitised exposures, and if no such standards are used then the criterion should be treated as inapplicable.	Recital 14 appears to relate to Article 9 (credit-granting criteria) only. Furthermore, for ABCP transactions, the seller is still required to apply Article 24(18), i.e. to apply 'underwriting standards no less stringent' and have 'expertise in originating exposures'. Given that ABCP is typically used to finance trade receivables, this clarifies that the STS criteria in this regard are intended to be applied to trade receivables. However, the EBA agrees that the origination of trade receivables usually does not involve application of underwriting standards, and agrees that in the specific case of trade receivables the origination involves application of credit standards applied by the seller to the sales on short-term credit. The EBA does not, however, share the view that such credit standards should apply, 'if any'. Such credit standards need to be applied for the transaction to be considered STS, as required by Article 24(18).	New paragraph 71 has been added.
Disclosure of changes to underwriting standards (paragraphs 70-71)	A number of respondents argued that the requirement to disclose changes to underwriting standards applied over a period of five years was unduly burdensome, with limited benefit for investors. A number of respondents proposed that the requirement to disclose material changes should be forward-looking only (from the date of establishment or last disclosure in an offering document). They argued that this, when combined	The EBA acknowledges that this requirement is forward-looking only. The guidance has been amended to refer to changes to underwriting standards only from the closing of the transaction. Practically, this relates to underwriting standards of exposures that are transferred to securitisation after the closing in the context of portfolio management.	Paragraph 70 has been amended.

	with a summary description of the underwriting standards disclosed before closing (in the offering document, prospectus or similar), would achieve the relevant regulatory objectives.		
Definition of 'material' changes (paragraph 70)	Some respondents asked for a higher bar or further clarification with respect to the 'material changes' to be disclosed after the origination of the securitisation.	The guidance has been amended to provide further clarification on the material changes to the underwriting standards that should be disclosed. In this context, the interactions with the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402 should be highlighted. In particular, the Delegated Regulation requires that all the underlying exposures in securitisation be underwritten according to similar underwriting standards. The guidance therefore clarifies that the material changes include (i) changes which affect the requirement on the similarity of the underwriting standards in accordance with the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402; (ii) changes which, although they do not affect the similarity of the underwriting standards in accordance with the RTS on homogeneity, do materially affect the overall credit risk or expected average performance of the portfolio without resulting in substantially different approaches to the assessment of the credit risk associated with the underlying exposures (for example a move from minimum 80% LTV to minimum 90% LTV). For the purpose of STS compliance, however, it is understood that in practice any material changes to the underwriting standards would not be such that they do not affect their similarity as required by the Delegated	Paragraph 70 has been amended.

		Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402.	
Q22. Do you agree with this balanced approach to the determination of the expertise of the seller? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?			
Expertise of corporate originators	Some respondents argued that the criteria to determine the expertise of a seller are too restrictive for corporate originators, in particular with respect to trade receivables. They noted that the business of the seller, and the expertise of its management, are more often focused on producing and selling products or services and not on 'originating and underwriting exposures' as such. It was proposed that a more appropriate test would be that the seller or members of its management body been engaged for at least five years in the business that gives rise to the securitised exposures.	Level 1 is clear in requiring that the 'seller shall have expertise in originating exposures'. To put the guidance in line with Level 1, the reference to 'expertise in originating and underwriting' has been replaced with the reference to 'expertise in underwriting'.	Paragraphs 72 -74 have been amended.
Definition of management body (paragraphs 72-73)	Some respondents suggested that the references to the management body could be further clarified in order to make it clear that not all members of the management body should be expected to hold relevant expertise, especially in larger financial institutions.	This interpretation is consistent with the original intention of the guidance. The guidance has been slightly amended to make this point clearer. While it is not desirable to provide a definition of 'management body', as it is assumed it is commonly understood, the guidance has been amended to clarify that, as a minimum, two members should have at least five years' experience.	Paragraph 73 has been amended.
Definition of 'senior staff'	Some respondents raised a concern that the definition of 'senior staff' could be subject to a wide range of interpretations.	Given that the definition of 'senior staff' will probably differ from institution to institution, it is not possible or desirable to define senior staff for all types of institution governance structures.	No change.
Prudentially regulated institutions	Several respondents asked whether paragraph 72(d) automatically allowed prudentially regulated institutions, with a licence deemed relevant to origination of similar exposures, to be considered to have expertise.	As paragraph 72 is a principles-based assessment of expertise, individual factors specified under letters (a) to (d) cannot be fully determinative in deciding whether a seller has expertise in originating similar assets to those	No change.

		securitised, but they should rather help the assessment of whether the seller has the required expertise or not.	
Five years' experience	Several respondents raised concerns regarding the difficulty of meeting or verifying the requirements in paragraph 73 in order to be deemed to have expertise in originating similar assets to those securitised.	The EBA does not propose that paragraph 73 be the only route to claiming 'expertise'. The specific criteria specified in paragraph 73 have been developed to facilitate the assessment of the expertise: if the conditions are met, the entity should be deemed to have the required expertise. In the event that institutions find it difficult to meet or verify meeting the criteria in paragraph 73, institutions can still argue they have 'expertise' based on the principles-based judgement in paragraph 72. In the event that this is also not possible, it is appropriate that the seller be considered to fail to meet the requirements of Article 24(18).	No change.
Cumulative experience	One respondent suggested clarifying in the STS guidelines whether experience could be considered cumulatively across the originator, original lender and sponsor.	The Level 1 text clearly states that the seller shall have expertise. Therefore, either the originator or the original lender must meet the criteria, not cumulatively.	No change.
Sale of business line	One respondent asked whether paragraph 73(a) adequately captured situations in which a lending business is transferred from one entity to another while maintaining the same form.	The EBA considers that in such a case it is impossible to identify whether the organisation has genuinely maintained its 'expertise', given that it is subject to a new governance structure. Therefore, this example is not intended to be captured by paragraph 73(a).	No change.
Q12. Should alternative interpretation of the 'similar exposures' be provided, such as, for example, referencing the eligibility criteria (per Article 24(7)) that are applied to select the underlying exposures? Similar exposure under Article 24(18) could thus be defined as an exposure that would qualify for the portfolio, based on the exposure level eligibility criteria (not portfolio level criteria) which has not been selected for the pool and which was originated at the time of the securitised exposure (e.g. an exposure that has repaid/prepaid by the time of securitisation). Similar interpretation could be used for the term 'exposures of a similar nature' under Article 24(18), and 'substantially similar exposures' under Article 24(14). The eligibility criteria considered should take into account the timing of the comparison. Please provide explanations which approach would be more appropriate in providing clear and objectively determined interpretation of the 'similarity' of exposures.			

Definition of 'similar exposures' for the purposes of determining expertise	The majority of respondents supported the existing definition of 'similar exposures' in the draft guidelines. A few respondents suggested including reference to underwriting standards as part of the definition.	The support for the existing interpretation of the similarity of exposures has been noted. The guidance has been slightly amended to align the wording with the final Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402. However, in order to avoid unnecessary complications of the definition, the reference to underwriting standards has not been included.	Paragraph 67 has been amended.
Linkage of the similarity with the eligibility criteria	A large majority of respondents supported the current proposal in the guidelines of 'similar exposures', and did not support the proposal regarding eligibility criteria. They argued that the eligibility criteria reflect a wide range of other factors such as investor preferences and funding needs. It was also argued that the eligibility criteria would introduce too detailed limitations, and change over time, which would complicate and unnecessarily restrict the scope of assessment of the similarity of exposures. Therefore, it was argued that the eligibility criteria might not be suitable as a test for genuine 'expertise'.	Based on the responses from the stakeholders, the existing definition has been maintained instead of a definition which references the eligibility criteria of the transaction, i.e. refers to the asset category as specified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, with some minor amendments. Although including a reference to the underwriting criteria would promote more specific expertise in respect of the underlying exposures, the associated benefit appears to be outweighed by the additional burden on institutions in meeting the requirement.	No change.
Triggers for termination of the revolving period in case of revolving securitisation (Article 24(19))			
Q24. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Insolvency-related event with regard to the servicer (paragraph 75)	A number of respondents did not agree that the occurrence of an insolvency event with respect to the servicer should necessarily and automatically trigger the replacement of the servicer. It was noted that this requirement goes beyond what is required by Regulation (EU) 2017/2402. It was also noted that, as the transaction documentation always provides for the right to (i) notify debtors and (ii) replace the servicer	The comment has been taken on board. The guidance has been amended taking into account that an insolvency-related event with respect to the servicer should not automatically lead to the replacement of the servicer, but it should enable the replacement of the servicer, consistently with the requirements of Regulation (EU) 2017/2402.	Paragraph 75 has been amended.

	immediately, allowing to achieve the commitment of the insolvency administrator, there is no need for a mandatory and immediate replacement.		
Early amortisation provisions/triggers for the termination of the revolving period	Some respondents proposed that the early amortisation provisions/triggers for the termination of the revolving period should be further specified.	Level 1 is considered clear and no further guidance is considered necessary.	No change.
Transaction documentation (Article 24(20))			
Q25. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Clear specification in the transaction documentation (paragraphs 76-77)	Several respondents proposed deleting paragraph 76, as it was deemed confusing. In addition, several respondents noted it was not clear how the anonymised, aggregated and summarised transaction documentation to be shared with investors at ABCP programme level would add value to investors that they do not gain from, for instance, investor reports. It was also noted that sharing this information with the investors at ABCP programme level would be very cumbersome.	The comments have been noted. The original intention of paragraph 76 was to state that the objective of the requirement is to provide transparency and therefore is met if there are no other undisclosed documents setting out obligations relating to the functioning of the securitisation. However, taking into account the respondents' comments, it does not seem to provide additional value to the Level 1 requirement. It is also noted that the transparency requirements with respect to the transaction documentation are covered in Article 7 and are therefore outside the scope of the guidelines. Paragraphs 76 and 77 have therefore been deleted.	Paragraphs 76-77 have been deleted.
PROGRAMME-LEVEL CRITERIA			
Temporary non-compliance (Article 26(1))			
Q26. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			**Do you furthe**
Detailed requirements of 'temporary non-	Many respondents argued that the period of three months allowed for non-compliance with certain criteria was too short and asked for at least six months. Likewise, many respondents asked for clarification that the period should begin from the	The EBA acknowledges the issues raised by the stakeholders. Consequently, an ABCP programme is in breach of the guidelines on Article 26(2) of Regulation (EU) 2017/2402 if either the share of non-compliant	Paragraph 80 has been amended.

compliance' (paragraph 80)	date on which the originator or sponsor became aware of the non-compliance. It was also suggested to clarify that the three-month period applies separately to each infringement and will start again in the event of non-compliance occurring again.	exposures surpasses 5%, or at least one underlying exposures is non-compliant for longer than six months.	
Confirmation of the external verification (paragraphs 82 and 85)	One respondent commented that the requirement in paragraph 82 (disclosure to investors) would raise significant questions and could be difficult to meet in many cases, since ABCP transactions and ABCP programmes are often private transactions and no formal offering document is provided to the ABCP programme sponsor.	While a corresponding requirement for the non-ABCP securitisation specified in Article 22(2) of Regulation (EU) 2017/2402 requires that 'the data disclosed in respect of the underlying exposures is accurate', Article 26, applicable to ABCP securitisation, does not contain a corresponding disclosure requirement. The EBA therefore agrees that the guidelines should not further specify how such disclosure should take place.	Paragraphs 82 and 85 have been deleted.
Responsibility for assessing the non-compliance (paragraph 87)	A few respondents asked for clarification of which party would be responsible for assessing non-compliance with the relevant STS transaction-level criteria.	It is understood it should also be the responsibility of the sponsor to comply with the requirements of Article 26(1). In this context, it should be the responsibility of the sponsor to address the issues raised by the external verification. In addition, it is expected that, for the purpose of compliance with the requirements of Article 26(1), the sponsor would conduct internal checks (in addition to, and independently from, the external verification conducted by the relevant external party). It should not be the responsibility of the sponsor to guarantee that the analysis of the independent and appropriate third party is valid.	No change.
Parties eligible to execute the external verification (paragraph 86)	One respondent proposed clarifying further which parties should be eligible to execute the external verification.	The guidance has been extended to clarify that the party executing the verification should be an entity other than the following: credit rating agency, third party verifying the STS compliance and an entity affiliated to the sponsor.	Paragraph 86 has been amended.

Q27. Do you agree that the external verification should only cover the criteria referenced in paragraphs (9), (10) and (11) of Article 24, or should it cover all criteria mentioned in Article 24? Do you agree with the approach on determining the frequency of the external verification?			
Scope of the external verification	A few respondents suggested that Article 26(1) of Regulation (EU) 2017/2402 meant that the external verification should be carried out only if there has been notification of temporary non-compliance with Article 24(9) to (11) of Regulation (EU) 2017/2402 and that this verification should cover only the relevant transactions, implying that, if all requirements have been fulfilled at transaction level, there is no need for external verification at all.	The EBA disagrees with this interpretation. The external verification has to take place in any case and the sample should cover all underlying exposures of all transactions.	No change.
Frequency of the external verification (paragraph 83)	Many respondents commented that a repetition of the external verification every time 75% of the underlying receivables had been replaced or substituted was excessive and it should not be repeated more than annually, especially for trade receivables transactions with maturities around 90 days. Some argued that the guidance on this issue should be deleted altogether.	The EBA acknowledges the concerns of the stakeholders. The guidance on this issue has not been deleted altogether, because without clear guidance the interpretation of what is a 'regular' external verification may differ greatly. It has, however, been clarified that the external verification should be repeated at least annually.	Paragraph 83 has been amended.
Q28. Concerning the sample, should a minimum sample size be prescribed (in absolute or relative terms)? Should a statistical method for evaluating the outcome of the external verification of the sample be specified? Do you agree that it should be representative covering all underlying exposures of all transactions? Do you see merit in further specifying that the sample should be representative by properly representing the various asset categories of the transactions; or that representativeness may be assumed when the sample is gathered via a random selection?			
Focus of the sample	One respondent suggested that the EBA should consider applying an '80-20' approach by looking only at the largest transactions or the largest obligor concentrations in each of those transactions. Other respondents suggested that no details about the sample should be prescribed (size, representativeness), but it should allow flexibility for the third party.	The EBA disagrees with the proposal made by one respondent. The sample of underlying exposures that is subject to the external verification should be a representative sample of the portfolio covering all exposures.	No change.

Remaining weighted average life (Article 26(2))			
Q29. Do you agree with the interpretation of this requirement, and the aspects that the interpretation is focused on? Should other aspects be covered? Please substantiate your reasoning.			
Method of calculating WAL (paragraph 88)	One respondent argued that the proposed guideline did not make it clear how the WAL should be calculated at ABCP programme level and how this calculation relates to the WAL at transaction level. It was also argued that the WAL calculation should be aligned with the calculation of tranche maturity in Article 257 of the CRR and in particular to take into account expected prepayments.	The comments have been noted. A new paragraph has been added in the guidance that clarifies how the WAL should be calculated at ABCP programme level and how this relates to the WAL at the transaction level. The EBA agrees that the calculation dates of the WAL at transaction level may differ from transaction to transaction and may be updated over time. To avoid arbitrage of the dates of calculation, new guidance has been introduced that the calculation dates between transactions may differ provided the difference is less than one month. The EBA is of the opinion that the WAL of the STS criteria and the tranche maturity of Article 257, among other factors, do not serve the same purpose, so there are no convincing reasons why the methodologies should be aligned. No change has therefore been made with respect to the proposal to calculate the WAL according to Article 257 of the CRR.	New paragraph 85 has been added.
Scope of the documentation	One respondent requested that the maximum maturity 'as defined in the documentation' be interpreted for trade receivables as the contractual payment terms between the seller and its debtor.	The EBA is of the opinion that such contractual payment terms need to be reflected adequately within the respective documentation in order to effectively guarantee an upper limit. The reasoning is that it is not per se guaranteed that underlying exposures within the transaction will arise from only the same seller and/or debtor, featuring the same contractual terms. Consequently, no change/clarification of the guidance is warranted.	No change.

Q30. Should the calculation of the weighted average life follow the concept of weighted cash flows or of weighted (residual) maturities? Should there be a facilitation for a simplified calculation of the WAL (e.g. to use the longest contractually possible remaining maturity of the exposures in a transaction as an upper bound)?			
The few comments received have already been addressed at Q29.			No change.
No resecuritisation (Article 26(4))			
Q31. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Description of 'sell senior' in Figures 3, 4 and 5	One respondent suggested that the words 'Sell Senior' should be changed to 'Issue Notes' to avoid confusion.	Although the wording seems technically correct, since Article 242(6) of the CRR disregards 'amounts due under interest rate or currency derivative contracts, fees or other similar payments' for the definition of 'senior securitisation position', and although the text of the guidance refers to the purchase of senior notes, the EBA acknowledges that the wording 'sell senior' might lead to confusion, and therefore agrees to change it to 'issue senior notes'.	The wording 'sell senior' has been changed to 'issue senior notes' within Figures 3, 4 and 5.
Description of full support in Figure 4.	One respondent suggested that Figure 4 needs to be clarified, because it does not show whether or not the sponsor provides full support at programme level, while each of Figure 3 and Figure 5 indicates 'Full support article 25(2)'.	Although the full support is not relevant for the specific case shown in Figure 4, EBA agrees to clarify the full support in Figure 4 accordingly.	It has been clarified that Figure 4 also captures full support.
Description of the role of the sponsor in Figures 3, 4 and 5	One respondent claims that it was confusing that the figures combine the roles of the sponsor bank as (i) a liquidity provider at ABCP programme level and (ii) a provider of partial credit enhancement (as purchaser of notes or letter of credit (LOC) provider) at the ABCP transaction level. Therefore, it would be better to more clearly separate the different roles.	The EBA agrees that it is not necessarily the sponsor, already providing the full support at programme level, that may provide additional credit enhancement (CE). EBA therefore agrees to split the 'sponsor box' into two boxes, showing another entity providing the additional CE.	The 'sponsor box' in Figures 3, 4 and 5 has been split.
Inclusion of partial support in Figures 3, 4 and 5	One respondent asked whether partially supported ABCP programmes might also be described for the purposes of clarifying what constitutes a resecuritisation.	EBA will not include figures and guidance on partial support, since this is outside the scope of STS ABCP programmes (see Article 25(2) of Regulation (EU) 2017/2402).	No change.

Trade credit insurance policies	One respondent recommended clarifying that trade credit insurance policies at transaction level (CE policies) are also not to be understood as a second layer of tranching.	The EBA is of the opinion that some of the CE policies may not cause a second layer of tranching at transaction level, while others may cause a tranching at transaction level, depending on the specific terms and conditions of the CE policies. Since there has been strong support for the general principles as well as the figures in the guidelines, EBA will not go into detail concerning CE policies, but expects them to be evaluated by those general terms.	No change.
Q32. Are there any other market practices – apart from the ones being covered by the clarification provided in the guidance – which would also fall within the conditions of Article 26(4), while from an economical point of view those should not be treated as resecuritisations? Do you agree with the clarification which credit enhancement is to be considered as 'establishing a second layer of tranching'?			
Prohibition of only one specific structure	One respondent argued that it might be easier to allow all CE structures in ABCP programmes, with the exception of the one where multiple classes of CP are issued (as displayed in Figure 5).	The EBA has received strong support for the general principles as well as the figures in the guidelines, which will be kept. Simplifying the requirement as suggested does not guarantee that all resecuritisation structures will be captured, or that the guidance can adapt to future market innovation.	No change.
No call options and other clauses (Article 26(5))			
Q33. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Contingent call option (paragraph 93)	Two respondents describe a specific call option, which the sponsor can exercise only if the investor has exercised his or her put option first (so called 'contingent call option'). They suggest that such an option should explicitly be allowed in the guidelines.	The EBA agrees that such a 'contingent call option' could not be exercised at the (sole) discretion of the seller, sponsor or SSPE, since it would be dependent on the previous exercise of the put option by the investor. Consequently, it seems that the investor would therefore effectively be protected from refinancing risk. Besides, put options held by investors at ABCP programme level are considered in line with Regulation (EU) 2017/2402 and the guidelines.	Paragraph 93 has been deleted.

		If the options mentioned by the respondent would be covered by the principles laid down in Regulation (EU) 2017/2402, they would therefore be permissible. Paragraph 93 is considered to replicate the Level 1 text and not to provide any additional value to the Level 1 requirement. To avoid confusion, it has been deleted.	
Early redemption options versus extension clauses	One respondent argued that options for early redemption should be distinguished from extension clauses of ABCP maturity, while the first should be allowed and the second only at the option of the investor, not at the option of the issuer.	The EBA recognises that Regulation (EU) 2017/2402 does not distinguish between options and clauses which shorten or extend the final maturity and therefore sees no room for distinguishing this issue in the guidelines.	No change.
Several classes of commercial papers issued within one ABCP programme	Two respondents argued that, in a given securitisation conduit, there could be structured ABCPs with a call option and other ABCPs without any call option. They suggest that the ABCPs with a call option could not be STS compliant, but that the guidelines should specify that this should not prevent the other ABCPs that have no call option from being STS compliant.	For the purposes of Article 26, all asset-backed commercial papers issued by an ABCP programme should meet the requirements specified in [Article 25] and Article 26 of Regulation (EU) 2017/2402 in order to be considered STS. Therefore, in order to be considered STS, an ABCP programme should not issue two different types of asset-backed commercial papers, some being STS compliant and some not being STS compliant. A general clarification has been included in the guidance to clarify this.	General clarification has been included in paragraph 13.
Appropriate mitigation of interest-rate and currency risks (Article 26(6))			
Q34. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
The guidance on Article 26(6) refers to the guidance on Article 24(12). The comments received have already been addressed at Q14.			No change.
Documentation of the ABCP programme (Article 26(7))			
Q35. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning. Should the 'specified events' referred to in Article 26(7)(e) be specified in more detail e.g. as including triggers with regard to the creditworthiness of the sponsor?			
Expertise of the sponsor	A few respondents proposed replacing the reference to 'originating and underwriting' with reference to 'credit underwriting'.	The comments have been noted and the reference has been corrected. The guidance has been amended consistently with the amendments introduced to	Paragraphs 95 -97 have been amended.

(paragraphs 95-97)	Otherwise, no major comments have been noted about the criteria determining the expertise of the sponsor.	criteria for determining the expertise of the originator in the non-ABCP guidelines.	
Licensed sponsor	One respondent asked for clarification of, if a sponsor holds a licence from a competent authority for credit underwriting, whether it should be deemed to have expertise in credit underwriting.	As paragraph 95 is a principles-based assessment of expertise, individual factors cannot be fully determinative in deciding whether a sponsor has expertise, but they should rather help when assessing whether the sponsor has the required expertise or not.	No change.
Expertise of the servicer (Article 26(8))			
Q36. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Criteria for determining the experience of the servicer (paragraphs 99-101)	Several respondents requested clarification with respect to the requirements about the servicer's expertise. In particular, it was noted that it was not clear why this criterion appears in the ABCP programme-level criteria rather than transaction-level criteria, as generally there is a servicer for each ABCP transaction but no servicer for the ABCP programme as a whole. The ABCP programme usually incorporates a programme-level administrator who fulfils various administrative duties in relation to the ABCP programme (a role that is usually undertaken by the sponsor, or in some cases by an affiliate of the sponsor or by an independent service provider).	The comments have been noted. It is understood that 'the servicer' in the context of an ABCP programme is meant to refer to the administrator of the ABCP programme, and the guidance has been clarified in that respect. In this context, the reference to the requirement for a back-up servicing function has been deleted.	Paragraphs 99-101 have been amended.
Adequacy of policy, procedures and risk management controls for supervised entities (paragraph 102(a))	A number of respondents raised concerns about the requirements for EU supervised entities, finding them redundant or burdensome. It was argued that, for supervised entities, it is not necessarily the case that the entities will have been assessed specifically in respect of their servicing, and that the competent authority will be willing to provide written confirmations.	It is noted that it might not be appropriate or feasible for the competent authorities to provide confirmation of the existence of well-documented and adequate policies. The guidance has been amended so that, for the regulated entities, the regulatory authorisation should suffice for the purpose of this requirement, as long as such authorisations are deemed relevant to the administration of ABCP programmes.	Paragraph 102 (a) has been amended.

Adequacy of policy, procedures and risk management controls for non-supervised entities (paragraph 102(b))	A number of respondents commented that the existing guidance is too vague and asked for further clarification on the nature of the reviewer and the scope of the review.	The guidance now provides further specification with respect to the third party which should substantiate the proof of the existence of well-documented and adequate policies and risk management controls, and provides examples of third parties, which could be credit rating agencies or external auditors.	Paragraph 102 (b) has been amended.
Non-specified articles of Regulation (EU) 2017/2402			
Q37. Do you agree that no other requirements are necessary to be specified further? If not, please provide reference to the relevant provisions of the STS Regulation and their aspects that require such further specification.			
Proposed comments have been included under the questions above.			

EBA/GL/2024/05

27 May 2024

Final Report

Guidelines on the STS criteria for on-balance-sheet securitisation

and

amending Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation

Contents

1. Executive Summary

The guidelines have been developed in accordance with Article 26a(2) of Regulation (EU) 2017/2402 that entitles the European Banking Authority (EBA) to provide guidelines on the harmonised interpretation and application of the criteria on simplicity, standardisation, transparency and of specific requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread, applicable to simple, transparent and standardised (STS) on-balance-sheet securitisation, as set out in Articles 26b to 26e of that Regulation. While addressing the mandate under Article 26a(2) of the SECR, the EBA deemed it necessary to amend the EBA guidelines on STS criteria for asset-backed commercial paper (ABCP) (EBA/GL/2018/08) and non-ABCP (EBA/GL/2018/09).

The main objective of the guidelines is to provide a single point of consistent interpretation of those criteria and ensure a common understanding of them by originators, original lenders, securitisation special purpose entities (SSPEs), investors, competent authorities and third-party verification agents verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402, throughout the Union. The amending guidelines include a limited set of targeted amendments to the existing EBA guidelines on non-ABCP and ABCP securitisation respectively, for a specific number of these requirements, to ensure that the interpretation provided by the EBA is consistent across all three guidelines.

The guidelines will be applied on a cross-sectoral basis throughout the Union with the aim of facilitating the adoption of the respective criteria, which is one of the prerequisites for the application of a more risk-sensitive regulatory treatment of exposures to securitisations compliant with such criteria, under the EU securitisation framework for originator institutions updated by the Capital Markets Recovery Package in 2021.

The guidelines should thus play an important role in the updated EU securitisation framework, which has been applicable since January 2019 and was subject to a further update in 2021, which aimed to contribute to a revival of a safe and sound securitisation market in the EU and help recovery from the COVID-19 crisis.

Next steps

The proposed guidelines were published for a three-month public consultation, from April to June 2023. Following their finalisation, they will be translated into the official EU languages and published on the EBA website.

2. Background and rationale

1. In accordance with Article 26a(2) of Regulation (EU) 2017/2402[1] (Securitisation Regulation or SECR) as amended by Regulation (EU) 2021/557[2] as part of the Capital Markets Recovery Package (CMRP), the EBA has been entitled to develop guidelines and recommendations on the harmonised interpretation of the specific requirements for on-balance-sheet securitisation (requirements related to simplicity, standardisation, transparency and specific requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread, later referred to as 'STS' requirements, as set out in Articles 26b to 26e of the SECR). Compliance with these requirements is a prerequisite for a preferential risk-weight treatment for originator institutions retaining exposures to senior tranches of such 'STS' on-balance-sheet securitisations, in accordance with specific requirements in the amended CRR[3].

2. When enacted in 2017, the Securitisation Regulation introduced a similar mandate for the EBA to develop guidelines and to harmonise the interpretation of STS requirements for traditional securitisation (the mandate was twofold, requesting one set of guidelines for non-ABCP securitisation, and another set of guidelines for ABCP securitisation). Based on those mandates, the EBA developed and published two sets of guidelines, one for non-ABCP securitisation, and one for ABCP securitisation, respectively, in December 2018[4].

3. In the present draft guidelines, addressing the mandate under Article 26a(2) of the SECR, the EBA has developed interpretations of the STS criteria applicable to on-balance-sheet securitisations, and focused on clarifying aspects of those requirements with potential points of ambiguity (with the exception of a small number of STS requirements that were assessed as being sufficiently clear and where no interpretation is provided).

4. When developing the guidelines, to the extent possible and where appropriate, the guidance provided in the EBA Guidelines on the STS criteria for non-ABCP securitisation[5] has been taken into account for those STS requirements that are similar or identical to requirements applicable to non-ABCP securitisation.

[1] Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2402&from=fr

[2] Regulation (EU) 2021/557 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0557&from=EN

[3] Regulation (EU) 2021/558 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) No 575/2013 as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis: EUR-Lex - 32021R0558 - EN - EUR-Lex (europa.eu)

[4] Guidelines on the STS criteria for ABCP and non-ABCP securitisation | European Banking Authority (europa.eu)

[5] Guidelines on the STS criteria for non-ABCP securitisation.pdf (europa.eu)

5. The main objective of the guidelines is to ensure a consistent interpretation and application of the STS criteria by the originators, original lenders, SSPEs and investors involved in the STS securitisation, the competent authorities designated to supervise the compliance of the entities with the criteria, and third parties authorised to check the compliance of the securitisation with the STS criteria. The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is a prerequisite for the application of preferential risk weights under the amended CRR for senior tranches retained by originators, as well as for administrative sanctions imposed by the Securitisation Regulation in the case of negligence or intentional infringement of the STS criteria. Also, given the inherent cross-sectoral nature of securitisation the guidelines will be applied on a cross-sectoral basis i.e. by different types of entities that will act as originators, original lenders, investors and SSPEs with respect to STS securitisations, as well as by competent authorities designated to supervise compliance of the above entities involved with the STS criteria.

6. The guidelines are interlinked with the ESMA RTS/ITS on the STS notifications. While the EBA guidelines are focused on providing guidance on the content of the STS requirements, the ESMA RTS/ITS are focused on specifying the format of notification of compliance with the STS requirements. It is expected that the guidance in the EBA guidelines for each single STS criterion should be appropriately reflected in the information provided on compliance with the STS criteria within the STS notifications.

7. These guidelines aim to cover in a comprehensive manner all the STS criteria for on-balance-sheet securitisations for which additional guidance is required. Recommendations may be developed, if necessary, at a later stage to address particular aspects arising from the practical application of the Securitisation Regulation and the EBA guidelines. This approach is also consistent with the legal nature of these two legal instruments: while in terms of their legal power they are both non-legally binding instruments subject to the comply-or-explain mechanism, guidelines are instruments of general application ‘erga omnes’ (towards all), whereas recommendations are instruments of specific application e.g. applying to specific addressees.

8. A number of the STS requirements specified in the SECR for on-balance-sheet securitisation are the same in substance as those for traditional (non-ABCP and ABCP) securitisation. To ensure consistency, the interpretation in the present guidelines for these requirements is therefore identical to the interpretation provided in the EBA guidelines on non-ABCP and ABCP securitisation (unless specificities of the on-balance-sheet securitisation require the interpretation to be adapted).

9. At the same time, for a small subset of these requirements which are identical for both traditional (non-ABCP and ABCP) and on-balance-sheet securitisation, experience with the practical implementation of these requirements identified a need to amend and ‘update’ the existing guidance, to ensure further clarity and to reflect on the practical implementation of the requirements. A limited set of targeted amendments is therefore proposed to the EBA guidelines on non-ABCP and ABCP securitisation respectively for a specific number of these requirements,

to ensure that the interpretation provided by the EBA is the same and consistent across all three guidelines. The amendments relate to the following requirements:

	Articles in the Securitisation Regulation		
STS criteria	**Non-ABCP securitisation**	**ABCP securitisation**	**On-balance-sheet securitisation**
Underwriting standards, originator's expertise	Article 20(10)	Article 24(18)	Article 26b(10)
No exposures in default and to credit-impaired debtors/guarantors	Article 20(11)	Article 24(9)	Article 26b(11)
At least one payment	Article 20(12)	Article 24(10)	Article 26b(12)
Risk retention requirements	Article 21(1)	Article 25(5) (this Article is not covered in the EBA mandate for guidelines for ABCP securitisation)	Article 26c(1)
Referenced interest payments	Article 21(3)	Article 24(16)	Article 26c(3)
Non-sequential priority of payments	Article 21(5)	Article 24(17)(b)	Article 26c(5)
Data on historical default and loss performance	Article 22(1)	Article 24(14)	Article 26d(1)
Verification of a sample of the underlying exposures	Article 22(2)	Article 26(1)	Article 26d(2)
Liability cash flow model	Article 22(3)	Requirement not available for ABCP securitisation	Article 26d(3)
Environmental performance and sustainability disclosures of the assets	Article 22(4)	Requirement not available for ABCP securitisation	Article 26d(4)
Compliance with disclosure requirements under Article 7	Article 22(5)	Article 25(6) (this Article is not covered in the EBA mandate for guidelines for ABCP securitisation)	Article 26d(5)

10. With respect to the structure of the guidelines, while the main interpretation of the STS criteria is provided in Section 3, this section includes additional information on the objectives and the rationale of each single interpretation, and comparison with the interpretation provided in the guidelines on non-ABCP securitisation. Section 8 of the guidelines includes targeted amendments to the guidelines on non-ABCP securitisation and ABCP securitisation. Following the finalisation of the guidelines, the EBA will issue guidelines for on-balance-sheet securitisation and publish consolidated versions of the guidelines for non-ABCP and ABCP securitisation.

11. Unless otherwise stated, in this section all references to individual articles refer to articles of the SECR.

Criteria relating to simplicity (Article 26b)

Requirements on the originator (Article 26b(1))

12. This requirement is part of the requirements that aim to exclude arbitrage securitisations, i.e. transactions in which the protection buyer purchases exposures outside its core lending/business activity for the sole purpose of writing tranched credit protection on them (i.e. securitising them) and arbitraging on the yields resulting from the transaction. Ensuring that the risk management and servicing of exposures purchased for the purpose of securitising them are consistent with those of comparable exposures held on the balance sheet by the protection buyer and not securitised is important to avoid the occurrence of moral hazard behaviours by the protection buyer that could result in overall lesser credit quality of the securitised exposures underlying a securitisation transaction compared to those comparable exposures, ultimately affecting both retained securitisation positions and securitisation positions placed with investors.

13. This requirement is deemed sufficiently clear and no further guidance has been assessed as necessary.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

14. No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

Origination as part of the core business activity of the originator (Article 26b(2))

Background and rationale:

15. This requirement is part of the requirements to exclude arbitrage securitisation. This requirement is deemed sufficiently clear and no further guidance has been assessed as necessary.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

16. No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

Exposures held on the balance sheet (Article 26b(3))

Background and rationale:

17. This requirement is part of the requirements to exclude arbitrage securitisation. This requirement is deemed sufficiently clear. No further guidance is considered necessary.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

18. No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

No double hedging (Article 26b(4))

Rationale:

19. This requirement is part of the requirements to exclude arbitrage securitisation. In order to ensure legal certainty in terms of the payment obligations of the protection seller, the protection buyer should make sure that it does not hedge the same credit risk more than once by obtaining credit protection in addition to the credit protection provided by the synthetic securitisation for such a credit risk.

20. To facilitate the consistent interpretation of this requirement, the term 'hedge beyond the protection obtained through the credit protection agreement' should be further clarified, in particular whether double or multiple protection is allowed, so as to ensure there are no doubts about whether a protection provider in relation to a certain underlying exposure or a tranche has the obligation to pay protection payments in the case of credit events, or not.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

21. No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

Credit risk mitigation rules (Article 26b(5))

Rationale:

22. In order to ensure the robustness of the credit protection agreement, this agreement should fulfil the credit risk mitigation requirements that have to be met by institutions seeking significant risk transfer through a synthetic securitisation, in accordance with the relevant provisions of Regulation (EU) No 575/2013, in particular with those of Article 249(2) and (3) and Part Three, Title II, Chapter 4, of that Regulation.

23. This requirement is deemed sufficiently clear and no further guidance has been assessed as necessary.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

24. No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

Representations and warranties (Article 26b(6))

Rationale:

25. To enhance the legal certainty with respect to the owner of the legal title to the underlying exposures and their enforceability under the credit protection agreement, the securitisation documentation should contain specific representations and warranties provided by the protection buyer in respect of the characteristics of those underlying exposures and the correctness of the information included in the securitisation documentation. Any non-compliance of the underlying exposures with the representations and warranties should lead to non-enforceability of the credit protection, following a credit event.

26. To facilitate a consistent interpretation of this requirement, the following aspects should be further clarified:

    a. the term 'to the best of knowledge' as used in letters d), f) and g) of Article 26b(6): in this context, it should be clarified that an originator should not be required to take all legally possible steps to determine the aspects set out in letters d), f) and g) of Article 26b(6), but that an originator is only required to take those steps that the originator usually takes within its activities in terms of origination, servicing, risk management and use of information that is received from third parties. This should not require the originator to check publicly available information or to check entries in at least one credit registry where an originator or original lender does not conduct such checks within its regular activities in terms of origination, servicing, risk management and use of information received from third parties, but rather relies, for example, on other information that may include credit assessments provided by third parties;

    b. the term 'no less stringent underwriting standards': independently of the guidance provided in these guidelines, it is understood that, in the spirit of restricting the 'originate-to-distribute' model of underwriting, where similar exposures exist on the originator's balance sheet, the underwriting standards that have been applied to the securitised exposures should also have been applied to similar exposures that have not been securitised, i.e. the underwriting standards should have been applied not solely to securitised exposures. To comply with this requirement, therefore, it is sufficient that the originator or the original lender has applied to securitised exposures the underwriting standards according to the underwriting policy for the respective asset class, without requiring that similar exposures: i) remain on the balance sheet after the selection of the securitisation pool (i.e. a bank can securitise an entire set of exposures originated pursuant to given underwriting standards, therefore leaving no similar exposures on its balance sheet) or ii) were originated at the time of origination of the securitised exposures;

    c. 'an entity of the group to which the originator belongs';

    d. 'an entity which is included in the scope of supervision on a consolidated basis'.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

27. The requirement relating to representations and warranties to be provided in the case of on-balance-sheet securitisation differs from the requirement relating to representations and warranties to be provided for non-ABCP securitisation. The interpretation of this requirement therefore differs from the interpretation provided in the Guidelines on the STS criteria for non-ABCP securitisation.

Eligibility criteria, active portfolio management (Article 26b(7))

Rationale:

28. The objective of this criterion in Article 26b(7) is to ensure that the selection of the underlying exposures in the securitisation is done in a manner which facilitates in a clear and consistent fashion the identification of which exposures are selected for the securitisation, and to enable the investors to assess the credit risk of the asset pool prior to their investment decisions.

29. In line with this objective, the active portfolio management of the exposures in the securitisation should be prohibited, given that it adds a layer of complexity and increases the agency risk arising in the securitisation by making the securitisation's performance dependent on both the performance of the underlying exposures and the performance of the active portfolio management of the transaction.

30. Revolving periods and other structural mechanisms resulting in the inclusion of exposures in the securitisation after the closing of the transaction may introduce the risk that exposures of lesser quality can be selected for the pool. For this reason, it should be ensured that any exposure selected after the closing meets eligibility criteria which are no less strict than those used to structure the initial pool of the securitisation.

31. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

    a. the purpose of the requirement on active portfolio management, and the provision of examples of techniques which should not be regarded as active portfolio management: this criterion should be considered without prejudice to the existing requirements with respect to the similarity of the underwriting standards in the draft RTS further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(14), 24(21) and 26b(13) of Regulation (EU) 2017/2402, as amended by Regulation (EU) 2021/557, which inter alia require that all the underlying exposures in a securitisation be underwritten according to similar underwriting standards;

    b. interpretation of the term 'clear' eligibility criteria;

    c. clarification with respect to the eligibility criteria that need to be met with respect to the exposures added after the closing of the transaction.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

32. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation, with some minor differences reflecting specificities of on-balance-sheet securitisation (in the interpretation of the term 'active portfolio management', the list of allowed portfolio management techniques has been adapted, in particular repurchase has been deleted; and in the interpretation of the term 'eligibility criteria to be met for exposures added after the closing of the transaction', reference to master trusts has been deleted, given that these are not relevant for on-balance-sheet securitisation).

Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 26b(8))

Rationale:

33. The criterion on homogeneity as specified in the first subparagraph of Article 26b(8) of the SECR has been clarified in Delegated Regulation (EU) 2019/1851 [6] on the homogeneity of the underlying exposures in the securitisation as amended by Delegated Regulation (EU) 2024/584[7].

34. The objective of the criteria specified in the second and third subparagraphs of Article 26b(8) of Regulation (EU) 2017/2402 is to ensure that the underlying exposures contain valid and binding obligations of the debtor/guarantor, including rights to payments or to any other income from assets supporting such payments that result in a periodic and well-defined stream of payments from the underlying exposures.

35. The objective of the criterion specified in the fourth subparagraph is that the underlying exposures do not include transferable securities, as they may add to the complexity of the transaction and of the risk and due diligence analysis to be carried out by the investors.

36. To facilitate consistent interpretation of this criterion, a clarification should be provided with respect to:

    a. the interpretation of the term 'contractually binding and enforceable obligations';

    b. a non-exhaustive list of examples of exposure types which should be considered to have defined periodic payment streams. The individual examples are without prejudice to applicable requirements, such as the requirement with respect to the

[6] Commission Delegated Regulation (EU) 2019/1851 of 28 May 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation (OJ L 285, 6.11.2019, p. 1)

[7] Commission Delegated Regulation (EU) 2024/584 of 7 November 2023 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2019/1851 as regards the homogeneity of the underlying exposures in simple, transparent and standardised securitisations (OJ L 2024/584, 15.02.2024)

defaulted exposures in accordance with Article 26b(11) of Regulation (EU) 2017/2402.

37. With respect to the specific case of specialised lending exposures, for the purposes of assessing homogeneity in accordance with Delegated Regulation (EU) 2019/1851 such specialised lending exposures should generally fall under the asset category of 'credit facilities, including loans and leases, provided to any type of enterprise or corporation' specified in Article 1(a)(iv) of that Delegated Regulation.

38. Specialised lending exposures are an exposure type towards an entity specifically created to finance or operate physical assets, where the primary source of repayment of the obligation is the income generated by the assets being financed. Examples of specialised lending exposures include project finance, object finance and commodities finance exposures. While it is understood that the specialised lending exposures would fall under the asset category for corporate exposures, they are distinct in various aspects from other corporate exposures, including due to the strong correlation of the asset value and the creditworthiness of the obligor, and typically they are subject to different credit granting and servicing standards from the rest of the corporate exposures. For this reason, it is expected that, where these exposures are combined with other corporate exposures, the corresponding pool of exposures would not meet the homogeneity requirements applicable to on-balance-sheet securitisation.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

39. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

No resecuritisation (Article 26b(9))

Rationale:

40. The objective of this criterion is to prohibit resecuritisation from being classified as STS on-balance-sheet securitisation. The corresponding general ban on resecuritisation subject to derogations for certain cases as specified in Article 8 of Regulation (EU) 2017/2402 has been introduced as a lesson learnt from the financial crisis, when resecuritisations were structured into highly leveraged structures in which notes of lower credit quality could be repackaged and credit enhanced, resulting in transactions whereby small changes in the credit performance of the underlying assets had severe impacts on the credit quality of the resecuritisation bonds. The modelling of the credit risk arising in these bonds proved very difficult, also due to high levels of correlation arising in the resulting structures.

41. The criterion is deemed sufficiently clear and does not require any further clarification.

Underwriting standards, originator's expertise (Article 26b(10))

Rationale:

42. The objective of the criterion specified in the first subparagraph of Article 26b(10) is to prevent cherry-picking and to ensure that the exposures that are to be securitised do not belong to exposure types that are outside the ordinary business of the originator, i.e. exposure types in which the originator or original lender may have less expertise and/or interest at stake. This criterion is focused on disclosure of changes to the underwriting standards and aims to help the investors assess the underwriting standards pursuant to which the exposures selected for the securitisation have been originated.

43. The objective of the criterion specified in the second subparagraph of Article 26b(10) is to prohibit the securitisation of self-certified mortgages for STS purposes, given the moral hazard that is inherent in granting such types of loans.

44. The objective of the criterion specified in the third subparagraph of Article 26b(10) is to ensure that the assessment of the borrower's creditworthiness is based on robust processes. It is expected that the application of this subparagraph will be limited in practice, given that according to Article 26b(1) originators need to be authorised or licensed in the Union, and the criterion is therefore understood to cover only exposures originated by such EU originators to borrowers in non-EU countries.

45. The objective of the criterion specified in the fourth subparagraph of Article 26b(10) is for the originator or original lender to have an established performance history of credit claims or receivables similar to those being securitised, and for an appropriately long period of time.

46. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified.

    a. The term 'exposures of a similar nature', with reference to requirements set out in the draft RTS further specifying which underlying exposures are deemed to be homogeneous, developed in accordance with Articles 20(14), 24(21) and 26b(13) of Regulation (EU) 2017/2402 as amended by Regulation (EU) 2021/557.

    b. Clarification of the requirement to disclose material changes from prior underwriting standards to potential investors without undue delay: the guidance clarifies that this requirement should be forward-looking only, referring to material changes to the underwriting standards after the closing of the securitisation. The guidance clarifies the interactions with the requirement for similarity of the underwriting standards set out in Delegated Regulation (EU) 2019/1851, which requires that all the underlying exposures in a securitisation be underwritten according to similar underwriting standards.

    c. The scope of the criterion with respect to the specific types of residential loans as referred to in the second subparagraph of Article 26b(10) and to the nature of the information that should be captured by this criterion.

d. Clarification of the criterion with respect to the assessment of a borrower's creditworthiness based on equivalent requirements in third countries. The application of those equivalent requirements is understood not to be limited to consumer and residential loans.

e. Identification of criteria on which the expertise of the originator or the original lender should be determined.

    i. When assessing if the originator or the original lender has the required expertise, some general principles should be set out against which the expertise should be assessed. The general principles have been designed to allow a robust qualitative assessment of the expertise. One of these principles is the regulatory authorisation: this is to allow for more flexibility in such qualitative assessments of the expertise if the originator or the original lender is a prudentially regulated institution which holds regulatory authorisations or permissions that are relevant with respect to origination of similar exposures. The regulatory authorisation in itself should, however, not be a guarantee that the originator or original lender has the required expertise.

    ii. Irrespective of such general principles, specific criteria should be developed, based on specifying a minimum period for an entity to perform the business of originating similar exposures, compliance with which would enable the entity to be considered to have sufficient expertise. Such expertise should be assessed at the group level, so that possible restructuring at the entity level would not automatically lead to non-compliance with the expertise criterion. It is not the intention of such specific criteria to form an impediment to the entry of new participants to the market. Such entities should also be eligible for compliance with the expertise criterion, as long as their management body and senior staff with managerial responsibility for origination of similar exposures have sufficient experience over a minimum specified period.

47. It is expected that information on the assessment of the expertise is provided in sufficient detail in the STS notification.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

48. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

No exposures in default and to credit-impaired debtors/guarantors (Article 26b(11))

Rationale:

49. The objective of the criterion in Article 26b(11) is to ensure that STS securitisations are not characterised by underlying exposures the credit risk of which has already been affected by certain negative events such as disputes with credit-impaired debtors or guarantors, debt restructuring processes or default events as identified by the EU prudential regulation. Risk analysis and due diligence assessments by investors become more complex whenever the securitisation includes exposures subject to certain ongoing negative credit risk developments. For the same reasons, STS securitisations should not include underlying exposures to credit-impaired debtors or guarantors that have an adverse credit history. In addition, significant risk of default normally rises as rating grades or other scores are assigned that indicate highly speculative credit quality and a high likelihood of default, i.e. a scenario in which the debtor or guarantor is not able to meet its obligations becomes a real possibility. Such exposures to credit-impaired debtors or guarantors should therefore also not be eligible for STS purposes.

50. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified.

    a. Interpretation of the term 'exposures in default': given the differences in interpretation of the term 'default', the interpretation of this criterion should refer to additional guidance on this term provided in the existing delegated regulations and guidelines developed by the EBA, while taking into account the limitation of scope of that additional guidance to certain types of institutions.

    b. Interpretation of the term 'exposures to a credit-impaired debtor or guarantor': the circumstances specified in points (a) to (c) of Article 26b(11) should be understood as specific situations of credit-impairedness to which exposures in the STS securitisation may not be exposed. Consequently, other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be outside the scope of this requirement. Moreover, taking into account the role of the guarantor as a risk-bearing entity, it should be clarified that the requirement to exclude 'exposures to a credit-impaired debtor or guarantor' is not meant to exclude (i) exposures to a credit-impaired debtor when it has a guarantor that is not credit-impaired; or (ii) exposures to a non-credit-impaired debtor when there is a credit-impaired guarantor.

    c. Interpretation of the term 'to the best knowledge of': an originator or original lender should not be required to take all legally possible steps to determine the debtor's credit status but is only required to take those steps that the originator / original lender usually takes within its activities in terms of origination, servicing, risk management and use of information that is received from third parties. This should not require the originator or original lender to check publicly available information, or to check entries in at least one credit registry where an originator or original lender does not conduct such checks within its regular activities in terms of origination, servicing, risk management and use of information received from third parties, but rather relies, for example, on other information that may include

credit assessments provided by third parties. Such clarification is important because corporates that are not subject to EU financial sector regulation and that are acting as sellers with respect to STS securitisation may not always check entries in credit registries and, in line with the best knowledge standard, should not be obliged to perform additional checks at origination of any exposure for the purposes of later fulfilling this criterion in terms of any credit-impaired debtors or guarantors.

d. Interpretation of the criterion with respect to the debtors and guarantors found on the credit registry: it is important to interpret this requirement in a narrow sense to ensure that the existence of a debtor or guarantor on the credit registry of persons with adverse credit history should not automatically exclude the exposure to that debtor/guarantor from compliance with this criterion. It is understood that this criterion should relate only to debtors and guarantors that are, at the time of origination of the exposure, considered entities with adverse credit history. Existence on a credit registry at the time of origination of the exposure for reasons that can be reasonably ignored for the purposes of the credit risk assessment (for example due to missed payments which have been resolved in the next two payment periods) should not be captured by this requirement. Therefore, this criterion should not automatically exclude from the STS framework exposures to all entities that are on the credit registries, taking into account that this would unintentionally exclude a significant number of entities given that different practices exist across EU jurisdictions with respect to entry requirements of such credit registries and that credit registries in some jurisdictions may contain both positive and negative information about the clients.

e. Interpretation of the term 'significantly higher risk of contractually agreed payments not being made for comparable exposures': the term should be interpreted with a similar meaning to the requirement aiming to prevent adverse selection of assets referred to in Article 6(2) of Regulation (EU) 2017/2402, and further specified in Article 16(2) of the Delegated Regulation specifying in greater detail the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402, given that in both cases the requirement (i) aims to prevent adverse selection of underlying exposures and (ii) relates to the comparison of the credit quality of exposures selected for a securitisation and comparable exposures on the originator's balance sheet which are not securitised. To facilitate the interpretation, a list is given of examples of how to achieve compliance with the requirement.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

51. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

At least one payment made (Article 26b(12))

Rationale:

52. STS securitisations should minimise the extent to which investors are required to analyse and assess fraud and operational risk. Having in mind that the objective of the requirement is to address fraud and operational risk, rather than the creditworthiness of the borrower, at least one ordinary payment that is specified in the contractual agreement should therefore be made by each underlying borrower at the time of selection of an exposure, since this reduces the likelihood of the loan or other exposure being subject to fraud or operational issues. This applies except in the case of revolving securitisations in which the distribution of securitised exposures is subject to constant changes because the securitisation relates to exposures payable in a single instalment or with an initial legal maturity of an exposure of below one year.

53. The requirement for 'at least one payment' to be made should be applicable to every single exposure of a borrower. If a borrower has various exposures with the same originator (e.g. various loans on different accounts), it should be applied to every such exposure (e.g. every loan or facility provided to the borrower by the originator). However, the requirement should not be applicable to further advances and drawings of the same exposure with the same borrower or to a restructuring of the same exposures.

54. To facilitate consistent interpretation of this criterion, its scope and the types of payments referred to therein should be further clarified.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

55. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation, with some minor differences to provide additional necessary clarifications.

Criteria relating to standardisation (Article 26c)

Compliance with risk retention requirements (Article 26c(1))

Rationale:

56. The main objective of the risk retention criterion is to ensure an alignment between the originators' / original lenders' and investors' interests, and to avoid an application of the originate-to-distribute model in securitisation.

57. To ensure a consistent interpretation of this criterion, it should be clarified that the supervision of compliance with risk retention requirements requires the necessary coordination between the authorities responsible for the supervision of compliance with the STS requirements and the prudential supervisor (if these are different). This would avoid any duplication of work with respect to STS transactions.

Appropriate mitigation of interest rate and currency risks (Article 26c(2))

Rationale:

58. The criterion set out in Article 26c(2) aims to protect both the protection buyer and the protection provider from any interest rate and/or currency risks. Mitigating or hedging interest rate and currency risks arising in the transaction enhances the simplicity of the transaction, since it helps protection buyers to model those risks and their impact on the credit risk of the securitisation investment.

59. It should be clarified that hedging (through derivative instruments) is only one possible way of addressing the risks mentioned. Whichever measure is applied for the risk mitigation, it should, however, be subject to specific conditions so that it can be considered to appropriately mitigate the risks mentioned.

60. One of these conditions aims to prohibit derivatives that do not serve the purpose of hedging interest rate or currency risk from being included in the pool of underlying exposures or entered into by the SSPE, given that derivatives add to the complexity of the transaction and to the complexity of the risk and due diligence analysis to be carried out by the investor. Derivatives hedging interest rate or currency risk enhance the simplicity of the transaction, since hedged transactions do not require investors to engage in the modelling of currency and interest rate risks.

61. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

    a. clarification with respect to the scope of derivatives that should and should not be captured by this criterion;

    b. clarification of the term ‘common standards in international finance’.

Comparison with the EBA Guidelines on the STS criteria for non-ABCP securitisation:

62. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation, with some minor differences.

Referenced interest payments (Article 26c(3))

Rationale:

63. The objective of the criterion set out in Article 26c(3) is to prevent securitisations from making reference to interest rates that cannot be observed in the commonly accepted market practice. The credit risk and cash flow analysis that investors must be able to carry out should not involve atypical, complex or complicated rates or variables that cannot be modelled on the basis of market experience and practice.

64. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

    a. the scope of the criterion (by specifying the common types and examples of interest rates captured by this criterion);

    b. the term 'complex formulae or derivatives', including examples of formulae and derivatives that should not be deemed complex.

Comparison with Guidelines on the STS criteria for non-ABCP securitisation:

65. This criterion is less relevant for synthetics, as the repayment of the securitisation positions is not dependent on the cash flows from the underlying exposures on a pass-through basis, and consequently there is less need for investors to understand the calculation of the interest payments on the underlying exposures. However, this information might still be useful, particularly with regard to public synthetic securitisations making use of an SSPE with various investors, and the requirement should therefore be kept for consistency purposes.

66. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation for the terms 'referenced rates' and 'complex formulae or derivatives'.

Requirements after enforcement notice (Article 26c(4))

Rationale:

67. The objective of this criterion is to provide appropriate legal comfort to investors regarding their enforceability where an enforcement or an acceleration notice has been delivered. To ensure a consistent interpretation of this criterion it is proposed to further clarify what is meant by the term 'amount trapped in the SSPE'.

Comparison with Guidelines on the STS criteria for non-ABCP securitisation:

68. The Guidelines on on-balance-sheet STS securitisations amend the clarification currently provided in the guidelines on non-ABCP securitisation to cater for the specificities of the on-balance-sheet securitisations, which are reflected in the adapted Level 1 requirement (in particular, these

guidelines do not contain an interpretation of the terms 'exceptional circumstances', 'repayment' and 'liquidation of the underlying exposures at market value', as these requirements are missing in Level 1. The interpretation of the term 'amount trapped in the SSPE' is consistent with the one provided in the non-ABCP guidelines.

Allocation of losses and amortisation of tranches (Article 26c(5))

Rationale:

69. Regulation (EU) 2017/2402 specifies the allocation of losses to the holders of the securitisation position, and the application of different types of amortisation to be applied to the tranches.

70. The objective of this criterion is to ensure that non-sequential amortisation should be used only in conjunction with clearly specified contractual triggers that determine the switch of the amortisation scheme to a sequential payment in the order of seniority, safeguarding the transaction from the possibility that credit enhancement will be too quickly amortised as the credit quality of the transaction deteriorates, thereby exposing senior investors to the risk of a decreasing amount of credit enhancement.

71. Given that the minimum mandatory triggers are specified in the draft RTS on performance-related triggers in STS on-balance-sheet securitisations developed in accordance with Article 26c(5) of Regulation (EU) 2017/2402, it is not deemed necessary to include these triggers in these guidelines too.

72. As mentioned in the final draft RTS on performance-related triggers, to ensure a consistent interpretation of this criterion, the guidelines should clarify the aspect of the reversion to non-sequential amortisation for those securitisations in which the amortisation has already reverted to sequential payments. In this context, it is understood that the non-sequential amortisation subject to performance-related triggers is a derogation and therefore once a trigger is activated the derogation ends. The reversion back to non-sequential amortisation should therefore not be allowed.

73. It is not deemed necessary to clarify in the guidelines the criteria for setting the level of the triggers under Article 26c(5) laid out in Article 5 of the draft RTS on performance-related triggers in STS on-balance-sheet securitisations developed by the EBA under Article 26c(5). These should be addressed in the final draft RTS on performance-related triggers.

74. Finally, in view of the responses to the consultation on the final draft RTS on performance-related triggers it appears that there is some confusion with the coexistence and misalignment with the triggers recommended in the EBA Report on significant risk transfer. It should therefore be clarified that additional performance-related triggers beyond those specified in the RTS may be applied (including those set out in the EBA Report on significant risk transfer), as long as the requirements set out in Article 26c(5) are met and provided that those triggers do not allow for a reversion of the securitisation to non-sequential amortisation.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

75. The guidance in these guidelines is different. The guidance in the guidelines on non-ABCP securitisation focused on interpreting the term performance-related triggers, which, for STS on-balance-sheet securitisations, has in the meantime been clarified in the RTS on performance-related triggers. On top of that, these guidelines provide additional clarification of the term 'reversion to non-sequential amortisation' as a follow-up to the requirements specified in the meantime in the RTS on performance-related triggers.

Early amortisation provisions / triggers for termination of revolving period (Article 26c(6))

Rationale:

76. The criterion set out in Article 26c(6) includes safeguards for investors when the securitisation includes a revolving period. Also, early amortisation provisions should be included for those securitisations that use an SSPE.

77. The content of this criterion is deemed sufficiently clear and therefore no further clarification or guidance has been proposed.

Comparison with the Guidelines on the STS requirements for non-ABCP securitisation:

78. The Guidelines on the STS requirements for non-ABCP securitisation include clarification with respect to the occurrence of an insolvency-related event with regard to the originator or the servicer. As this requirement is missing in the requirements for on-balance-sheet securitisation, it is not clarified here.

Transaction documentation (Article 26c(7))

Rationale:

79. The objective of this requirement is to help provide full transparency to investors, assist investors in the conduct of their due diligence and prevent investors from being subject to unexpected disruptions in cash flow collections and servicing, as well as to provide investors with certainty about the replacement of counterparties involved in the securitisation transaction. This will ensure that the credit events covered by the credit protection agreement and corresponding losses are determined correctly at each payment date.

80. Particularly when the credit risk of the securitised portfolio is transferred to more than one investor (e.g. when credit-linked notes (CLNs) of different seniority are issued by an SSPE), the appointment of an identified person with fiduciary responsibilities acting in the best interests of investors is necessary, in order to minimise the impact of potential conflicts in terms of the interpretation of certain provisions of the securitisation documentation and their applicability at payment dates.

81. From the perspective of an investor in synthetic securitisation, it is also important that, irrespective of whether the underlying exposures are serviced by the originator or by another party, at closing date and thereafter the servicer adheres to high servicing standards, in order to ensure that credit events covered by the credit protection agreement and corresponding losses are determined correctly at each payment date.

82. To ensure a consistent interpretation of the criterion, the following terms should be clarified:

    a. servicing standards;

    b. servicing procedures;

    c. third-party verification agent.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

83. The guidance in these guidelines differs from the Guidelines on the STS criteria for non-ABCP securitisation, where no clarification was deemed necessary to be provided, also reflecting the difference between the requirements applicable to non-ABCP securitisation and on-balance-sheet securitisation.

Servicer's expertise and servicing requirements (Article 26c(8))

Rationale:

84. The objective of this requirement is to ensure that all the necessary conditions for proper functioning of the servicing function are in place, taking into account the crucial importance of the servicing in securitisation and the central nature of this function within any securitisation transaction. In synthetic securitisations this is particularly relevant for those transactions where the servicing is not carried out by the originator but outsourced to a third party. Considering the importance of effective servicing in synthetic securitisations and of the timely identification of the relevant credit events and identification of losses, the guidelines set out the criteria for determining the expertise of the servicer.

85. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

    a. criteria for determining the expertise of the servicer;

    b. exposures of a similar nature;

    c. criteria for determining well-documented and adequate policies, procedures and risk-management controls of the servicer.

86. The criteria for the expertise of the servicer should correspond to those for the expertise of the originator or the original lender. Newly established entities should be allowed to perform the

tasks of servicing, as long as the back-up servicer has the appropriate experience. It is expected that information on the assessment of the expertise will be provided in sufficient detail in the STS notification.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

87. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

Reference register (Article 26c(9))

Rationale:

88. According to the criterion set out in Article 26c(9), to avoid conflicts between the protection buyer and the protection sellers and to ensure legal certainty in terms of the scope of the credit protection purchased for underlying exposures, such credit protection should reference clearly identified reference obligations, giving rise to the underlying exposures, of clearly identified entities or obligors. Therefore, the reference obligations for which protection is purchased should be clearly identified at all times via a reference register, and this reference register should always be kept up to date. This requirement is also indirectly part of the criterion defining the on-balance-sheet securitisation and excluding arbitrage securitisation from the STS framework.

89. The content of this criterion is deemed sufficiently clear and therefore no further clarification or guidance has been proposed.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

90. No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

Timely resolution of conflicts between investors (Article 26c(10))

Rationale:

91. The requirement set out in Article 26c(10) aims to resolve any potential conflicts between investors in a timely manner, especially in the case of securitisations that use SSPEs.

92. In line with the Guidelines on the STS criteria for non-ABCP securitisations, it is proposed to clarify what is meant by the term ‘clear provisions facilitating the timely resolution of conflicts between different classes of investors ‘.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

93. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

Criteria relating to transparency (Article 26d)

Data on historical default and loss performance (Article 26d(1))

Rationale:

94. The objective is to provide investors with sufficient information on the asset class to which the securitised exposures belong in order to enable investors to conduct appropriate due diligence and to provide them with access to a sufficiently rich data set putting investors in a position to conduct a more accurate calculation of expected loss in different stress scenarios. These data are necessary for investors to carry out proper risk analysis and due diligence, and they contribute to building confidence and reducing uncertainty regarding the market behaviour of the underlying asset class. New asset classes entering the securitisation market for which a sufficient track record of performance has not yet been built up may not be considered transparent in that they cannot ensure that investors have the appropriate tools and knowledge to carry out proper risk analysis.

95. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:

    a. its application to external data;

    b. the term ‘substantially similar exposures’.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

96. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

Verification of a sample of the underlying exposures (Article 26d(2))

Rationale:

97. The objective of the criterion is to provide a level of assurance that the data on and reporting of the underlying credit claims or receivables are accurate and that the underlying exposures meet the eligibility criteria, by ensuring checks on the data to be disclosed to the investors by an external entity not affected by a potential conflict of interest within the transaction.

98. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

a. requirements on the sample of the underlying exposures subject to external verification;

b. requirements on the party executing the verification;

c. requirements on the confirmation of the verification;

d. scope of the verification: in this context, with respect to the determination of the size of the representative sample, one may refer to guidelines on the determination of the sample size provided in the IAASB Handbook ISA 530, which is an internationally recognised standard for audit sampling;

e. clarification of the term 'prior to the closing of the transaction'.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

99. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation, with some differences in the interpretation of the scope of verification (to provide clearer guidance on the interpretation of the confidence level, and on how to determine the size of the representative sample), and in the requirements for independence of the third party (which, in addition to the guidance in the Guidelines on the STS criteria for non-ABCP securitisation, specify that the party should not be an entity affiliated to the SSPE, sponsor or investor).

Liability cash flow model (Article 26d(3))

Rationale:

100. The objective of the criterion set out in Article 26d(3) is to enable investors to appropriately model the payments flowing between the originator, investor, other third parties and when applicable the SSPE by making a liability cash flow model available to investors before pricing and on an ongoing basis thereafter.

101. To ensure a consistent interpretation of this requirement, it is suggested to clarify what is meant by the term 'precise representation of the contractual relationship' and the 'third parties'.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

102. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

Environmental performance and sustainability disclosures of the assets (Article 26d(4))

Rationale:

103. It should be clarified that this is a requirement of disclosure about the energy efficiency of the assets when this information is available to the originator, sponsor or SSPE, rather than a requirement for a minimum energy efficiency of the assets.

104. To facilitate consistent interpretation of this criterion, the term 'available information related to the environmental performance and the principal adverse impacts on sustainability indicators' should be further clarified.

105. It is to be noted that at the time when the Guidelines on the STS criteria for non-ABCP securitisation were developed the data on energy efficiency were not available for all of the assets and a proportionate approach was taken. For the same reasons, a similar approach was also followed for the information on the principal adverse impacts of the assets on sustainability indicators.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

106. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

Compliance with disclosure requirements under Article 7 (Article 26d(5))

Rationale:

107. According to Article 26d(5) the originator shall satisfy the disclosure requirements in accordance with Article 7. The objective of this criterion is to ensure that investors have access to the data that are relevant for them to carry out the necessary risk and due diligence analysis with respect to their investment decision.

108. To ensure a consistent interpretation of this criterion, it should be clarified that the supervision of compliance with the disclosure requirements requires the necessary coordination between the authorities responsible for the supervision of compliance with the STS requirements and the prudential supervisor (if these are different). This would avoid any duplication of work with respect to STS transactions.

Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

109. To ensure consistency, equivalent clarification has been provided in the Guidelines on the STS criteria for non-ABCP securitisation (no equivalent clarification has been added in the Guidelines on the STS criteria for ABCP securitisation, as compliance with disclosure

requirements under Article 7 in the case of ABCP securitisation is not covered in the EBA mandate for guidelines for ABCP securitisation).

Criteria specific to on-balance-sheet securitisation (Article 26e)

110. No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation in relation to any of the specific requirements referred to in this subsection.

Credit events covered under the credit protection agreement (Article 26e(1))

Rationale:

111. This requirement aims to standardise the minimum credit events to be considered in on-balance-sheet securitisations and to be included in the credit protection agreement. According to this requirement, the credit protection agreement shall include, as a minimum, the credit events referred to in point (a) of Article 215(1) (in the case of the use of guarantees) or in point (a) of Article 216(1) (in the case of the use of credit derivatives) of Regulation (EU) No 575/2013 respectively, to ensure consistency with the prudential framework. Given that these are well-established requirements it is not deemed necessary to further define them.

112. To ensure consistent interpretation of this requirement, it should be clarified that the parties under the credit protection agreement may agree on additional events or stricter specifications of the events referred to in the aforementioned requirements of Regulation (EU) No 575/2013 (e.g. failure to pay with a grace period of less than 90 days or the introduction of minimum payment thresholds for defaulted claims to qualify as 'failure to pay'), in line with the general framework provided for in the standard industry master agreements.

Credit protection payments (Article 26e(2))

Rationale:

113. The requirement set out in Article 26e(2) aims to ensure that following a credit event the credit protection agreement covers the losses incurred by the originator in a timely manner. It specifies how to determine the losses in the reference portfolio, the interim and final credit protection payments and the relevant timing for these payments. From the originator's perspective, in order to ensure that the credit protection eventually covers the losses incurred by the originator, it is important that loss settlements do not fall short of the loss amounts, as worked out by the originator. In addition, aligning credit protection payments with the loss amounts worked out by the originator ensures that the protection buyer's and the protection seller's interests in the transaction are more aligned, leading to better incentives on both sides of the transaction.

114. To facilitate a consistent interpretation of this requirement, the following aspects should be clarified.

a. Clarification of the term 'proportional to the share of the outstanding nominal amount of the underlying exposure'.

b. Clarification with respect to determination of the interim protection payment, in particular the 'higher of' condition and the term 'where applicable'. In this context, it is understood that an 'expected loss amount as determined in accordance with Chapter 3 of Title II of Part Three of Regulation (EU) No 575/2013' as referred to in the second subparagraph, point (b), should be considered (under the 'higher of' condition) only if the originator has received permission to apply the IRB Approach to the respective underlying exposure in respect of which the 'higher of' condition is being assessed.

c. Clarification on the determination of the 'expected loss' amount. This should also be seen in relation to the provision in the seventh subparagraph of Article 26e(2), according to which: 'The amount of the credit protection payment shall be calculated at the level of the individual underlying exposure for which a credit event has occurred.' Also, the clarification should be consistent with the approach set out in the RTS on the calculation of KIRB in accordance with the purchased receivables approach, developed according to Article 255(9) of Regulation (EU) No 575/2013, which allow for the calculation of expected losses for retail exposures at sub-pool level.

Debt workout and credit protection premiums (Article 26e(3))

Rationale:

115. The requirement in Article 26e(3) aims to ensure the effectiveness of the credit protection agreement from the originators' perspective and at the same time provides legal certainty for the investors on the termination date to make payments by specifying the maximum extension period for the debt workout. The requirement also specifies that only contingent credit protection premiums are allowed.

116. To facilitate a consistent interpretation of this criterion, the term 'contingent on the outstanding nominal amount of the performing securitised exposures' should be further clarified.

Third-party verification agent (Article 26e(4))

Rationale:

117. The requirement in Article 26e(4) for the appointment of a third-party verification agent aims to ensure legal certainty for all parties involved in a transaction and to further enhance the soundness and accuracy of certain aspects of the credit protection agreement.

118. To facilitate a consistent interpretation of this criterion, the following aspects should be clarified:

a. requirements on the third-party verification agent;

b. requirements on the sample verification in the case of securitisations with mezzanine positions;

c. clarification of the term 'final loss amount'.

Early termination events exercisable by the originator (Article 26e(5))

Rationale:

119. Article 26e(5) sets out the early termination events activated by the originator and specifies an exhaustive list of conditions under which the early termination of a transaction by the originator is permitted, in order to ensure the stability and continuity of the credit protection.

120. To facilitate the consistent interpretation of this criterion, the following clarifications are provided in relation to requirements for the time calls as set out in Article 26e(5), first subparagraph, point (d):

a. clarification on the calculation of the weighted average life (WAL) of the initial reference portfolio. This clarification is consistent with the determination of WAL applicable under paragraphs 53 and 54 of the Guidelines on the STS criteria for ABCP securitisation;

b. clarification on the calculation of WAL in the case of the existence of a replenishment period. The clarification is made on the assumption that the size of the pool of the underlying exposures and the maturity of the underlying exposures added during the replenishment period are consistent with the size of the pool of the underlying exposures and the maturity of the underlying exposures of the initial portfolio;

c. with regard to point (f), it is suggested to provide further guidance by including the conditions for the eligibility of a guarantee as a protection provider.

Early termination events exercisable by the investor (Article 26e(6))

Rationale:

121. Article 26e(6) specifies the conditions which may lead to an early termination event exercisable by the investor. The criterion is deemed sufficiently clear. No further guidance is considered necessary**.**

Synthetic excess spread (Article 26e(7))

Rationale:

122. The objective of the criterion in Article 26e(7) is to specify the requirements for the synthetic excess spread committed by the originator and available as credit enhancement for the investors.

123. To facilitate the consistent interpretation of this requirement, the following aspects should be further clarified:

a. clarification on the calculation of 'one-year expected loss' specified in points (c) and (d) of Article 26e(7). In addition, with respect to point (d) applicable to those institutions not using the IRB Approach for the calculation of expected losses, a reference is provided to the applicable accounting framework, which is consistent with the requirements set out in the draft RTS on the determination by originator institutions of the exposure value of synthetic excess spread, developed in accordance with Article 248(4) of Regulation (EU) No 575/2013 as amended by Regulation (EU) 2021/558;

b. additionally, it should be clarified that the requirement to 'use the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013' under Article 26e(7), point (c), only applies in those cases where the originator determines own funds requirements for the entire pool of the underlying exposures in accordance with the IRB Approach.

Types of credit protection agreements (Article 26e(8))

Rationale:

124. Article 26e(8) specifies the forms of credit protection agreements that are eligible for STS on-balance-sheet securitisations. The content of this criterion is deemed sufficiently clear and therefore no further clarification or guidance has been proposed.

Specific type of the credit protection agreement (Article 26e(9))

125. Article 26e(9) sets out requirements for specific credit protection agreements that have the form of a guarantee, a credit derivative or a credit-linked note and are secured by collateral meeting the requirements of this paragraph and of paragraph 10 of the Article. To ensure a consistent interpretation of this criterion it is proposed to provide further guidance on the term 'legal opinion for the enforceability of the credit protection in all relevant jurisdictions'. Also, it is proposed to further clarify the requirements for a 'qualified legal counsel'.

Requirements for recourse to high-quality collateral (Article 26e(10))

Rationale:

126. The objective of Article 26e(10) is to mitigate the counterparty credit risk for both the originator and the investor in the case of funded credit protection. It specifies the types of acceptable high-quality collateral that both the originator and the investor, or, where the derogation according to the second subparagraph of the paragraph is applied, only the originator, should have recourse to in accordance with the type of credit protection referred to in Article 26e(8)(c).

127. To facilitate the consistent interpretation of this criterion, the following aspects should be clarified:

a. in point (a), clarification of the term 'collateral in the form of 0% risk-weighted debt securities referred to in Chapter 2 of Title II of Part Three of that Regulation';

b. in point (a)(i), clarification with respect to the payment frequency of the acceptable high-quality collateral in the form of 0% risk-weighted debt securities;

c. clarification of this criterion with respect to the use of credit-linked notes.

3. Guidelines on the STS criteria for on-balance-sheet securitisation and amending Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation

EBA/GL/2024/05

27/05/2024

Guidelines

on the STS criteria for on-balance-sheet securitisation

and amending Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[8] . In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions shall make every effort to comply with the guidelines.

2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities shall notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by 09/12/2024. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2024/05'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.

4. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010.

[8] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p.12)

2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify, in accordance with Article 26a of Regulation (EU) 2017/2402[9], how the requirements relating to simplicity, standardisation and transparency, and the requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread, set out in Articles 26b to 26e of that Regulation, apply to on-balance-sheet securitisation for such securitisation to be deemed simple, transparent and standardised (STS). Moreover, these guidelines amend Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation, issued pursuant to Articles 19 and 23 of Regulation (EU) 2017/2402.

Scope of application

6. These guidelines should apply in accordance with the scope of application of Regulation (EU) 2017/2402 as set out in Article 1 thereof.

Addressees

7. These guidelines are addressed to competent authorities referred to in Article 4, point (2), of Regulation (EU) 1093/2010 that have been designated as competent authorities pursuant to Article 29(5) of Regulation (EU) 2017/2402, and to financial institutions referred to in Article 4, point (1), of Regulation (EU) 1093/2010 that are subject to regulation and supervision pursuant to Regulation (EU) 2017/2402, including third parties verifying STS compliance also in accordance with Article 2(5), last subparagraph, of Regulation 1093/2010. Competent authorities designated pursuant to Article 29(5) of Regulation (EU) 2017/2402 that do not qualify as competent authorities pursuant to Article 4, point (2), of Regulation No 1093/2010 are encouraged to apply these guidelines.

[9] Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2402&from=fr

3. Implementation

Date of application

8. These guidelines apply from 09/12/2024. These guidelines apply to on-balance-sheet securitisations the securitisation positions of which are created in accordance with credit protection agreements adopted after DD-MM-YYYY [2 months after the last translation]. The amendments to Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation, set out in Section 8 of these guidelines, apply to securitisations the securities of which are issued in accordance with terms of agreement adopted after 09/12/2024.

4. Criteria relating to simplicity

Exposures held on the balance sheet (Article 26b(3) of Regulation (EU) 2017/2402)

Balance sheet

9. For the purposes of Article 26b(3) of Regulation (EU) 2017/2402, the term balance sheet should be interpreted as the accounting balance sheet of the originator or of an entity that belongs to the same group as the originator.

No double hedging (Article 26b(4) of Regulation (EU) 2017/2402)

Hedge beyond the protection obtained through the credit protection agreement

10. The criterion in accordance with Article 26b(4) of Regulation (EU) 2017/2402 should be understood to disallow multiple credit protection in respect of the credit risk of the pool of underlying exposures, irrespective of whether such additional credit protection relates to protection against the credit risk of a tranche, part of a tranche or an underlying exposure, so as to ensure that the credit risk of the pool of underlying exposures is not hedged more than once.

11. For the purposes of Article 26b(4) of Regulation (EU) 2017/2402, separate credit protection provided for separate tranches, separate parts of the tranches or separate underlying exposures under the credit protection agreement should not be considered as a hedge beyond the protection obtained through the credit protection agreement.

Representations and warranties (Article 26b(6) of Regulation (EU) 2017/2402)

An entity of the group to which the originator belongs

12. For the purpose of Article 26b(6) of Regulation (EU) 2017/2402, the ‘group’ should be interpreted as the consolidated group to which the entity belongs for accounting or prudential purposes.

An entity which is included in the scope of supervision on a consolidated basis

13. For the purposes of Article 26b(6) of Regulation (EU) 2017/2402, the ‘entity which is included in the scope of supervision on a consolidated basis' should be interpreted within the meaning of Article 26b(3) of that Regulation.

No less stringent underwriting standards

14. For the purposes of Article 26b(6), point (e), of Regulation (EU) 2017/2402, the underwriting standards applied to securitised exposures should be compared to the underwriting standards applied to similar exposures at the time of origination of the securitised exposures.

15. Compliance with the previous paragraph should not imply that either the originator or the original lender is required to hold similar exposures on its balance sheet at the time of the selection of the securitised exposures or at the exact time of their securitisation, nor should it require that similar exposures were actually originated at the time of origination of the securitised exposures.

To the best of the originator's knowledge

16. For the purposes of Article 26b(6), point (f), of Regulation (EU) 2017/2402, the 'best knowledge' standard should be considered to be fulfilled where the originator uses information obtained from any of the following sources and circumstances or from any combination of those sources and circumstances:

    a. information on obligors obtained at the origination of the exposures;

    b. information obtained in the course of the originator's servicing of the exposures or in the course of its risk management procedures;

    c. notifications to the originator by a third party;

    d. publicly available information or information on any entries in one or more credit registries of persons with adverse credit history at the time of origination of an underlying exposure, only to the extent that this information had already been taken into account in the context of the information referred to in points (a), (b) or (c) above, and in accordance with the applicable regulatory and supervisory requirements, including with respect to sound credit granting criteria as specified in Article 9 of Regulation (EU) 2017/2402.

Eligibility criteria, active portfolio management (Article 26b(7) of Regulation (EU) 2017/2402)

Active portfolio management

17. For the purposes of Article 26b(7) of Regulation (EU) 2017/2402, active portfolio management should be understood as portfolio management to which either of the following applies:

    a. the portfolio management makes the performance of the securitisation dependent on both the performance of the underlying exposures and the performance of the portfolio management of the securitisation, thereby preventing the investors from modelling the credit risk of the underlying exposures without considering the portfolio management strategy of the portfolio manager;

    b. the portfolio management is performed for speculative purposes aiming to achieve better performance, increased yield, overall financial returns or other purely financial or economic benefit.

18. The techniques of portfolio management that should not be considered active portfolio management include:

    a. substitution of the underlying exposures that are subject to regulatory dispute or investigation, where the purpose of such substitution is the facilitation of the resolution of that dispute or the end of the investigation;

    b. acquisition of new underlying exposures during the 'ramp-up' period to increase the value of the underlying exposures up to the value of the securitisation obligations.

Clear eligibility criteria

19. For the purposes of Article 26b(7) of Regulation (EU) 2017/2402, the eligibility criteria should be understood to be 'clear' where compliance with them is possible to be determined by a court or tribunal, as a matter of law or fact or both.

Eligibility criteria to be met for exposures added after the closing of the transaction

20. For the purposes of Article 26b(7) of Regulation (EU) 2017/2402, meeting 'eligibility criteria that are no less stringent than those applied in the initial selection of the underlying exposures' should be understood to mean that eligibility criteria are no less strict than the eligibility criteria applied to the initial underlying exposures at the closing of the transaction.

21. Eligibility criteria to be applied to the underlying exposures in accordance with the previous paragraph should be specified in the transaction documentation and should refer to eligibility criteria applied at exposure level.

Permitted removals

22. Article 26b(7), fourth subparagraph, of Regulation (EU) 2017/2402 lays down an exhaustive list of circumstances under which an underlying exposure may be removed from the transaction.

Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 26b(8) of Regulation (EU) 2017/2402)

Contractually binding and enforceable obligations

23. For the purposes of Article 26b(8), second subparagraph, of Regulation (EU) 2017/2402, 'obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors' should be understood to refer to all obligations contained in the contractual specification of the underlying exposures that are relevant to investors because they affect any obligations on the debtor and, where applicable, the guarantor to make payments or provide security.

Exposures with periodic payment streams

24. For the purposes of Article 26b(8), third subparagraph, of Regulation (EU) 2017/2402, exposures with defined periodic payment streams should include:

    a. exposures payable in a single instalment in the case of revolving securitisation, as referred to in Article 26b(12), point (a), of Regulation (EU) 2017/2402;

    b. exposures related to credit card facilities;

    c. exposures with instalments consisting of interest and where the principal is repaid at maturity, including interest-only mortgages;

    d. exposures with instalments consisting of interest and repayment of a portion of the principal, where either of the following conditions is met:

        (i) the remaining principal is repaid at maturity;

        (ii) the repayment of the principal is dependent on the sale of assets securing the exposures;

    e. exposures with temporary payment holidays as contractually agreed between the debtor and the lender.

Underwriting standards, originator's expertise (Article 26b(10) of Regulation (EU) 2017/2402)

Disclosure of material changes from prior underwriting standards

25. For the purposes of Article 26b(10), first subparagraph, of Regulation (EU) 2017/2402, material changes to the underwriting standards that are required to be fully disclosed should be understood to be those material changes to the underwriting standards that are applied to the exposures that are added to the pool of underlying exposures after the closing of the securitisation in the context of replenishment or portfolio management as referred to in paragraphs 20 and 21.

26. Changes to such underwriting standards should be deemed material where they refer to either of the following types of changes to the underwriting standards:

    a. changes that affect the requirement of the similarity of the underwriting standards further specified in Article 1, first paragraph, point (b), of Delegated Regulation (EU) 2019/1851;

    b. changes that materially affect the overall credit risk or expected average performance of the pool of underlying exposures without resulting in substantially different approaches to the assessment of the credit risk associated with the underlying exposures.

27. The disclosure of all changes to underwriting standards should include an explanation of the purpose of such changes.

28. With regard to trade receivables which are not originated in the form of a loan, the reference to underwriting standards in Article 26b(10), first subparagraph, of Regulation (EU) 2017/2402 should be understood to refer to credit standards applied by the seller to short-term credit of the same type giving rise to the securitised exposures in the context of payment targets agreed with its customers in relation to the sales of its products and services.

Residential loans

29. In accordance with Article 26b(10), second subparagraph, of Regulation (EU) 2017/2402, the pool of underlying exposures has not to include residential loans that were both marketed and underwritten on the premise that the loan applicant or intermediaries were made aware that the information provided might not be verified by the lender.

30. Residential loans that were underwritten but were not marketed on the premise that the loan applicant or intermediaries were made aware that the information provided might not be verified by the lender, or that the loan applicant or intermediaries become aware after the loan was underwritten, should not be deemed to be captured by this requirement.

31. For the purposes of Article 26b(10), second subparagraph, of Regulation (EU) 2017/2402, the 'information' provided should be considered to include relevant information only. The relevance of the information should be based on whether the information is a relevant underwriting metric, such as information considered relevant for assessing a borrower's creditworthiness, for assessing access to collateral and reducing the risk of fraud.

32. Relevant information for general non-income-generating residential mortgages should normally be considered to constitute income, and relevant information for income-generating residential mortgages should normally be considered to constitute rental income. Information that is not useful as an underwriting metric, such as mobile phone numbers, should not be considered relevant information.

Equivalent requirements in third countries

33. For the purposes of Article 26b(10), third subparagraph, of Regulation (EU) 2017/2402, the assessment of the creditworthiness of borrowers in third countries should be carried out based on the following principles, where appropriate, as specified in Directives 2008/48/EC and 2014/17/EC:

    a. before the conclusion of a credit agreement, on the basis of sufficient information, the lender assesses the borrower's creditworthiness on the basis of sufficient information, where appropriate obtained from the borrower and, where necessary, on the basis of a consultation of the relevant database;

b. if the parties agree to change the total amount of credit after the conclusion of the credit agreement, the lender should update the financial information at its disposal concerning the borrower and should assess the borrower's creditworthiness before any significant increase in the total amount of credit;

c. the lender should make a thorough assessment of the borrower's creditworthiness before concluding a credit agreement, taking appropriate account of factors relevant to verifying the prospect of the borrower's meeting his or her obligations under the credit agreement;

d. the procedures and information on which the assessment is based should be documented and maintained;

e. the assessment of creditworthiness should not rely predominantly on the value of the residential immovable property exceeding the amount of the credit or the assumption that the residential immovable property will increase in value unless the purpose of the credit agreement is to construct or renovate the residential immovable property;

f. the lender should not be able to cancel or alter the credit agreement once concluded to the detriment of the borrower on the grounds that the assessment of creditworthiness was incorrectly conducted;

g. the lender should make the credit available to the borrower only where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement are likely to be met in the manner required under that agreement;

h. the borrower's creditworthiness should be reassessed on the basis of updated information before any significant increase in the total amount of credit is granted after the conclusion of the credit agreement unless such additional credit was envisaged and included in the original creditworthiness assessment.

Criteria for determining the expertise of the originator or original lender

34. For the purposes of determining whether an originator or original lender has expertise in originating exposures of a similar nature to those securitised in accordance with Article 26b(10), fourth subparagraph, of Regulation (EU) 2017/2402, both of the following should apply:

a. the members of the management body of the originator or original lender and the senior staff, other than the members of the management body, responsible for managing the originating of exposures of a similar nature to those securitised should have adequate knowledge and skills in the origination of exposures of a similar nature to those securitised;

b. any of the following principles on the quality of the expertise should be taken into account:

    i. the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;

    ii. the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;

    iii. the involvement of the members of the management body and the senior staff within the governance structure of the function of originating the exposures should be appropriate;

    iv. in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to origination of exposures of a similar nature to those securitised.

35. An originator or original lender should be deemed to have the required expertise when either of the following applies:

    a. the business of the entity, or of the consolidated group to which the entity belongs for accounting or prudential purposes, has included the origination of exposures similar to those securitised for at least five years;

    b. where the requirement referred to in point (a) is not met, they comply with both of the following:

        i. at least two of the members of the management body have relevant professional experience in the origination of exposures similar to those securitised, at a personal level, of at least five years;

        ii. senior staff, other than members of the management body, who are responsible for managing the entity's originating of exposures similar to those securitised have relevant professional experience in the origination of exposures of a similar nature to those securitised, at a personal level, of at least five years.

36. For the purposes of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail and in accordance with the applicable confidentiality requirements to permit investors to carry out their obligations under Article 5 of Regulation (EU) 2017/2402.

Exposures of a similar nature

37. For the purposes of Article 26b(10), fourth subparagraph, of Regulation (EU) 2017/2402, exposures should be considered to be of a similar nature if one of the following conditions is met:

    a. the exposures belong to one of the asset categories referred to in Article 1, first paragraph, points (a)(i) to (a)(iii) or (a)(v) to (a)(vii), of Delegated Regulation (EU) 2019/1851;

    b. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(iv), of Delegated Regulation (EU) 2019/1851, and to the same type of obligor referred to in Article 2(3), point (a), of that Regulation;

    c. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(viii), of Delegated Regulation (EU) 2019/1851, and they share similar characteristics with respect to any of the homogeneity factors referred to in Article 2(6) of that Regulation.

No exposures in default and to credit-impaired debtors/guarantors (Article 26b(11) of Regulation (EU) 2017/2402)

Exposures in default

38. For the purposes of Article 26b(11) of Regulation (EU) 2017/2402, the exposures in default should be interpreted within the meaning of Article 178(1) of Regulation (EU) No 575/2013, as further specified by the Delegated Regulation on the materiality threshold for credit obligations past due developed in accordance with Article 178(6) of that Regulation, and by the EBA Guidelines on the application of the definition of default developed in accordance with Article 178(7) of that Regulation.

39. Where an originator or original lender is not an institution and is therefore not subject to Regulation (EU) No 575/2013, the originator or original lender should comply with the guidance provided in the previous paragraph to the extent that such application is not deemed to be unduly burdensome. In that case, the originator or original lender should apply the established processes and the information obtained from debtors on origination of the exposures, information obtained from the originator in the course of its servicing of the exposures or in the course of its risk management procedures, or information notified to the originator by a third party.

Exposures to a credit-impaired debtor or guarantor

40. For the purposes of Article 26b(11) of Regulation (EU) 2017/2402, the circumstances specified in points (a) to (c) of that paragraph should be understood as definitions of credit-impairedness. Other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be understood to be excluded from this requirement.

41. The prohibition of the inclusion of underlying exposures 'to a credit-impaired debtor or guarantor' in the pool of underlying exposures as referred to in Article 26b(11) of Regulation (EU) 2017/2402 should be understood as the requirement that, at the time of selection, there should be recourse for the full securitised exposure amount to at least one non-credit-impaired party, irrespective of whether that party is a debtor or a guarantor. Therefore, the underlying exposures should not include either of the following:

    a. exposures to a credit-impaired debtor, when there is no guarantor for the full securitised exposure amount;

    b. exposures to a credit-impaired debtor who has a credit-impaired guarantor.

To the best of the originator's or original lender's knowledge

42. For the purposes of Article 26b(11) of Regulation (EU) 2017/2402, the 'best knowledge' standard should be considered to be fulfilled on the basis of information obtained only from any of the following combinations of sources and circumstances:

    a. debtors on the origination of the exposures;

    b. the originator in the course of its servicing of the exposures or in the course of its risk management procedures;

    c. notifications to the originator by a third party;

    d. publicly available information or information on any entries in one or more credit registries of persons with adverse credit history at the time of origination of an underlying exposure, only to the extent that this information had already been taken into account in the context of (a), (b) and (c), and in accordance with the applicable regulatory and supervisory requirements, including with respect to sound credit granting criteria as specified in Article 9 of Regulation (EU) 2017/2402. This is with the exception of trade receivables that are not originated in the form of a loan, with respect to which credit granting criteria do not need to be met.

Exposures to credit-impaired debtors or guarantors that have undergone a debt restructuring process

43. For the purposes of Article 26b(11), point (a), of Regulation (EU) 2017/2402, the requirement to exclude exposures to credit-impaired debtors or guarantors that have undergone a debt restructuring process with regard to their non-performing exposures should be understood to refer to both the restructured exposures of the respective debtor or guarantor and those of its exposures that were not themselves subject to restructuring. For the purposes of this paragraph, restructured exposures which meet the conditions of Article 26b(11), points (a)(i) and (a)(ii), of Regulation (EU) 2017/2402 should not result in a debtor or guarantor becoming designated as credit-impaired.

Credit registry

44. The requirement referred to in Article 26b(11), point (b), of Regulation (EU) 2017/2402 should be understood as being limited to exposures to debtors or guarantors to which both of the following conditions apply at the time of origination of the underlying exposure:

    a. the debtor or guarantor is explicitly flagged in a credit registry as an entity with adverse credit history due to a negative status or negative information stored in the credit registry;

    b. the debtor or guarantor is on the credit registry for reasons that are relevant to the purposes of the credit risk assessment.

Risk of contractually agreed payments not being made being significantly higher than for comparable exposures

45. For the purposes of Article 26b(11), point (c), of Regulation (EU) 2017/2402, the credit-impaired debtors or guarantors of exposures should not be considered to have a 'credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures of other credit-impaired debtors or guarantors held by the originator which are not securitised' when both of the following conditions apply:

    a. the most relevant factors determining the expected performance of the underlying exposures and the comparable exposures are similar;

    b. as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or the applicable models, that, over the life of the transaction or over a maximum of four years, where the life of the transaction is longer than four years, the performance of the underlying exposures would not be significantly worse than that of the comparable exposures.

46. The conditions in the previous paragraph should be considered to have been met where either of the following applies:

    a. the underlying exposures do not include exposures that are classified as doubtful, impaired or non-performing, or classified to a similar effect under the relevant accounting principles;

    b. the underlying exposures do not include exposures to debtors or guarantors whose credit quality, based on credit ratings or other credit quality thresholds, is significantly worse than the credit quality of debtors or guarantors of comparable exposures that the originator originates in the course of its standard lending operations and credit risk strategy.

At least one payment made (Article 26b(12) of Regulation (EU) 2017/2402)

Scope of the criterion

47. For the purposes of Article 26b(12) of Regulation (EU) 2017/2402, further advances and drawings in terms of one exposure or a restructuring of the same exposure to a certain borrower should not be deemed to trigger a new 'at least one payment' requirement with respect to such an exposure.

48. For the purposes of Article 26b(12) of Regulation (EU) 2017/2402, the intended selection of a different separate exposure to the same borrower should trigger a new 'at least one payment' requirement with respect to such an exposure.

At least one payment

49. For the purposes of Article 26b(12) of Regulation (EU) 2017/2402, the payment referred to in the requirement according to which 'at least one payment' should have been made at the time of the inclusion of the underlying exposures should be a rental, principal or interest payment or any other kind of ordinary payment specified in the contractual agreement related to the exposure.

5. Criteria relating to standardisation

Compliance with the risk retention requirements (Article 26c(1) of Regulation (EU) 2017/2402)

50. For the purposes of Article 26c(1) of Regulation (EU) 2017/2402, the competent authorities designated pursuant to Article 29(5) of that Regulation and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation should cooperate closely in accordance with Article 36 of that Regulation, where they are different.

Appropriate mitigation of interest and currency risks (Article 26c(2) of Regulation (EU) 2017/2402)

Derivatives

51. For the purposes of Article 26c(2), third subparagraph, of Regulation (EU) 2017/2402, exposures in the pool of underlying exposures that merely contain a derivative component exclusively serving the purpose of directly hedging the interest rate risk or currency risk of the respective underlying exposure itself, which are not themselves derivatives, should not be understood to be prohibited.

Common standards in international finance

52. For the purposes of Article 26c(2), third subparagraph, of Regulation (EU) 2017/2402, common standards in international finance should include ISDA or similar established national documentation standards.

Referenced interest payments (Article 26c(3) of Regulation (EU) 2017/2402)

Referenced interest rates

53. For the purposes of Article 26c(3) of Regulation (EU) 2017/2402, interest rates that should be considered to be an adequate reference basis for referenced interest payments should include all of the following:

    a. interbank rates including Libor, Euribor and other recognised benchmarks;

    b. other established reference interest rates such as €STR, SONIA, SOFR and TONA;

    c. rates set by monetary policy authorities, including federal funds rates and central banks' discount rates;

    d. sectoral rates reflective of a lender's cost of funds, including standard variable rates and internal interest rates that directly reflect the market costs of funding of a bank or a subset of institutions, to the extent that sufficient data are provided to

investors to allow them to assess the relation of the sectoral rates to other market rates.

Complex formulae or derivatives

54. For the purposes of Article 26c(3) of Regulation (EU) 2017/2402, interest rate caps or floors should not be understood to constitute a complex formula or derivatives.

Requirements after enforcement notice (Article 26c(4) of Regulation (EU) 2017/2402)

Amount trapped in the SSPE

55. For the purposes of Article 26c(4), second subparagraph, of Regulation (EU) 2017/2402, the amount of cash to be considered as trapped in the SSPE should be determined as set out in the transaction documentation.

56. For the purposes of Article 26c(4) of Regulation (EU) 2017/2402, it should be permissible to trap the cash in the SSPE in the form of a reserve fund for future use, as long as the use of the reserve fund is exclusively limited to the purposes set out in Article 26c(4), second subparagraph, of that Regulation including orderly repayment to the investors.

Allocation of losses and amortisation of tranches (Article 26c(5) of Regulation (EU) 2017/2402)

Triggers

57. For the purposes of Article 26c(5) of Regulation (EU) 2017/2402, in addition to the minimum required triggers, the parties to the transaction may agree to include other performance-related triggers. The occurrence of a trigger event for any such performance-related triggers should lead to the amortisation of the securitisation tranches reverting to a sequential payment in order of seniority, irrespective of whether other triggers apply or not.

Reversion to non-sequential amortisation

58. For the purpose of Article 26c(5), third subparagraph, of Regulation (EU) 2017/2402, once the reversion of the amortisation to sequential payment is applied as a consequence of the breach of any performance-related trigger, a further reversion back to non-sequential amortisation should not be allowed in accordance with the transaction documentation.

Transaction documentation (Article 26c(7) of Regulation (EU) 2017/2402)

Servicing standards

59. For the purposes of Article 26c(7), point (d), of Regulation (EU) 2017/2402, servicing standards should be understood as standards related to servicing specified in the transaction documentation that have to be met throughout the life of the securitisation transaction.

Servicing procedures

60. For the purposes of Article 26c(7), point (c), of Regulation (EU) 2017/2402, the servicing procedures should be understood as actual procedures necessary to ensure compliance with the servicing standards. The procedures may be adapted throughout the life of the securitisation transaction as long as the servicing standards continue to be met.

Transaction counterparties

61. For the purposes of Article 26c(7), point (b), of Regulation (EU) 2017/2402, the trustee and the third-party verification agent should always differ from the servicer, the investor and the originator. The third-party verification agent should additionally meet the requirements specified in paragraph 73.

Servicer's expertise and servicing requirements (Article 26c(8) of Regulation (EU) 2017/2402)

Criteria for determining the expertise of the servicer

62. For the purposes of determining whether a servicer has expertise in servicing exposures of a similar nature to those securitised in accordance with Article 26c(8) of Regulation (EU) 2017/2402, both of the following should apply:

a. the members of the management body of the servicer and the senior staff, other than members of the management body, responsible for servicing exposures of a similar nature to those securitised should have adequate knowledge and skills in the servicing of exposures similar to those securitised;

b. any of the following principles on the quality of the expertise should be taken into account in the determination of the expertise:

i. the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;

ii. the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;

iii. the involvement of the members of the management body and the senior staff within the governance structure of the function of servicing the exposures should be appropriate;

iv. in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to the servicing of similar exposures to those securitised.

63. A servicer should be deemed to have the required expertise where either of the following applies:

    a. the business of the entity, or of the consolidated group to which the entity belongs for accounting or prudential purposes, has included the servicing of exposures of a similar nature to those securitised for at least five years;

    b. where the requirement referred to in point (a) is not met, it complies with all of the following:

        i. at least two of the members of its management body have relevant professional experience in the servicing of exposures of a similar nature to those securitised, at a personal level, of at least five years;

        ii. senior staff, other than members of the management body, who are responsible for managing the entity's servicing of exposures of a similar nature to those securitised, have relevant professional experience in the servicing of exposures of a similar nature to those securitised, at a personal level, of at least five years;

        iii. the servicing function of the entity is backed by a back-up servicer compliant with point (a).

64. For the purpose of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail and in accordance with the applicable confidentiality requirements to permit investors to carry out their obligations referred to in Article 5 of Regulation (EU) 2017/2402.

Exposures of a similar nature

65. For the purposes of Article 26c(8) of Regulation (EU) 2017/2402, the interpretation of the term 'exposures of a similar nature' should follow the interpretation provided in paragraph 37.

Well-documented and adequate policies, procedures and risk-management controls

66. For the purposes of Article 26c(8) of Regulation (EU) 2017/2402, the servicer should be considered to have 'well-documented and adequate policies, procedures and risk-management controls relating to the servicing of exposures' where either of the following conditions is met:

    a. the servicer is an entity that is subject to prudential and capital regulation and supervision in the Union and its regulatory authorisations or permissions are deemed relevant to the servicing;

    b. the servicer is an entity that is not subject to prudential and capital regulation and supervision in the Union, and a proof of existence of well-documented and adequate policies and risk-management controls is provided, which also includes a

proof of adherence to good market practices and reporting capabilities. The proof should be substantiated by an appropriate third-party review, such as by a credit rating agency or external auditor.

Timely resolution of conflicts between investors (Article 26c(10) of Regulation (EU) 2017/2402)

Clear provisions facilitating the timely resolution of conflicts between different classes of investors

67. For the purposes of Article 26c(10) of Regulation (EU) 2017/2402, provisions of the transaction documentation that 'facilitate the timely resolution of conflicts between different classes of investors' for securitisation transactions with more than one investor should include all of the following:

    a. the method for calling meetings or arranging conference calls;

    b. the maximum timeframe for setting up a meeting or conference call;

    c. the required quorum;

    d. the minimum thresholds of votes to validate such a decision, with clear differentiation between the minimum thresholds for each type of decision;

    e. where applicable, a location for the meetings which should be in the Union.

68. For the purposes of Article 26c(10) of Regulation (EU) 2017/2402, where mandatory statutory provisions exist in the applicable jurisdiction that set out how conflicts between investors have to be resolved, the transaction documentation may refer to those provisions.

6. Criteria relating to transparency

Data on historical default and loss performance (Article 26d(1) of Regulation (EU) 2017/2402)

Data

69. For the purposes of Article 26d(1) of Regulation (EU) 2017/2402, where the originator cannot provide data in line with the data requirements contained therein, external data that are publicly available or are provided by a third party, such as a rating agency or another market participant, may be used, provided that all of the other requirements of that article are met.

Substantially similar exposures

70. For the purposes of Article 26d(1) of Regulation (EU) 2017/2402, the term 'substantially similar exposures' should be understood as referring to exposures for which both of the following conditions are met:

    a. the most relevant factors determining the expected performance of the underlying exposures are similar;

    b. as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or applicable models, that, over the life of the transaction, or over a maximum of four years, where the life of the transaction is longer than four years, their performance would not be significantly worse than that of the securitised exposures.

71. For the purposes of Article 26d(1) of Regulation (EU) 2017/2402, the substantially similar exposures should not be limited to exposures held on the balance sheet of the originator.

Verification of a sample of the underlying exposures (Article 26d(2) of Regulation (EU) 2017/2402)

Sample of the underlying exposures subject to external verification

72. For the purposes of Article 26d(2) of Regulation (EU) 2017/2402, the underlying exposures that should be subject to verification prior to the closing date of the transaction should be a representative sample of the provisional portfolio from which the securitised pool is extracted and which is in a reasonably final form before the closing date of the transaction.

Party executing the verification

73. For the purposes of Article 26d(2) of Regulation (EU) 2017/2402, a party should be deemed appropriate and independent when it meets both of the following conditions:

a. it has the experience and capability to carry out the verification;

b. it is none of the following:

   i. a credit rating agency;

   ii. a third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402;

   iii. an entity affiliated to the originator, sponsor, investor or SSPE.

Scope of the verification

74. For the purposes of Article 26d(2) of Regulation (EU) 2017/2402, the verification should be carried out applying an appropriate statistical method and based on a random sample of underlying exposures extracted from the underlying exposures in the securitisation, while the size of the sample should be determined so as to ensure that the probability (confidence level) to correctly reject the hypothesis that there are no exceptions to the requirement in the entire pool of the underlying exposures in the securitisation is at least 95% (i.e. the probability of the so-called type II error of falsely accepting an entire pool without exceptions should be 5%).

75. In any case, the minimum number of the underlying exposures in the sample should be 50. For securitisations where the pool of underlying exposures consists of less than 50 underlying exposures, the sample should consist of all the underlying exposures.

76. The verification should include a check of the originator's database or IT systems against the credit protection agreement and related documentation in order to confirm that the occurrence of a credit event would trigger a credit protection payment by the investor where losses on the underlying exposure subject to a credit event would be assigned to the protected tranche(s) with respect to the exposures which are subject to the verification. Where this verification is not possible using the originator's database or IT systems, the party executing the verification should check other types of documents or records to perform the verification.

77. The verification should be carried out in the form of an agreed-upon procedures report.

Confirmation of the verification

78. For the purposes of Article 26d(2) of Regulation (EU) 2017/2402, confirmation that this verification has occurred and that no significant adverse findings have been found should be disclosed.

Prior to the closing of the transaction

79. For the purposes of Article 26d(2) of Regulation (EU) 2017/2402, where no notes are issued under a synthetic securitisation the term prior to the closing of the transaction should be

interpreted as referring to the time prior to the guarantee or credit derivative under the credit protection agreement becoming effective.

Liability cash flow model (Article 26d(3) of Regulation (EU) 2017/2402)

Precise representation of the contractual relationship

80. For the purposes of Article 26d(3) of Regulation (EU) 2017/2402, the liability cash flow model should be considered to have been done 'precisely' where it is done accurately and with an amount of detail sufficient to allow investors to model the payment obligations, including those of the SSPE, where applicable, and to price the securitisation accordingly. This may include algorithms that permit investors to model a range of different scenarios that will affect cash flows, such as different prepayment or default rates.

Third parties

81. For the purposes of Article 26d(3) of Regulation (EU) 2017/2402, where the liability cash flow model is developed by third-party providers the originator should remain responsible for making the information available to potential investors.

Environmental performance and sustainability disclosures of the assets (Article 26d(4) of Regulation (EU) 2017/2402)

Available information related to the environmental performance and the principal adverse impacts on sustainability factors

82. The requirement in Article 26d(4) of Regulation (EU) 2017/2402 should be applicable only if the information on the energy performance certificates referred to in the first subparagraph is available, or where the information on the principal adverse impacts on sustainability factors of the assets financed by the underlying exposures referred to in the second subparagraph is available to the originator and the originator decides to apply that second subparagraph, and where the respective information is captured in its internal database or IT systems. Where any such information is available only for a proportion of the underlying exposures, the requirement should apply only in respect of the proportion of the underlying exposures for which information is available.

Compliance with disclosure requirements under Article 7 (Article 26d(5) of Regulation (EU) 2017/2402)

83. For the purposes of Article 26d(5) of Regulation (EU) 2017/2402, the competent authorities designated pursuant to Article 29(5) of that Regulation and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation, should cooperate closely in accordance with Article 36 of that Regulation, where they are different.

7. Criteria specific to on-balance-sheet securitisation

Credit events covered under the credit protection agreement (Article 26e(1) of Regulation (EU) 2017/2402)

Additional credit events

84. For the purposes of Article 26e(1), first subparagraph, of Regulation (EU) 2017/2402, the requirement for the credit protection agreement to cover at least the credit events set out in that subparagraph should not prevent the parties from agreeing on additional credit events or stricter definitions of the events referred to in Chapter 4 of Title II of Part Three of Regulation (EU) No 575/2013.

Credit protection payments (Article 26e(2) of Regulation (EU) 2017/2402)

Proportional to the share of the outstanding nominal amount of the underlying exposure

85. For the purposes of Article 26e(2) of Regulation (EU) 2017/2402, if the amount of the underlying exposure covered by the credit protection agreement is lower than the outstanding notional amount of the underlying exposure, the interim and final credit protection payments should be calculated in the same proportion (pro rata) to the share of the outstanding nominal amount covered by the credit protection agreement.

Determination of interim credit protection payment

86. For the purposes of Article 26e(2), second subparagraph, point (b), of Regulation (EU) 2017/2402, 'where applicable' should be understood as applicable only if the originator has received permission from the competent authority to apply the IRB Approach to determine the expected loss amount for the respective underlying exposure in respect of which the 'higher of' condition is being assessed, and where the rating system used for the underlying exposure has accordingly been assessed by the competent authority for use under the IRB Approach.

Expected loss amount

87. For the purposes of Article 26e(2) of Regulation (EU) 2017/2402, the expected loss amount should be calculated at the level of individual underlying exposures for which a credit event has occurred. As a derogation, the expected loss amount may be calculated at sub-pool level for retail exposures in accordance with the draft RTS on the calculation of KIRB in accordance with the purchased receivables approach, developed according to Article 255(9) of Regulation (EU) No 575/2013.

Debt workout and credit protection premiums (Article 26e(3) of Regulation (EU) 2017/2402)

Contingent on the outstanding nominal amount of the performing securitised exposures at the time of the payment

88. For the purposes of Article 26e(3), third subparagraph, of Regulation (EU) 2017/2402, where the credit protection agreement covers the performing securitised exposures only in part, the credit protection premiums to be paid under the credit protection agreement should be structured as contingent on the part of the outstanding nominal amount of the performing securitised exposures that is covered by the credit protection agreement.

Third-party verification agent (Article 26e(4) of Regulation (EU) 2017/2402)

Party executing the verification

89. For the purposes of Article 26e(4) of Regulation (EU) 2017/2402, the third-party verification agent should meet both of the following conditions:

    a. it has the experience and capability to carry out the verification;

    b. it is none of the following:

        i. a credit rating agency;

        ii. a third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402;

        iii. an entity affiliated to the originator, sponsor, investor or SSPE.

Sample verification in the case of securitisations with mezzanine positions

90. For the purposes of Article 26e(4), third subparagraph, of Regulation (EU) 2017/2402, without prejudice to the right of investors to request the verification of the eligibility of any particular underlying exposure, for securitisations with mezzanine positions the parties to the securitisation may agree for the sample verification process to start after the detachment point of the first loss tranche decreases below a certain percentage of that detachment point determined at the closing date of the transaction.

Final loss amount

91. For the purposes of Article 26e(4), first subparagraph, point (e), of Regulation (EU) 2017/2402, the ‘final loss amount’ should be understood as the ‘originator’s final loss estimate’ referred to in Article 26e(3), first subparagraph, of that Regulation, where no final credit protection payment has been made for an underlying exposure subject to a credit event at the end of the extension period specified in the credit protection agreement.

Early termination events by originator (Article 26e(5) of Regulation (EU) 2017/2402)

Calculation of the weighted average life of the initial reference portfolio

92. For the purposes of Article 26e(5), first subparagraph, point (d), of Regulation (EU) 2017/2402, the weighted average life (WAL) of the initial reference portfolio of underlying exposures should be calculated by time-weighting only the repayments of principal amounts and should not take into account any prepayment assumptions or any payments relating to fees or interest to be paid by the obligors of the underlying exposures.

Replenishment period or revolving period

93. For the purposes of Article 26e(5), first subparagraph, point (d), of Regulation (EU) 2017/2402, in the case of the existence of a replenishment or revolving period, the WAL should be the sum of the replenishment or revolving period and the estimated WAL calculated at the end of the replenishment or revolving period. For this estimation, for each securitised exposure maturing before the end of the replenishment or revolving period, the originator should adjust the scheduled maturity to equal the sum of its current maturity and the longest permitted maturity of an exposure that is eligible to be added to the securitised portfolio during the replenishment or revolving period. The adjustments should be made as many times as necessary for that purpose when the term of the adjusted maturity is shorter than the term of the replenishment or revolving period.

Investor

94. For the purposes of Article 26e(5), first paragraph, point (b), in the case of credit-linked notes issued by an SSPE, the reference to the investor should be understood as a reference to the SSPE or any protection provider which has entered into the credit protection agreement with the originator.

Synthetic excess spread (Article 26e(7) of Regulation (EU) 2017/2402)

Calculation of one-year expected loss

95. For the purposes of Article 26e(7) of Regulation (EU) 2017/2402, the one-year regulatory expected loss amounts on all underlying exposures for that year should be calculated taking into account a number of payment periods equivalent to one year, and by multiplying the percentage that the expected loss amount represented on the securitised exposures at the closing date of the transaction with the total outstanding portfolio balance of the performing securitised exposures at the beginning of that one year period.

96. For the purposes of Article 26e(7), point (a), of Regulation (EU) 2017/2402, the term ‘fixed synthetic excess spread’ refers to the amount of the synthetic excess spread that the originator commits to using as credit enhancement every period. This amount is expressed as the product of a fixed percentage of the outstanding performing portfolio balance every period.

97. For the purposes of Article 26e(7), point (d), of Regulation (EU) 2017/2402, for the originators not using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013 the calculation of the 'one-year expected loss' should be done in accordance with the risk provisioning under the applicable accounting framework or, where that approach results in a loss coverage that is not sufficiently representative of the expected future losses on the securitised exposures, the originator institution should model expected loss amounts based on other internal risk parameters, such as those considered in its internal capital adequacy assessment process (ICAAP), which should be clearly set out in the transaction documentation.

Using the IRB Approach for the purposes of point (c)

98. Article 26e(7), point (c), of Regulation (EU) 2017/2402, should apply where the originator determines the own funds requirements using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013 for the entire pool of underlying exposures.

Payment period

99. For the purposes of Article 26e(7), point (a), the term 'payment period' should be understood to refer to the period in which the synthetic excess spread is designated in accordance with the transaction documentation.

Requirements for recourse to high-quality collateral (Article 26e(10) of Regulation (EU) 2017/2402)

Acceptable collateral

100. For the purposes of Article 26e(10), first subparagraph, point (a), of Regulation (EU) 2017/2402, the term 'collateral in the form of 0% risk-weighted debt securities' should be understood as collateral in the form of debt securities issued by those entities to which a 0% risk weight is assigned in accordance with Part Three, Title II, Chapter 2, of Regulation (EU) No 575/2013.

Maturity requirements with regard to acceptable high-quality collateral

101. Article 26e(10), first subparagraph, point (a)(i), of Regulation (EU) 2017/2402 should be understood to refer to debt securities which, irrespective of their original maturity, have a remaining maturity of no more than three months. Where the period until the next payment date under the credit protection agreement is less than three months, the remaining maturity of the debt securities should be no longer than that period in order to avoid any maturity mismatch between the date when the debt securities are repaid and the next payment date under the credit protection agreement.

Investments in credit-linked notes

102. For the purposes of Article 26e(10), first subparagraph, point (b), of Regulation (EU) 2017/2402, the requirement relating to the collateral in the form of cash should be considered to be fulfilled in the case of investments in credit-linked notes issued by the originator in accordance with Article 218 of Regulation (EU) No 575/2013.

8. Amendments to Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation

103. EBA/GL/2018/09 is amended as follows:

a. Paragraph 8 of the Guidelines is replaced by the following:

'These guidelines are addressed to competent authorities referred to in Article 4, point (2), of Regulation (EU) 1093/2010 that have been designated as competent authorities pursuant to Article 29(5) of Regulation (EU) 2017/2402, and to financial institutions referred to in Article 4, point (1), of Regulation (EU) 1093/2010 that are subject to regulation and supervision pursuant to Regulation (EU) 2017/2402, including third parties verifying STS compliance also in accordance with Article 2 (5), last subparagraph, of Regulation 1093/2010. Competent authorities designated pursuant to Article 29(5) of Regulation (EU) 2017/2402 that do not qualify as competent authorities pursuant to Article 4, point (2), of Regulation No 1093/2010 are encouraged to apply these guidelines.'

b. Paragraph 22 of the Guidelines is replaced by the following:

'For the purposes of Article 20(10), fourth subparagraph, of Regulation (EU) 2017/2402, exposures should be considered to be of a similar nature if one of the following conditions is met:

a. the exposures belong to one of the asset categories referred to in Article 1, first paragraph, points (a)(i) to (a)(iii) or (a)(v) to (a)(vii), of Delegated Regulation (EU) 2019/1851;

b. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(iv), of Delegated Regulation (EU) 2019/1851, and to the same type of obligor referred to in Article 2(3), point (a), of that Regulation;

c. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(viii), of Delegated Regulation (EU) 2019/1851, and they share similar characteristics with respect to any of the homogeneity factors referred to in Article 2(6) of that Regulation.'

c. Paragraph 26 of the Guidelines is replaced by the following:

'Changes to such underwriting standards should be deemed material where they refer to either of the following types of changes to the underwriting standards:

a. changes that affect the requirement of the similarity of the underwriting standards further specified in Article 1, first paragraph, point (b), of Delegated Regulation (EU) 2019/1851;

b. changes that materially affect the overall credit risk or expected average performance of the pool of underlying exposures without resulting in substantially different approaches to the assessment of the credit risk associated with the underlying exposures.'

d. Paragraph 39 of the Guidelines is replaced by the following:

'For the purposes of Article 20(11) of Regulation (EU) 2017/2402, the circumstances specified in points (a) to (c) of that paragraph should be understood as definitions of credit-impairedness. Other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be understood to be excluded from this requirement.'

e. Paragraph 44 of the Guidelines is replaced by the following:

'For the purposes of Article 20(11), point (c), of Regulation (EU) 2017/2402, the credit-impaired debtors or guarantors of exposures should not be considered to have a "credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures of other credit-impaired debtors or guarantors held by the originator which are not securitised" when both of the following conditions apply:

a. the most relevant factors determining the expected performance of the underlying exposures and the comparable exposures are similar;

b. as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or the applicable models, that, over the life of the transaction or over a maximum of four years, where the life of the transaction is longer than four years, the performance of the underlying exposures would not be significantly worse than that of the comparable exposures.'

f. Paragraph 45 of the Guidelines is replaced by the following:

'The conditions in the previous paragraph should be considered to have been met where either of the following applies:

a. the underlying exposures do not include exposures that are classified as doubtful, impaired or non-performing, or classified to a similar effect under the relevant accounting principles;

b. the underlying exposures do not include exposures to debtors or guarantors whose credit quality, based on credit ratings or other credit quality thresholds, is significantly worse than the credit quality of debtors or guarantors of comparable exposures that the originator originates in the course of its standard lending operations and credit risk strategy.'

g. Paragraph 46 of the Guidelines is replaced by the following:

'For the purposes of Article 20(12) of Regulation (EU) 2017/2402, further advances and drawings in terms of one exposure or a restructuring of the same exposure to a certain borrower should not be deemed to trigger a new "at least one payment" requirement with respect to such an exposure.'

h. An additional paragraph 46a is added following paragraph 46:

'For the purposes of Article 20(12) of Regulation (EU) 2017/2402, the intended transfer of a different separate exposure to the same borrower to the SSPE should trigger a new "at least one payment" requirement with respect to such an exposure.'

i. Paragraph 47 of the Guidelines is replaced by the following:

'For the purposes of Article 20(12) of Regulation (EU) 2017/2402, the payment referred to in the requirement according to which "at least one payment" should have been made at the time of transfer should be a rental, principal or interest payment or any other kind of ordinary payment specified in the contractual agreement relating to the exposure.'

j. An additional paragraph 50a is added following paragraph 50:

'Risk retention requirements

For the purposes of Article 21(1) of Regulation (EU) 2017/2402, the competent authorities designated pursuant to Article 29(5) of that Regulation and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation should cooperate closely in accordance with Article 36 of that Regulation, where they are different.'

k. Paragraph 57 of the Guidelines is replaced by the following:

'For the purposes of Article 21(3) of Regulation (EU) 2017/2402, interest rates that should be considered to be an adequate reference basis for referenced interest payments should include all of the following:

a. interbank rates including Libor, Euribor and other recognised benchmarks;

b. other established reference interest rates such as €STR, SONIA, SOFR and TONA;

c. rates set by monetary policy authorities, including federal funds rates and central banks' discount rates;

d. sectoral rates reflective of a lender's cost of funds, including standard variable rates and internal interest rates that directly reflect the market costs of funding of a bank or a subset of institutions, to the extent that sufficient data are provided to investors to allow them to assess the relation of the sectoral rates to other market rates.'

l. An additional paragraph 66a is added following paragraph 66:

'For the purpose of Article 21(5) of Regulation (EU) 2017/2402, once the reversion of the amortisation to sequential payment is applied, further reversion back to non-sequential amortisation should not be allowed in accordance with the transaction documentation.'

m. Paragraph 76 of the Guidelines is replaced by the following:

'For the purposes of Article 22(1) of Regulation (EU) 2017/2402, the term "substantially similar exposures" should be understood as referring to exposures for which both of the following conditions are met:

a. the most relevant factors determining the expected performance of the underlying exposures are similar;

b. as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or applicable models, that, over the life of the transaction, or over a maximum of four years, where the life of the transaction is longer than four years, their performance would not be significantly worse than that of the securitised exposures.'

n. An additional paragraph 78a is added[10] following paragraph 78:

[10] This is a follow-up to the explanation provided in the feedback statement on page 77 of the guidelines on non-ABCP securitisation, according to which such a clarification should have been provided in the legal text of the guidelines but has been omitted in the final text of the guidelines.

'For securitisations which issue multiple series of securities, including master trusts, a new verification should be completed prior to the issuance in cases where one year has passed since the previous verification.'

o. Paragraph 79 is replaced by the following paragraph:

'For the purposes of Article 22(2) of Regulation (EU) 2017/2402, an appropriate and independent party should be deemed to be a party that meets both of the following conditions:

a. it has the experience and capability to carry out the verification;

b. it is none of the following:

i. a credit rating agency;

ii. a third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402;

iii. an entity affiliated to the originator, sponsor, investor or SSPE**.'**

p. Paragraph 80 is replaced by the following paragraphs:

'For the purposes of Article 22(2) of Regulation (EU) 2017/2402, the verification should be carried out applying an appropriate statistical method and based on a random sample of underlying exposures extracted from the underlying exposures in the securitisation, while the size of the sample should be determined so as to ensure that the probability (confidence level) to correctly reject the hypothesis that there are no exceptions to the requirement in the entire pool of the underlying exposures in the securitisation is at least 95% (i.e. the probability of the so-called type II error of falsely accepting an entire poll without exceptions should be 5%).

80a. In any case, the minimum number of the underlying exposures in the sample should be 50. For securitisations where the pool of underlying exposures consists of less than 50 underlying exposures, the sample should consist of all the underlying exposures.

80b. The verification should be carried out in the form of an agreed-upon procedures report.'

q. Paragraph 83 is replaced by the following paragraph:

'For the purposes of Article 22(3) of Regulation (EU) 2017/2402, where the liability cash flow model is developed by third-party providers, the originator should remain responsible for making the information available to potential investors.'

r. Paragraph 84 is replaced by the following paragraph:

'This requirement should be applicable only if the information on the energy performance certificates referred to in the first subparagraph is available, or where the information on the principal adverse impacts on sustainability factors of the assets financed by the underlying

exposures referred to in the second subparagraph is available to the originator and the originator decides to apply that second subparagraph, and where the respective information is captured in its internal database or IT systems. Where any such information is available only for a proportion of the underlying exposures, the requirement should apply only in respect of the proportion of the underlying exposures for which information is available.'

s. An additional paragraph 85 is added:

'Compliance with disclosure requirements under Article 7

For the purposes of Article 22(5) of Regulation (EU) 2017/2402, the competent authorities designated pursuant to Article 29(5) of that Regulation and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation should cooperate closely in accordance with Article 36 of that Regulation, where they are different.'

104. EBA/GL/2018/08 is amended as follows:

a. Paragraph 8 of the Guidelines is replaced by the following:

'These guidelines are addressed to competent authorities referred to in Article 4, point (2), of Regulation (EU) 1093/2010 that have been designated as competent authorities pursuant to Article 29(5) of Regulation (EU) 2017/2402, and to financial institutions referred to in Article 4, point (1), of Regulation (EU) 1093/2010 that are subject to regulation and supervision pursuant to Regulation (EU) 2017/2402, including third parties verifying STS compliance also in accordance with Article 2 (5), last subparagraph, of Regulation 1093/2010. Competent authorities designated pursuant to Article 29(5) of Regulation (EU) 2017/2402 that do not qualify as competent authorities pursuant to Article 4, point (2), of Regulation No 1093/2010 are encouraged to apply these guidelines.'

b. Paragraph 29 of the Guidelines is replaced by the following:

'For the purposes of Article 24(9) of Regulation (EU) 2017/2402, the circumstances specified in points (a) to (c) of that paragraph should be understood as definitions of credit-impairedness. Other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be understood to be excluded from this requirement.'

c. Paragraph 34 of the Guidelines is replaced by the following:

'For the purposes of Article 24(9), point (c), of Regulation (EU) 2017/2402, the credit-impaired debtors or guarantors of exposures should not be considered to have a "credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly

higher than for comparable exposures of other credit-impaired debtors or guarantors held by the originator which are not securitised" when both of the following conditions apply:

a. the most relevant factors determining the expected performance of the underlying exposures and the comparable exposures are similar;

b. as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or the applicable models, that, over the life of the transaction or over a maximum of four years, where the life of the transaction is longer than four years, the performance of the underlying exposures would not be significantly worse than that of the comparable exposures.'

d. Paragraph 35 of the Guidelines is replaced by the following:

'The conditions in the previous paragraph should be considered to have been met where either of the following applies:

a. the underlying exposures do not include exposures that are classified as doubtful, impaired or non-performing, or classified to a similar effect under the relevant accounting principles;

b. the underlying exposures do not include exposures to debtors or guarantors whose credit quality, based on credit ratings or other credit quality thresholds, is significantly worse than the credit quality of debtors or guarantors of comparable exposures that the originator originates in the course of its standard lending operations and credit risk strategy.'

e. Paragraph 36 of the Guidelines is replaced by the following:

'For the purposes of Article 24(10) of Regulation (EU) 2017/2402, further advances and drawings in terms of one exposure or a restructuring of the same exposure to a certain borrower should not be deemed to trigger a new "at least one payment" requirement with respect to such an exposure.'

f. An additional paragraph 36a is added following paragraph 36:

'For the purposes of Article 24(10) of Regulation (EU) 2017/2402, the intended transfer of a different separate exposure to the same borrower to the SSPE should trigger a new "at least one payment" requirement with respect to such an exposure.'

g. Paragraph 37 of the Guidelines is replaced by the following:

'For the purposes of Article 24(10) of Regulation (EU) 2017/2402, the payment referred to in the requirement according to which "at least one payment" should have been made at the time of transfer should be a rental, principal or interest payment or any other kind of ordinary payment specified in the contractual agreement relating to the exposure.'

h. Paragraph 51 of the Guidelines is replaced by the following:

'For the purposes of Article 24(14) of Regulation (EU) 2017/2402, the term "substantially similar exposures" should be understood as referring to exposures for which both of the following conditions are met:

a. the most relevant factors determining the expected performance of the underlying exposures are similar;

b. as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or applicable models, that, over the life of the transaction, or over a maximum of four years, where the life of the transaction is longer than four years, their performance would not be significantly worse than that of the securitised exposures.'

i. Paragraph 57 of the Guidelines is replaced by the following:

'For the purposes of Article 24(16) of Regulation (EU) 2017/2402, interest rates that should be considered to be an adequate reference basis for referenced interest payments should include all of the following:

a. interbank rates including Libor, Euribor and other recognised benchmarks;

b. other established reference interest rates such as €STR, SONIA, SOFR and TONA;

c. rates set by monetary policy authorities, including federal funds rates and central banks' discount rates;

d. sectoral rates reflective of a lender's cost of funds, including standard variable rates and internal interest rates that directly reflect the market costs of funding of a bank or a subset of institutions, to the extent that sufficient data are provided to investors to allow them to assess the relation of the sectoral rates to other market rates.'

j. Paragraph 65 of the Guidelines is replaced by the following:

'For the purposes of Article 24(18), fourth subparagraph, of Regulation (EU) 2017/2402, exposures should be considered to be of a similar nature if one of the following conditions is met:

a. the exposures belong to one of the asset categories referred to in Article 1, first paragraph, points (a)(i) to (a)(iii) or (a)(v) to (a)(vii), of Delegated Regulation (EU) 2019/1851;

b. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(iv), of Delegated Regulation (EU) 2019/1851, and to the same type of obligor referred to in Article 2(3), point (a), of that Regulation;

c. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(viii), of Delegated Regulation (EU) 2019/1851, and they share similar characteristics with respect to any of the homogeneity factors referred to in Article 2(6) of that Regulation.'

k. Paragraph 69 of the Guidelines is replaced by the following:

'Changes to such underwriting standards should be deemed material where they refer to either of the following types of changes to the underwriting standards:

a. changes that affect the requirement of the similarity of the underwriting standards further specified in Article 1, first paragraph, point (b), of Delegated Regulation (EU) 2019/1851;

b. changes that materially affect the overall credit risk or expected average performance of the pool of underlying exposures without resulting in substantially different approaches to the assessment of the credit risk associated with the underlying exposures.'

l. Paragraph 82 is replaced by the following paragraph:

'For the purposes of Article 26(1) of Regulation (EU) 2017/2402, an appropriate and independent party should be deemed to be a party that meets both of the following conditions:

a. it has the experience and capability to carry out the verification;

b. it is none of the following:

i. a credit rating agency;

ii. a third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402;

iii. an entity affiliated to the originator, sponsor, investor or SSPE**.'**

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

According to Article 16(2) of the EBA Regulation (Regulation (EU) No 1093/2010), guidelines developed by the EBA shall be, where appropriate, accompanied by an impact assessment which analyses the related potential costs and benefits. This section provides an overview of such an impact assessment, and the potential costs and benefits associated with the implementation of the guidelines.

A similar impact assessment was conducted during the development of the guidelines on STS criteria for ABCP and non-ABCP securitisation in 2018. Given that the amending guidelines include only targeted amendments to the guidelines on STS criteria for ABCP and non-ABCP securitisation to ensure consistency across all three sets of guidelines, no separate impact assessment for the amending guidelines was deemed necessary.

A. Problem identification

The guidelines have been developed in accordance with the mandate assigned to the EBA in Article 26a(2) of Regulation (EU) 2017/2402 as amended by Regulation (EU) 2021/557 as part of the Capital Markets Recovery Package, under which Regulation the EBA may adopt guidelines on the harmonised interpretation and application of the criteria for STS on-balance-sheet securitisation.

When enacted in 2017, Regulation (EU) 2017/2402 introduced two similar mandates for the consistent interpretation and harmonised application of the STS requirements for ABCP and non-ABCP securitisation by the originators, original lenders, sponsors, securitisation special purpose entities (SSPEs), investors, competent authorities and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402 throughout the Union. Following these two mandates, the EBA developed and published two sets of guidelines, EBA/GL/2018/09 for non-ABCP securitisation and EBA/GL/2018/08 for ABCP securitisation, in December 2018.

In a similar way to the guidelines for non-ABCP and ABCP securitisation, these guidelines are expected to play an important role in the consistent and correct implementation of the STS criteria for on-balance-sheet securitisation, and the STS securitisation framework in general. They should lead to consistent interpretation and application of the criteria by the originators, original lenders, SSPEs and investors involved in the STS on-balance-sheet securitisation, the competent authorities designated to supervise the compliance of the entities with the criteria, and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402. The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is a prerequisite for the application of preferential risk weights under the

amended capital framework, as well as by severe sanctions imposed by Regulation (EU) 2017/2402 for negligence or intentional infringement of the STS criteria. Lastly, the guidelines will be applied on a cross-sectoral basis by different types of financial institutions that will act as originators, original lenders, investors and, where relevant SSPEs, as well as by a large number of competent authorities that supervise the compliance of such market participants with the STS criteria and the third-party verification agents.

B. Policy objectives

The main objective of the guidelines is to ensure the harmonised interpretation and application of the STS criteria, and a common and consistent understanding of the STS criteria throughout the Union. The guidelines aim to further enhance consistency in the interpretation of the STS criteria and thus facilitate the uniform application of the STS criteria by the originators, original lenders, SSPEs, investors involved in the STS securitisation, relevant competent authorities and third-party verification agents.

The introduction of the simple, transparent and standardised on-balance-sheet securitisation product, and the establishment of the criteria that such a product needs to comply with, is one of the core pillars of the amended EU securitisation framework, consisting of Regulation (EU) 2021/557 and accompanying changes in the CRR for credit institutions and investment firms, which entered into force in the EU in April 2021.

The guidelines should therefore contribute to the original general objective of this reform, which is to revive a safe securitisation market by introducing STS securitisation instruments, which address the risks inherent in highly complex, opaque and risky securitisation instruments and are clearly differentiated from such complex structures. This should lead to improvement of the financing of the EU economy in light of the recovery from the pandemic and the ongoing geopolitical uncertainty.

By playing an important role in the effective implementation of the EU securitisation framework for on-balance-sheet securitisations, the guidelines should also contribute to the general objective of the EBA, which is to ensure a high, effective and consistent level of EU regulation, and hence maintain the stability of the EU financial system.

C. Baseline scenario

The baseline scenario presumes the existence of no guidelines for STS on-balance-sheet securitisation. It is expected that their absence would have a negative impact on the implementation of the STS framework for on-balance-sheet securitisation, given that potential ambiguities or uncertainties present in the STS criteria as specified in Regulation (EU) 2021/557 would not be addressed, leading to a lack of convergence and to divergent approaches in the implementation of the criteria throughout the EU. Taking into consideration the existence of guidelines for STS criteria for ABCP and non-ABCP securitisation, this would create an uneven

playing field between the various types of securitisations (ABCP and non-ABCP securitisation and on-balance-sheet securitisation). This could increase the costs of compliance with the requirements, and result in origination of on-balance-sheet securitisations with differing characteristics and risk profiles, resulting from different interpretation of the criteria set out in Regulation (EU) 2021/557. In addition, this could disincentivise the originators from issuing STS securitisations, in particular in the light of severe sanctions that could be imposed in cases of breach of the obligations. Lastly, such divergent application of the criteria could create barriers for investments in such securitisation and undermine investors' confidence in the STS products. The lack of clear interpretation of the rules could also increase the scope for potential use of binding mediation, if disagreements arose due to inconsistent understanding of the Level 1 requirements.

D. Preferred option

Even though the STS criteria for on-balance-sheet securitisations are largely based on the STS criteria for traditional securitisations, due to the inherent differences between the two types of securitisation and considering that some of the addressees of these guidelines may be different from those of the guidelines on STS criteria for ABCP and non-ABCP securitisation, a distinct set of guidelines has been developed. For those STS criteria that are similar to the criteria for ABCP and non-ABCP securitisation, the text from the guidelines for non-ABCP and ABCP securitisation has been incorporated in this new separate set of guidelines. However, necessary adjustments have been made where relevant considering the specificities of on-balance-sheet securitisation.

Furthermore, in line with the approach taken for the guidelines on STS criteria for ABCP and non-ABCP securitisation, the EBA has addressed the legal mandate by providing a detailed interpretation of all the STS criteria specified in Regulation (EU) 2021/557, following the principle of proportionality. For internal purposes, the criteria were assessed in terms of the level of ambiguity, and guidance is provided accordingly. For a small number of STS criteria that are assessed as sufficiently clear no interpretation is provided. It should be taken into account that the STS criteria, as well as the EBA guidelines, are a binary system, i.e. each criterion and each interpretation in the EBA guidelines is equally important given that non-compliance with any criterion could potentially lead to losing the STS classification.

E. Cost-benefit analysis

In a similar way to the guidelines for ABCP and non-ABCP securitisation, it is expected that the implementation of the guidelines for on-balance-sheet securitisation will bring about substantial benefits for the originators, original lenders, investors, SSPEs, competent authorities and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402. These guidelines should provide a single source of interpretation of the STS criteria for on-balance-sheet securitisation and should therefore substantially facilitate their consistent adoption across the EU.

The guidelines should help achieve the objectives of the general EU securitisation framework as set out above in a more efficient and effective way, also ensuring a level playing field between the

various types of securitisation (ABCP, non-ABCP and on-balance-sheet). These guidelines should help introduce an immediately recognisable STS on-balance-sheet product in EU securitisation markets, increase investors' trust in the STS products that will be eligible for a more risk sensitive capital treatment and thereby help investors and originators to reap the benefits of simple, transparent and standardised instruments.

With respect to the costs, while it is expected that the implementation of these guidelines may be accompanied by administrative, compliance and operational costs for both market participants and competent authorities, they should contribute further to the mitigation of such costs, by providing additional clarity on Level 1 requirements. Beyond the costs for market participants and competent authorities to adapt to the new regulatory framework, there should be no relevant social and economic costs.

It is assessed that the guidelines on the STS criteria for on-balance-sheet securitisation will affect a large number of stakeholder groups. Given the inherently cross-sectoral nature of the securitisation, different types of prudentially regulated and non-regulated institutions and other entities will be brought under the scope of Regulation (EU) 2017/2402 as amended by Regulation (EU) 2021/557 and the guidelines, on both the origination and investment sides. The guidelines will also need to be implemented by the competent authorities that will be designated to supervise the compliance of the market participants with the STS criteria. In this respect, coordination among the competent authorities is key, given that in some cases the competent authorities responsible for supervising compliance with the STS requirements may be different from the competent authorities in charge of the prudential supervision of the relevant financial institutions. Finally, third parties that will be authorised to verify compliance with the STS criteria in accordance with Article 28 of Regulation (EU) 2017/2402 will also need to rely on the interpretation provided in the guidelines.

5.2 Feedback on the public consultation

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

The consultation period lasted for three months and ended on 7 July 2023. Eleven responses were received, of which eight were published on the EBA website.

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

In many cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments and EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

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

Summary of key issues and the EBA's response

The respondents generally welcomed and supported the guidelines, the approach to the interpretation of the STS criteria for on-balance-sheet securitisation and the targeted amendments to the guidelines on the STS criteria for non-ABCP and ABCP securitisation. A number of technical comments have been provided by the respondents on a number of specific technical issues in the guidelines.

The following key comments have been raised and corresponding changes have been introduced to the guidelines.

- **Requirements relating to simplicity**: several comments, questions and requests for clarifications were raised for various requirements. Concerns were raised on the guidance provided for the 'at least one payment' requirement and more specifically on the interpretation of the term 'at least one payment'. In response to these concerns the guidance has been amended and the payment is not limited to the economic substance of the exposure but refers to any ordinary payment.

- **Requirements relating to standardisation and transparency**: comments and requests for clarifications were raised mainly on the requirements relating to the 'allocation of losses and amortisation of tranches' and the 'verification of a sample of underlying exposures'. To address these comments amendments were made to the guidelines with the aim of providing further clarity and of ensuring consistency with other RTS (e.g. RTS on performance-related triggers, joint RTS on sustainability-related disclosures) and other guidelines where relevant.

- **Requirements specific to on-balance-sheet securitisations**: similarly, comments were raised on the consistency of the draft guidelines with the RTS on the determination of the exposure value of the SES that were published after the publication of the Consultation Paper. Also, given that these criteria are specific to OBS and no similar guidance was available in the guidelines for non-ABCP and ABCP securitisation, a few comments highlighted some differences in the guidance and in market practice. Based on the feedback received, several amendments have been made to the guidelines where appropriate.

- **Targeted amendments to the guidelines on the STS criteria for non-ABCP and ABCP securitisation**: regarding the proposed amendments to the existing guidelines most of the comments raised were related to the interpretation of the 'at least one payment' criterion.

- **Other**: finally, several comments were raised highlighting the need for grandfathering in cases where market participants have taken a different interpretation of the Level 1 requirements.

The following table provides a complete summary of the comments received during the consultation, the EBA analysis of the comments and the corresponding amendments that have been introduced to the guidelines. The comments in the table also include comments received from stakeholders on the corresponding criteria in the Consultation Paper on the Guidelines on the STS criteria for non-ABCP securitisation (EBA/GL/2018/09) and the Guidelines on the STS criteria for ABCP securitisation ((EBA/CP/2018/04). To the extent possible, the corresponding amendments to the guidelines have been aligned with those introduced to the guidelines on those Guidelines. All the references to paragraphs in the 'EBA analysis' part refer to paragraphs in the Consultation Paper (not to the paragraphs in the final guidelines) while in the part 'Amendments to the proposals' the paragraphs in these guidelines have been included.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2023/09			
REQUIREMENTS RELATING TO SIMPLICITY (Article 26b) – Article 26b(1), Article 26b(2), Article 26b(3), Article 26b(4), Article 26b(5), Article 26b(6), Article 26b(7), Article 26b(8), Article 26b(9), Article 26b(10), Article 26b(11), Article 26b(12)			
Question 1. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. For example, should additional interpretations of the terms 'no less stringent' or 'comparable exposures' be provided and, if so, how are these terms understood in securitisation practice?			
Purchased vs. acquired exposures	While most of the respondents broadly agree that it is not necessary to further clarify this criterion, a few respondents requested the provision of guidance relating to the purchase of third-party exposures and more specifically on the comparable assessment of credit policies and servicing procedures. One respondent also requested that a distinction be made between the purchased and acquired exposures due to M&A regarding the application of the 'no less stringent' requirement.	Regarding the request on the distinction between purchased and acquired exposures, it is the EBA's view that this request is not in line with the spirit of the rule and that there is no legal basis for making such a distinction.	No change
Established in the Union	One of the comments that was raised by the stakeholders was related to the term 'established in the Union' and the scope of this requirement.	Given the pending response to this Q&A, the EBA is not in a position to provide any further clarification on this and the other related questions in the guidelines. Any additional questions raised in the consultation on this matter by other respondents which are beyond the scope	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		of these guidelines should follow the formal Q&A process.	
Question 2. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.			
	All of the respondents agree that there is no need to further specify this criterion.		No change
Question 3. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.			
Balance sheet	Most of the respondents broadly agree that it is not necessary to further clarify this criterion. However, a few respondents requested further clarification in the guidelines whether the term 'balance sheet' in Article 26(b)(3) refers to the prudential or the accounting balance sheet.	It is the EBA's understanding that the balance sheet refers to the accounting balance sheet which is also consistent with the interpretation of Article 26b(6) point (b).	
Request for further clarification	In addition, further clarification was requested on whether the following three cases would meet this STS criterion: 1) the assets have been sold to an SSPE as part of a true sale securitisation for which no SRT benefit is sought and where the SSPE is consolidated into the regulatory balance sheet of the originator; 2) the assets are incorporated in the cover pool of a covered bond; and 3) the assets are transferred as part of a repo transaction (for example to a central bank).	It is the EBA's understanding that the true sale securitisation (case 1) would not seem to contravene this criterion where the SSPE is part of the group and consolidated into the regulatory balance sheet of the originator provided that the 'full legal and valid title' requirement under Article 26b(6) is also met and considering also that there is no overlap between the protected tranche under the on-balance-sheet securitisation and the tranches under the traditional securitisation placed with investors. Regarding the use of assets as collateral in the cover pool (case 2), it is understood that, provided the assets remain on	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		the consolidated balance sheet of the originator or the group (in the case of an SPV), it does not seem to contravene the criterion unless there are national law constraints. Finally, in line with the approach followed in the RTS on risk retention, provided the credit risk is not transferred to a third party the use of collateral for secured funding purposes (case 3) would not contravene this requirement.	
Question 4. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Separate hedges on different parts of the exposure	In general, all the respondents agree with the interpretation provided for this criterion. Some respondents requested further clarification in relation to the existence of separate hedges on different parts of the same exposures as those which are included in the securitised portfolio.	It is the EBA's understanding that separate hedges on different parts of the same exposure would not seem to contravene this criterion subject to compliance with the risk retention requirement.	No change
Use of protected underlying exposures as collateral for secured funding purposes	In addition, respondents requested clarification that protected underlying exposures used as collateral for secured funding purposes would not contravene this criterion, noting that this would be in line with the guidance provided in relation to risk retention hedging.	Regarding the comment on the use of exposures as collateral for other purposes such as secured funding, this has been addressed in the previous question. [Please refer to EBA answer in Q3 of the Consultation Paper relating to Article 26b(3).]	No change
State guarantees	Finally, some respondents requested clarification of the treatment of state guarantee schemes which cover securitised exposures.	There is a specific mandate for the EBA in CRR 3 on the portfolio guarantees which is expected to provide further clarity also on the state guarantee schemes which cover securitised exposures.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Protection in the form of a CDS on an obligor	A few comments were raised on the case where an originator purchases credit protection in the form of a CDS on an obligor but not on any specific assets and books that CDS as a trading book asset.	It is the EBA's understanding that a CDS on an obligor booked in the trading book in principle does not seem to contravene the criterion provided that the two functions (trading activities and credit and portfolio management) are separated by Chinese walls.	No change
Question 5. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.			
	All the respondents agree that it is not necessary to further specify this criterion.		No change
Question 6. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
To the best of the originator's knowledge	Some respondents suggested specifying that the list of sources and circumstances provided for in paragraph 119: i) is to be considered as non-exhaustive and ii) is expanded to include as a minimum information obtained from third parties. In addition, some respondents suggested including in paragraph 119 the wording provided for in paragraph 26(a), in particular with reference to the part specifying that an originator is not required to take all legally possible steps in order to determine the relevant requirements but should instead take those steps that the relevant entity would usually take in the course of its origination, servicing and risk management procedures and its policies in	In the EBA's view, no change in the guidelines is deemed necessary. The guidance is consistent with the Guidelines on the STS criteria for non-ABCP securitisation. Furthermore, paragraph 26 in the 'Background and rationale' section already clarifies that originators can make use of information that is received from third parties. Additionally, it clarifies that an originator should not be required to take all legally possible steps but only those steps that the originator usually takes within its activities in terms of origination, servicing, risk management and use of information that is received from third parties.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	respect of the use of information received from third parties.		
Group	Some respondents commented that the relation between point (a) and point (b) of Article 26b(6) is unclear, in particular because they see no substantial differences between the two paragraphs and see that also in point a) the concept of ´group´ is aligned to Article 26b(3). These respondents therefore suggest amending paragraph 120, and possibly merging it with paragraph 121. It was also suggested that it be clearly indicated that the ´group´ concept is not connected to the ´group´ for accounting purposes.	Article 26b(6) point (a) requires that the originator or an entity of the group to which the originator belongs should have the full legal and valid title to the underlying exposures, while Article 26b(6) point (b) requires that the credit risk should be in the regulatory perimeter of the originator.	No change
Occurrence of a credit event	It was suggested by a respondent that it be clarified that the reference in Article 26b(6) to 'other than the occurrence of a credit event' also covers events that, solely through the passage of time, could result in a credit event (e.g. an exposure with a missed payment for which, at the time of its inclusion in the portfolio, the contractual grace period is not yet expired, thus not yet resulting in a formal credit event).	Article 26e(1) specifies the minimum credit events that should be covered under the credit protection agreement. The parties may agree on additional credit events as long as the minimum requirements are met. Therefore, the EBA does not see merit in further clarifying this situation in the guidelines.	No change
Full legal and valid title	Two respondents highlighted that the interpretation of the ´full legal and valid title´ criterion could create unintended consequences (for instance, it would impede – in certain central banks' liquidity schemes – the securitisation of exposures that have been used as collateral for funding purposes). According to these respondents,	Provided that the originator retains the full credit risk of the underlying exposures, even when underlying exposures have been posted as collateral with central banks or otherwise used by the originator as collateral the criterion is met. This is also consistent with the approach followed in the RTS on risk retention where retained	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	the concept of ´valid title´ does not refer to a widely understood form of right. These respondents suggested therefore clarifying in the guidelines that the ´full legal and valid title´ criterion does not prevent the use in OBS STS securitisations of underlying exposures that have been posted as collateral with central banks, used as part of the cover pool for covered bonds or otherwise used by the originator as collateral, provided that the originator retains the full credit risk of the underlying exposures.	exposures may be used as collateral for secured funding purposes provided that such use as collateral does not transfer the exposure to the credit risk of these retained exposures to a third party.	
Request for clarification of the terms: 'date of inclusion' and 'closing date'	Some respondents suggested that it be clarified that the phrase 'date it is included in the securitised portfolio' in points (c) and (f) of Article 26b(6) is in reality referring to the closing of the transaction, which might come weeks or months after the date of inclusion of assets in the pool. Another respondent highlighted that in synthetic transactions – unlike with a true sale for which the inclusion in a pool corresponds to the date of sale to the SPV – the concept of inclusion in the pool corresponds to the moment when the originator checks the eligibility of the exposure, normally known as the cut-off date. This respondent therefore suggested including this clarification in the guidelines. In addition, one of the respondents also suggested, as an alternative, limiting the cut-off date to a maximum of 30 days prior to the closing date (that in its interpretation corresponds to when the protection starts).	The EBA's view is that the Level 1 text is clear and very precise for certain representations and warranties with reference to the 'date of inclusion' – as in points (c) and (f) – or to the 'closing date' – as in point (h). The comment raised seems to be related to differences in market practices. While it is acknowledged that there are no definitions in the Level 1 text on these terms, the specific request to introduce a limit to the cut-off date is considered to be beyond the scope of these guidelines and thus there is no need to make any amendments to the present guidelines. For cases where the timing of the requirement is not clearly specified at Level 1 and there is doubt, it is suggested that the formal EBA Q&A process be followed.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Question 7. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Amendment that is not credit driven	A number of respondents highlighted their difficulties in correctly interpreting point (c) of Article 26b(7) when it comes to an exposure 'subject to an amendment that is not credit driven, such as refinancing or restructuring of debt'. There seems to be ambiguity in the Level 1 text which arises from the placement of the subclause 'such as refinancing or restructuring of debt' as well as the reference to 'restructuring of debt', and whether these examples are intended to be examples of amendments that are credit driven or not credit driven. Therefore, respondents requested that the EBA clarify in the guidelines that cases of refinancing or restructuring which occur at a time when the borrower is not in financial difficulty are not considered credit-driven amendments.	According to the EBA, it is not deemed necessary to further specify the terms refinancing and restructuring in these guidelines. It is the EBA's understanding that modifications of the contract which are 'not credit driven' would occur where there is no change in the risk profile of the obligor.	No change
Permitted removals	Comments were raised by the respondents requesting the EBA to clarify that the list of admissible removals provided for in points (a) to (d) of Article 26b(7) is to be considered as non-exhaustive and also requested enlargement of the list with a number of additional circumstances.	The Level 1 text is clear. The fourth subparagraph of Article 26b(7) provides an exhaustive list of circumstances where the removal of an underlying exposures is permitted. A new paragraph has been added to the guidelines. In addition, regarding any questions raised during the consultation on specific circumstances, it is the EBA's view that these should follow the formal EBA Q&A process.	Paragraph 22 has been added.
Question 8. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Contractually binding and enforceable obligations	A comment was raised on the necessity of paragraph 127 of the CP given that in the respondent's view it does not add much to the Level 1 text.	The guidance is consistent with the Guidelines on the STS criteria for non-ABCP securitisation. No change is deemed necessary based on this comment.	No change
Exposures with periodic payment streams	Some respondents, while agreeing with paragraph 128 of the CP, suggested that the EBA add to the list also credit facilities or credit lines in respect of which commitment fees are payable while the facility is undrawn but which would provide for interest when drawn.	The Level 1 text is clear and no commitment fees should be allowed.	No change
Specialised lending	One of the comments raised does not consider as correct or appropriate paragraph 27 of the CP, which states that while pertaining to the corporate exposure asset category (as also noted by the EBA in its final report on the draft RTS on homogeneity, when a separate asset class for specialised lending exposures was not deemed necessary) specialised lending exposures mixed with other corporate exposures would make the pool non-compliant with the homogeneity requirement. On the same note some respondents highlighted that in their opinion specialised lending exposures should be booked into the other corporate exposure category and they doubt the correctness of paragraph 27 of the CP.	It is the EBA's view that specialised lending pertains to the corporate exposure asset category and no further change is deemed necessary. The guidance is also consistent with the approach followed in the final report on the draft RTS on homogeneity.	No change
Question 9. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	Most of the respondents explicitly agreed that it is not necessary to further specify this criterion, raising no further points.		No change
Question 10. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
	A number of respondents were explicitly supportive and agreed with the proposed guidance; additionally a few respondents were also supportive although with some requests for amendments.		
Similar exposures	Some respondents considered paragraph 129(b) of the CP unclear and in any case not in line with (i.e. unduly stricter than) Delegated Regulation (EU) 2019/1851 as amended by Delegated Regulation (EU) YYYY/NNNN. They suggested that the EBA align the guidelines to the above Delegated Regulation and therefore that it also consider the ´jurisdiction´ as a criterion to determine whether exposures to ´any type of enterprise or corporation´ are considered to be of a similar nature. One respondent suggested aligning the wording of the guidelines with that of the corresponding guidelines for non-ABCP transactions.	The EBA's intention in paragraph 129(b) is to clarify that when it comes to 'credit facilities, including loans and leases, provided to any type of enterprise or corporation', exposures are considered similar if they alternatively belong to the following type of obligors: (i) micro, small and medium-sized enterprises (SMEs); (ii) other types of enterprises and corporates. The homogeneity factor of jurisdiction (of the obligor or of the immovable property) is not considered for the purpose of the expertise of the originator or the original lender; therefore, exposures to SMEs and exposures to other types of enterprise are not considered to have a similar nature for the purpose of paragraph 4 of Article 26b(10). Given this precise intent, the EBA does not deem it necessary to amend this paragraph.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
No less stringent underwriting standards	Some respondents found that the wording used by the EBA in paragraphs 130 and 131 is not clear and that, in a literal reading, paragraph 131 seems to contradict paragraph 130. A number of these respondents therefore suggested deleting paragraphs 130 and 131, while the others suggested instead some redrafting to solve the interpretative issue.	The EBA acknowledges that this criterion slightly differs from the one for non-ABCP and ABCP securitisation. Given that this requirement is included in Article 26b(6) (representations and warranties), this guidance has been moved to paragraphs 14 and 15 of these guidelines interpreting the 'no less stringent underwriting standards' under Article 26b(6) point (e).	Paragraphs 130 and 131 of the CP have been moved to paragraphs 14 and 15 of the guidelines. Accordingly, paragraph 35(b) of the CP has been moved to 26(b) of the 'Background and rationale' section.
Disclosure of material changes from prior underwriting standards	Some respondents, while agreeing in general with paragraphs 132 and 133, considered unnecessary the requirement to explain the purpose of all changes to underlying standards as required in paragraph 134, and suggested that the EBA delete this paragraph or at least clarify in the text that only changes to the underwriting standards during the revolving or replenishment period should be disclosed (as the changes that come after these periods have no impact on the transaction).	The guidance is consistent with the Guidelines on the STS criteria for non-ABCP transactions. For consistency reasons the EBA does not consider it necessary to make amendments to the guidelines based on this comment.	No change
Expertise of the originator or original lender	A comment was raised on paragraph 142, describing the requirements therein as too loose, especially because they only require that three people in the whole organisation have expertise in the origination of securitisation. In this respondent's opinion, the issuance of securitisation transactions requires experience at many levels and across departments of banks.	The guidance in paragraph 142 of the CP is intended to set the minimum requirements for the expertise of the originator or original lender. The EBA considers the guidance sufficiently clear and, for consistency with the guidelines for non-ABCP transactions, the EBA does not see merit in amending the guidelines.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Comment on 'equivalent requirement in third countries'	A comment was raised suggesting that the EBA clarifies: i) that the criterion provided for in paragraph 140 only applies to exposures originated by EU originators to borrowers in non-EU countries and ii) whether it only covers consumer loans and residential mortgage loans – to which the two EU directives mentioned in the third paragraph of Article 26b(10) solely refer – or also other asset classes.	In the EBA's view, it is sufficiently clear that the guidance provided in paragraph 140 of the CP further specifies that the assessment of the creditworthiness of borrowers in third countries should be based on the principles set out in Directives 2008/48/EC and 2014/17/EC. Regarding the scope of application of this requirement, it is the EBA's understanding that the intention was not to limit the application to residential and consumer asset classes.	Paragraph 46(d) of the 'Background and rationale' section has been amended accordingly.
Potential investors	One respondent asked the EBA to clarify in the guidelines that the requirement in the first paragraph of Article 26b(10) also refers to current investors and not only to potential ones.	The first paragraph of Article 26b(10) refers to potential investors because the underwriting standards pursuant to which underlying exposures were originated are intended to be disclosed early on in the process which is a moment in time in which investors may still be potential investors.	No change
SSPEs	One respondent asked for clarification that the intention of co-legislators in the first paragraph is that only loans to SSPEs are allowed to be of a no full recourse nature.	The EBA considers the Level 1 text is sufficiently clear in specifying that the full recourse requirement does not apply to SSPEs. For this reason, the EBA has not added any clarification on this point in the guidelines.	No change
Question 11. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Exposures to a credit-impaired debtor or guarantor	One respondent, while agreeing that circumstances under paragraphs a) and b) of Article 26b(11) be read as a definition of credit-impairedness, considered that this is not the case for paragraph c), the latter being not necessarily linked to the status	The guidance, which is consistent with the Guidelines on the STS criteria for non-ABCP securitisation, is a direct consequence of the wording chosen by co-legislators in Article	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	of impairedness of exposures. This respondent asked therefore that the guidelines be updated coherently.	26b(11). The EBA therefore does not see merit in amending the paragraph.	
To the best of the originator's knowledge	A number of respondents reiterated on this point the same comments raised in the context of Article 26b(6), highlighting the need to reflect the explanation in paragraph 39(c) of the ´Background and rationale´ section (originator is not required to take all legally possible steps in order to determine the debtor's credit status) directly in the text of the guidelines. Other respondents suggested that the EBA indicate that the list of circumstances provided for in the guidelines be considered as a non-exhaustive list.	In the EBA's view, no change in the guidelines is deemed necessary. The guidance is consistent with the Guidelines on the STS criteria for non-ABCP securitisation. Furthermore, paragraph 39(c) in the 'Background and rationale' section of the CP already clarifies that the originator is not required to take all legally possible steps but only those steps that the originator usually takes within its activities in terms of origination, servicing, risk management and use of information that is received from third parties to determine the debtor's credit status. Finally, the list provided for in the guidelines indicates the minimum requirement(s) for the 'best knowledge' standard to be considered to be fulfilled. Any of those circumstances or a combination of those circumstances would be considered as fulfilling this requirement.	No change
Risk of contractually agreed payments not being made being significantly higher than for comparable exposures	Some respondents pointed out that applying the test of point (c) of Article 26b(11) at single exposure level would imply in many cases failing the test. These respondents assumed therefore that the intention of the EBA is to apply this test at portfolio level (differently from the tests of points (a) and (b), which are considered applicable at single exposure level). The same respondents, however, highlighted that this interpretation would be functional only if	The guidance which is consistent with the guidelines for non-ABCP securitisation is aligned with the requirement on the prevention of the adverse selection of assets in the Delegated Regulation specifying in greater detail the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402. Therefore, it is the EBA's view that 'comparable exposures' for this purpose should be other exposures which	Paragraphs 45 and 46 have been amended accordingly.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	coupled with a more concrete and narrow definition of 'comparable exposures', that in no cases should be referred to the overall book of comparable exposures (circumstance which would imply failing the test). On a similar note a few respondents suggested modifying paragraph 152(b) of the CP by specifying that the credit quality of debtors or guarantors of underlying exposures cannot be ´worse´ than the credit quality of debtors or guarantors of comparable exposures that the originator originates in the course of its standard lending operations and credit risk strategy. The term ´differs´ used in the guidelines is considered overly restrictive.	satisfy the eligibility criteria set out in the transaction documentation other than those criteria which specifically relate to the creditworthiness of the securitised exposures. Furthermore, it is the EBA's understanding that this test should be applied by looking at the credit rating or score of each of the underlying exposures of the securitised portfolio compared to the average credit assessment or score of the portfolio of comparable exposures. For this, a filter/threshold should be set at the average rating or score of the portfolio and the originator or original lender should consider those that are (significantly) above the average for the purposes of this test. Finally, taking into consideration the feedback on the term 'significantly different', the term has been replaced by the term 'significantly worse'.	
Stage 2 loans based on IFRS 9	A few respondents asked the EBA to confirm that the concept of credit-impairedness does not include assets in stage 2 based on IFRS 9 accounting principles.	According to the EBA Guidelines on the application of the definition of default under Article 178 of Regulation (EU) No 575/2013 (EBA/GL/2016/07), it is clear that exposures in stage 2 should not be automatically classified as defaulted. Stage 2 exposures should be classified as defaulted if other indications of default apply but the fact that they are classified as stage 2 should not automatically be treated as a trigger of default.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
At the time of selection	A comment was raised suggesting that the EBA clarifies that the ´time of selection´ indicated in Article 26b(11) should be read as time of inclusion of exposures in the pool, in consideration of the fact that the selection can come several weeks (and sometimes months) before the transaction closing date (i.e. the actual inclusion).	The Level 1 text is sufficiently clear and the timing of the requirement is clearly specified, therefore the comment has not been taken on board.	No change
Question 12. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Scope of the criterion	Few respondents were supportive and agreed with the proposed guidance on this requirement. Some respondents commented that the proposed guidance unduly narrows the Level 1 requirement. Some respondents specifically highlighted that paragraph 154 (which envisages the application of the test at the level of each exposure of the same borrower) should be eliminated, since payments by the same borrower on different exposures should be considered as sufficient to mitigate risk of fraud and to meet the 'at least one payment' requirement. Connected to the above, four respondents highlighted that from an operational perspective with corporate underlying exposures the test: i) would in many cases be impossible to conduct due to the lack of data at single position level and ii) in the case of data availability, would determine a delay of at least three months between the loans' origination and their inclusion in the pool.	Considering that the objective of the criterion is to mitigate fraud and operational risk, the EBA's understanding is that the intent of the legislator was to apply this requirement to each underlying exposure. In this respect it is not deemed necessary to make any changes to paragraph 154 or the text in the 'Background and rationale' section accordingly. Consistently the same approach applies also to the guidelines on non-ABCP and ABCP.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Double narrowing of the criterion	Most of these respondents commented on the 'double narrowing' of this requirement with the definition of payment provided in the guidelines and the inclusion of the term 'economic substance', which is restrictive in requiring that these be extended to fees (such as administration or commitment fees).	Based on the feedback received, the EBA has amended the guidance in paragraph 155 of the CP, removing the term 'economic substance'.	Paragraph 49 of the guidelines has been amended accordingly.
REQUIREMENTS RELATING TO STANDARDISATION (Article 26c) – Article 26c(1), Article 26c(2), Article 26c(3), Article 26c(4), Article 26c(5), Article 26c(6), Article 26c(7), Article 26c(8), Article 26c(9), Article 26c(10)			
Question 13: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
	Most of the respondents agreed with the interpretation provided while the rest of the submitters did not provide any comments.		No change
Question 14: Do you agree with the interpretation provided? Should additional aspects be clarified? More specifically, is there a need to further clarify the term 'appropriate mitigation' of interest rate and currency risks and further specify any mitigation measures? Please elaborate.			
No interest rate or currency risk	Some respondents agreed with the interpretation provided, other respondents did not provide any comments. One respondent suggested that where there is no interest rate risk or currency risk in a securitisation or where all the payments in the securitisation are denominated in the same currency, there is no need for any disclosure of that fact and suggested removing the disclosure requirement in such cases.	In the EBA's view, in the absence of interest rate or currency risk, a clarification and a short explanation why there is no interest rate or currency risk in a securitisation would be necessary. Without such a clarification, investors and STS verifiers would not be able to assess whether a securitisation meets the requirements in accordance with Article 26c(2) of Regulation (EU) 2017/2402 or not. This is for the reason that	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		they would not know whether the cause of the lack of a description of the interest rate and currency risks arising from a securitisation is the absence of such risks in the securitisation or the non-compliance of the securitisation with the corresponding STS requirement. The EBA agrees, however, that in the case of the absence of interest rate and currency risks in a securitisation there is no need to provide disclosure on any measures to mitigate those risks.	
No risk mitigation measures	Another respondent questioned the necessity of the clarification provided in paragraph 157 of the CP and argued that in many synthetic securitisations any interest rate or currency risks are not hedged or otherwise mitigated but are allocated to either the protection buyer or the protection seller and this is contractually agreed in the legal documentation.	Concerning this comment, it is the EBA's view that due to the lack of an appropriate mitigation of interest rate or currency risks synthetic securitisations referred to in the submitter's comment would be understood not to meet the requirement set out in the second sentence of Article 26c(2) of Regulation (EU) 2017/2402.	No change
Question 15: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Reference interest rates	A few respondents proposed additionally including in paragraph 159 of the CP a non-exhaustive list of the main risk-free rates such as €STR, SONIA, SOFR and TONA.	The comment has been taken on board. Other established reference interest rates, such as €STR, SONIA, SOFR and TONA, have been added to the corresponding non-exhaustive list of risk-free rates.	Paragraph 53 of the guidelines has been amended accordingly.
Make-up mechanism	Some respondents proposed including an additional clarification in the guidelines that a 'make-up mechanism' according to which the interest amount / credit protection premium to be paid to the investors is adjusted/corrected to take into account	In terms of the 'make-up mechanism', the EBA agrees that such a mechanism does not prevent a securitisation from complying with the requirements pursuant to Article 26c(3) of Regulation (EU) 2017/2402. This is for the reasons	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	any deviation between the interim and the final credit protection payment for underlying exposures subject to a credit event is consistent with the requirements in accordance with Article 26c(3) of Regulation (EU) 2017/2402. According to the respondents such a mechanism ensures that, where the coupon/premium to be paid to investors is based on a reference index and/or a margin and the outstanding balance of the tranche of the credit protection provided by such investors, any parts of the outstanding balance of the tranche taking into account interim credit protection payments are adjusted to the corresponding final credit protection payments once those final credit protection payments have been determined.	that in such a case the referenced interest payments are not deemed to reference complex formulae or derivatives and that any such adjustment is required as a result of the differentiation between interim and final credit protection payments in accordance with Article 26e(2) of that Regulation. The EBA, however, regards the wording of Article 26c(3) as sufficiently clear and therefore sees no need for amending paragraph 160 of the CP in this regard.	
Question 16: On reference rates: is the interpretation on this term deemed helpful for the interpretation of this requirement? Please provide more information on the referenced interest payments used in relation to the transaction in your entity's practice.			
	Most of the respondents either agreed with the interpretation provided or did not provide any comments of substance; one of the respondents also agreed that the interpretation could be helpful but shared the observation that to date it has not been market practice for issuing banks to disclose to investors in the portfolio reporting what the reference rate is for many asset classes (mortgages being the main exception).	As none of the respondents disagreed with the interpretation provided or indicated that changes in market practice in this regard could become a major issue, the EBA does not see the need for any amendments concerning this issue.	No change
Question 17: On complex formulae or derivatives: is the guidance provided sufficient to clarify the requirement or should the guidance be extended? In case of the latter, please provide suggestions on how to define complex formulae and derivatives.			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	All respondents either agreed with the interpretation provided or did not provide any comments.		No change
Question 18: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Consistency with Article 26e(6)	One respondent sees a need to ensure consistency between the reference to 'an enforcement event in respect of the originator' in Article 26c(4) of Regulation (EU) 2017/2402 and the exhaustive list of circumstances set out in Article 26e(6) of that Regulation in which an STS on-balance-sheet securitisation may be terminated by investors prior to its scheduled maturity. According to the respondent, the guidelines should additionally clarify that the list of potential enforcement events under Article 26c(4) of Regulation (EU) 2017/2402 is limited to the termination events explicitly referred to in Article 26e(6) of that Regulation.	The EBA does not see the need for full consistency between the enforcement events referred to under Article 26c(4) of Regulation (EU) 2017/2402 and the exhaustive list of termination events pursuant to Article 26e(6) of that Regulation. This is for the reason that investors may e.g. initiate legal steps in order to enforce the originator's compliance with a certain contractual obligation such as the execution of a certain premium payment without terminating the entire credit protection agreement.	No change
Request for clarification	One of the respondents proposed additionally clarifying that the reference to 'defaulted underlying exposures' in Article 24c(4) of Regulation (EU) 2017/2402 may include exposures which have experienced a potential credit event prior to the termination of the securitisation, which then crystallises into an actual credit event after such termination.	In the EBA's view this request for clarification is beyond the scope of these guidelines and therefore the comment was not taken on board.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Difference between the guidelines and market practice	Comments were raised on the proposed guidance in paragraph 161 of the CP. According to one respondent, in cases where an enforcement or termination notice of the credit protection agreement is delivered any amount to remain in the SSPE will not be determined by a trustee or a representative of the investors but by the calculation agent or cash manager in accordance with the transaction documentation. Furthermore, any cash or other collateral that remains with the SSPE after the delivery of such a notice will be held in the same way as prior to that delivery. Another respondent commented that according to market practice the mechanics for determining the amount of cash remaining at the SSPE upon the delivery of an enforcement or termination notice of the credit protection agreement are already set out in the transaction documentation and are not negotiated at the time of the delivery of such a notice. This market practice ensures legal certainty in case of an enforcement or termination event. The respondent also considers it unlikely that trustees or other investor representatives will be comfortable determining such cash amounts on behalf of the investors. Against this background the respondent proposed further specifying in paragraph 161 that the mechanism for determining the cash amount remaining with the SSPE may be determined as set out in the transaction documentation and that a clarification be added to paragraph 162 that for the purposes of this paragraph it is not necessary to	Following the feedback received an adjustment to the guidelines is deemed necessary, distinguishing this requirement from the similar requirement for non-ABCP securitisation. There was no intention to establish new parties to do the calculation or require a new account. The proposed amendment aims to provide further clarity and alignment with market practice.	Paragraph 55 of the guidelines has been amended accordingly.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	open a new reserve account as such a condition would appear unnecessarily burdensome. On a similar note another respondent commented that the content of paragraph 161 of the CP is unclear and unnecessary and makes post-enforcement resolution slow and costly. For those reasons, the respondent proposes deleting that paragraph.		
Question 19: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Reversion to pro rata amortisation	One respondent explicitly agrees and two respondents disagree with the content of paragraph 163 and the latter request that a reversion to pro rata amortisation should be allowed after the conditions activating a performance-related trigger no longer apply.	In the EBA's view, where the conditions for the application of the derogation cease to apply because a performance-related trigger has been activated, the standard rule according to which sequential amortisation shall be applied to all tranches of an on-balance-sheet securitisation should apply until the maturity of such a securitisation. This is also consistent with the approach followed in the final RTS on performance-related triggers.	No change
Triggers	Another respondent requested further specification on the interaction between paragraphs 163 and 167. In particular, the respondent seeks clarification whether, in cases where none of the mandatory triggers but an additional voluntary trigger has been activated and has switched the amortisation back to sequential, a switch back to non-sequential payments would be allowed where the conditions for activating the voluntary trigger no longer apply.	Irrespective of whether the trigger is among the minimum triggers mentioned in Level 1 or an additional performance-related trigger, it is the EBA's understanding that once the trigger has been activated the switch to sequential amortisation should be permanent. Considering also that the general requirement is to use sequential amortisation, in the case of pro rata amortisation when the condition for derogation does not apply then it should always revert to sequential amortisation. Based on the feedback it	Paragraphs 55 and 58 have been amended.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		is deemed necessary to make changes to the guidelines. Therefore, the paragraph has been amended to clarify that this refers to the minimum but also applies to other voluntary triggers. The revised wording should provide further clarity.	
Significant losses and last part of the maturity of the transaction	Several comments were raised by some respondents relating to the interpretation provided on the terms 'significant losses' and 'last part of the maturity of the transaction'. One of the respondents proposed defining the 'last part of the maturity of the transaction' as the 'final third of the expected maturity of the transaction' in order to provide a meaningful clarification of the term and to ensure consistency between the content of paragraphs 164 and 165 of the CP, while another respondent suggested leaving the further specification of the terms 'significant losses' and 'period close to the maturity of the credit protection' to the parties involved in a particular securitisation.	In the EBA's view these terms and the criteria for the calibration of these triggers should be addressed in the final draft RTS on performance-related triggers.	Paragraphs 164, 165 and 166 of the CP have been deleted.
Request for clarification for transactions with tranches junior to the protected tranches	A few respondents also pointed out that the last subparagraph of Article 26c(5) of Regulation (EU) 2017/2402 lacks to account for the loss-bearing capacity of any tranches junior to the protected tranches of a securitisation and that such a requirement should therefore not be applied literally to synthetic securitisations including mezzanine tranches. The respondents propose including such a clarification in the final guidelines.	It is the EBA's understanding that in cases where part of the losses on underlying exposures is being absorbed by more junior tranches, the loss-bearing capacity of those tranches should be taken into account for the purposes of the last subparagraph of Article 26c(5).	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Earlier reversion to sequential amortisation	A comment was raised by another respondent that the determination of the initial LGD as the higher of provisions or the regulatory LGD in accordance with Article 26e(2) will lead to determined interim losses being on average structurally higher than the realised final losses and will thus cause an early switch back to sequential amortisation. Due to this criterion initial losses will be either equal to or higher than the bank's expectation at the time of default, and therefore on average higher than the bank's provisioning – assuming that the bank's provisioning is on average a fair and even conservative estimate of final realised losses.	The EBA has taken note of the point made that the expectation of interim losses may on average be structurally higher than realised final losses and that this might lead to an earlier reversion to sequential amortisation. As the content of the corresponding Level 1 requirement (Article 26e(2)) seems, however, to be sufficiently clear, the EBA does not consider the guidelines as an appropriate means of further clarifying this issue.	No change
Question 20: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.			
Replenishment (or revolving period) and substitution of ineligible exposures	According to one respondent further clarification on the distinction between replenishment (or a revolving period) and the substitution of ineligible exposures would be appreciated as different contractual arrangements in terms of eligible activities during the revolving period and in terms of the replacement of ineligible underlying exposures or even fully repaid underlying exposures after the end of the revolving period exist in the market. The respondent pointed out as well that this issue is also relevant for determining the WAL in accordance with paragraph 201 of the CP, according to which any replenishment period has to be considered in the calculation of the WAL in order to determine the	Article 26b(7) of Regulation (EU) 2017/2402 generally prohibits active portfolio management and only allows for the addition of exposures after the closing date with regard to 'the substitution of exposures that are in breach of representations or warranties or, where the securitisation includes a replenishment period, the addition of exposures that meet the defined replenishment conditions'. The final subparagraph of that paragraph also provides an exhaustive list of circumstances under which an underlying exposure may be removed from the pool. In light of these clear requirements, the EBA does not see a need for further specifying the distinction between the terms 'replenishment	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	earliest date when a time call option may be exercised by the originator.	period' and 'replacement of ineligible underlying exposures'.	
Rise in losses	Another respondent suggested that point (b) of Article 26c(6) of Regulation (EU) 2017/2402 should be interpreted as either referring to a 'rise in losses' as per the wording of the requirement but also to an 'increase in the cumulative amount of defaulted exposures' in line with 26c(5)(a) of that Regulation.	In the EBA's view, this is beyond the scope of these guidelines and therefore this comment has not been considered.	No change
Question 21: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Fixed standards	A comment was raised that the reference to 'fixed standards' in terms of servicing applied in paragraph 168 of the CP may be interpreted as implying that during the maturity of an STS on-balance-sheet securitisation no improvements of servicing standards are allowed irrespective of whether those improvements are proposed by the originator on its own initiative or are imposed by an institution's competent authority. The respondent also points to compliance issues on the part of the originator, where a third party and not the originator itself is responsible for the servicing.	The EBA acknowledges that the reference to 'fixed standards' in paragraph 168 of the CP may be misinterpreted as not allowing for any improvements of the underwriting standards referred to in the transaction documentation. Accordingly, the word 'fixed' is deleted in paragraph 168 of the guidelines.	Paragraph 59 of the Guidelines has been amended accordingly.
Question 22: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Disclosure of policies, procedures and risk-management controls	One respondent considers that point (a) of paragraph 175 of the CP is helpful but sees practical issues in terms of the application of point (b) of that paragraph and therefore overall recommends deleting the entire paragraph 175 of the CP. As	The conditions laid out in paragraph 175 of the CP are identical to the guidance provided in the EBA Guidelines on the STS criteria for non-ABCP securitisation (EBA/GL/2018/09). The EBA sees no reason to differentiate the guidance unless there	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	practical issues with regard to the application of point (b) the respondent points to (i) the difficulties or the operational burden with regard to getting entities to disclose their policies and practices in this regard, (ii) the practical difficulty of providing evidence of 'adherence to good market practices and reporting capabilities' and the unlikeliness that any third party will 'feel comfortable' in substantiating such evidence in light of existing practical issues.	are specificities to on-balance-sheet securitisation.	
Key man risk	Another respondent commented on the content of paragraph 172(b), points (i) and (ii), of the CP. In the respondent's view the conditions set out in paragraph 172(b), points (i) and (ii), of the CP would create significant 'key man' risk.	The conditions referred to in paragraph 172(b), points (i) and (ii), of the CP are identical to the established conditions pursuant to paragraph 69(b), points (i) and (ii), of the EBA Guidelines on the STS criteria for non-ABCP securitisation (EBA/GL/2018/09). The EBA sees no reason to differentiate the guidance unless there are specificities to on-balance-sheet securitisation.	No change
Question 23: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.			
At all times	A few respondents requested further clarification on the wording 'at all times' used in the first sentence of Article 26c(9) of Regulation (EU) 2017/2402, stating that this cannot be a permanent 24/7 process.	In the EBA's view the wording 'at all times' used in the first sentence of Article 26c(9) of Regulation (EU) 2017/2402 should be interpreted as an obligation of the originator to maintain an up-to-date reference register on an ongoing basis so that at any time the third-party verifier or any other party has access to the most up-to-date information on the pool of underlying exposures. This means that, when necessary, the relevant	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		parties should be able to identify the most up-to-date information in the reference register.	
Request for additional information	One respondent pointed out that, in addition to the information referred to in Article 26c(9) of Regulation (EU) 2017/2402, in its view key information that might reasonably be expected to be needed to assess the credit performance of each underlying exposure should also be included in the reference register, in particular in cases where the obligor name is disclosed but no information on its creditworthiness is publicly available or where the obligor name is not disclosed.	In the EBA's view the Level 1 text is sufficiently clear and while it requires the identification of the obligor there is no requirement for the creditworthiness of the obligor and therefore this request is considered to be beyond the scope of these guidelines. No change in the guidelines is deemed necessary.	No change
Question 24: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Request for clarification	One respondent requested further clarification that the requirement only refers to external investors but not to the originator as holder of the senior notes or retention. Another respondent shared this view too and pointed out that synthetic securitisations in many cases only comprise one protection seller and the originator as protection buyer and investor in the tranches not benefitting from any credit protection. For this reason, an additional clarification should be added in the guidelines that in such cases paragraph 176 of the CP does not apply.	In the EBA's view, for the purposes of this article, even though the originator can be defined as an investor, as per the definition in Regulation (EU)2017/2402, it should not be treated as an investor for the purposes of this requirement. However, in cases where new investors enter the transaction compliance with this requirement should be ensured.	Paragraph 67 has been amended accordingly.
Meetings in the Union	One respondent claims that no clarification is necessary on this criterion and that the arrangements to ensure compliance with the	Regarding the requirement for investors to attend meetings in the Union, the intent was for all investors to be able to participate in person in the	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	requirements pursuant to Article 26c(10) of Regulation (EU) 2017/2402 should be left to market participants. That respondent recommends at least replacing 'should' with 'may (without limitation)' where that word is used in paragraph 176 of the CP, as in particular requiring investors to attend meetings in the Union may from the respondent's perspective decrease the liquidity of the market for STS on-balance-sheet securitisations.	meetings. In the EBA's view, given that nowadays there are other possibilities of organising hybrid/virtual meetings, it is not deemed necessary to amend the guidelines, which are also consistent with the Guidelines on the STS criteria for non-ABCP securitisation.	
REQUIREMENTS RELATING TO TRANSPARENCY (Article 26d) – Article 26d(1), Article 26d(2), Article 26d(3), Article 26d(4), Article 26d(5)			
Question 25: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Proxy data	One of the respondents suggested the use of proxy data or external performance data by originators.	Paragraph 178 of the CP clearly states that where the data are not available, publicly available data or data from third parties can be used.	No change
Rating migration data	Request to clarify that rating migration data (whether of internal or external ratings) can be included in the definition of 'historical default and loss performance such as delinquency and default data' for corporate loans. In addition, one of the respondents suggested different types of data depending on the asset class.	The Level 1 text is clear on the data requirements. In the EBA's view, rating migration data can be provided in addition to the data requirements specified in this article. Regarding the requirement on dynamic historical default data, the migration tables on PD changes would not seem to contravene the requirement.	No change
Similarity of conditions for SME/corporate loans	A comment was raised requesting further clarity on the similarity of the conditions for SME/corporate loans.	In the EBA's view paragraph 179 of the CP is sufficiently clear. This guidance is also consistent	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		with the Guidelines on the STS criteria for non-ABCP securitisation.	
Question 26: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning. **Question 27: In particular, do you agree with the interpretation of the scope of the verification, in particular with the specification on how the size of the representative sample should be determined? Should additional aspects/parameters for determining the sample be clarified? Please substantiate your reasoning.**			
Prior to the closing of the transaction	Some respondents requested additional confirmation in the guidelines that the wording 'prior to the closing of the transaction' used in Article 26d(2) of Regulation (EU) 2017/2402 is to be understood as follows: (i) where a synthetic securitisation includes the issuance of notes, as the point in time when the notes are issued; (ii) where no notes are issued under a synthetic securitisation, as the point in time when the guarantee becomes effective, i.e. when all conditions for the effectiveness of the guarantee to be met by the originator are fulfilled. Furthermore, one of the respondents considers it important that, if the final guidelines allow the verification to take place after signing but before the date when the credit protection agreement becomes effective, the guidelines should not prohibit verification from taking place prior to signing.	Regarding the requested clarification of the wording 'prior to the closing of the transaction' used in Article 26d(2), the EBA agrees that, where no notes are issued under a synthetic securitisation, for the purposes of this criterion the aforementioned wording should be interpreted as referring to the time prior to the guarantee or credit derivative under the credit protection agreement becoming effective. A corresponding clarification is added to the final guidelines. While the EBA sees no need and also no legal basis in Regulation (EU) 2017/2402 for further specifying the earliest point in time when the AUP verification may be executed, such as the point in time when the credit protection agreement is signed by the parties in the transaction, an AUP verification should only be conducted when the pool of exposures, the credit events and the criteria for credit protection payments can be expected to be reasonably stable. Finally, the wording is specific to on-balance-sheet securitisation and therefore no amendment to the guidelines for non-ABCP securitisation is deemed necessary.	Paragraph 79 has been added.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
At least 95% and equal to or less than 5% type II error	One respondent recommends that in paragraph 183 the fixed confidence level of 95% should be replaced by a confidence level of at least 95% in line with the corresponding provision in paragraph 80 of EBA/GL/2018/09 in order to allow transaction parties to apply higher confidence levels. Similarly, the respondent proposed replacing the fixed value of the 'type II error' of 5% with a 'type II error' of 'equal to or less than 5%' to also allow transaction parties to agree on more prudent assumptions regarding the determination of the applicable sample size. Finally, that respondent requests clarification on the exact definition of the 'type II error'.	The EBA agrees that it should be left to the discretion of the parties of a transaction to agree on a higher confidence level and a lower percentage of the type II error as adding this flexibility poses no problem, since the probability of type II error is reduced and the resulting sample size can only grow in number. Regarding the request of a definition of the term 'type II error', the EBA considers the terms 'type I error' and 'type II error' as standard and basic concepts in statistics/hypothesis testing. A 'type II error' is the error of falsely accepting the tested hypothesis. Paragraph 183 of the CP is the only paragraph mentioning the term 'type II error'. It states: 'the probability of the type II error of falsely accepting an entire pool without exceptions should be 5%'. Thus 'type II error' is already defined in the text as falsely accepting the hypothesis and the EBA therefore concludes that no further definition is needed.	Paragraph 74 has been amended.
Without replacement	A comment was raised by the respondents pointing out that the wording 'without replacement' in paragraph 183 is redundant and proposed deleting that wording. According to the respondents the replacement would not create an issue with regard to the provisional portfolio and would not be allowed anyway with regard to the final portfolio.	The wording 'without replacement' used in paragraph 183 of the CP is supposed to mean that once an individual underlying exposure has been drawn from the pool and become part of the sample such an underlying exposure is not 'put back' in the pool and may be drawn again to become part of the sample. The EBA, however, deems the wording of the respective sentence to be sufficiently clear also without that wording and	Paragraph 74 has been amended.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		accordingly that wording is not considered in the final guidelines.	
Transaction documentation and occurrence of a credit event	Some respondents requested clarification that the reference to the term 'transaction documentation' in paragraph 185 of the CP refers to the documentation of the securitisation and not to the documentation related to individual underlying exposures, and suggested the deletion of the wording 'in order to confirm that the occurrence of a credit event would trigger a credit protection payment …' in that paragraph. In this regard, the respondents argue that the wording cited in the previous sentence does not hold, for example, where losses are allocated to the first loss tranche and the credit protection agreement only relates to the mezzanine tranche. Accordingly, the respondents deem a sample verification that the eligibility criteria are met to be sufficient.	Concerning the reference to the term 'transaction documentation' in paragraph 185 of the CP the EBA confirms that this wording refers to the documentation of the synthetic securitisation and not the documentation of the underlying exposures and in order to remove any interpretation issues in this regard the wording 'transaction documentation' has been deleted in paragraph 185 of the CP. Furthermore, the wording 'where losses on the underlying exposure subject to a credit event would be assigned to the protected tranche(s)' is added to the sentence of paragraph 185 of the CP in order to account for the fact that losses on underlying exposures subject to a credit event are not necessarily compensated by credit protection payments where those losses are assigned to a tranche not benefitting from the credit protection under the credit protection agreement.	Paragraph 76 has been amended.
Provisional portfolio	The respondents also pointed to a perceived inconsistency between the wording of paragraphs 181 and 183 of the CP as the former refers to sample verification in terms of the 'provisional portfolio', whereas the wording applied in the latter suggests that the sample verification should relate to the actually securitised portfolio. The respondents requested the removal of this inconsistency and consider a reference to the	The EBA agrees that AUP verification will usually be conducted in terms of the provisional portfolio. Therefore, the word 'all' in paragraph 183 of the CP has been deleted in order to remove any ambiguity in this regard.	Paragraph 74 has been amended.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	provisional portfolio in both paragraphs as better reflecting the market practice that individual exposures are often replaced only shortly before the closing date of a transaction. The latter assessment is shared also by another respondent.		
Question 28: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Third parties	One of the comments raised concerns the terminology of 'third parties'. Art 26d(3) of the regulation refers to third parties as one of the actors in the contractual relationship while the guidelines refer to a third party as a possible external provider of the liability cash flow model.	The EBA understands that a clarification that the terms refer to two different third parties would make the interpretation clearer. Therefore, paragraph 189 has been amended to provide further clarity.	Paragraph 81 has been amended.
On an ongoing basis	Some respondents requested further clarity on the circumstances in which the originator has the obligation to update the cash flow model. More specifically, guidance is sought on whether the originator's obligation to make the cash flow model available to investors 'on an ongoing basis' is an obligation to prepare an updated cash flow model on a periodic basis or whether the originator would only need to prepare an updated cash flow model following any amendment of any relevant contractual relationship, provided that the most up-to-date cash flow model is always made available to investors and potential investors.	In the EBA's view the cash flow model should always be made available to investors and, upon request, to potential investors. The cash flow model should be updated when needed in order to precisely represent the contractual relationship between the underlying exposures and the payments flowing between the originator, investors, other third parties and, where applicable, the SSPE,	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Model for synthetic securitisation	Another respondent pointed out that a model for a synthetic securitisation contains a limited number of cash flows as compared to a model for a cash transaction and as such is hard to qualify as a cash flow model.	The Level 1 text is sufficiently clear and therefore no further amendments to the guidelines are deemed necessary.	No change
Question 29: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Threshold/minimum proportion	One of the respondents pointed out that, to ensure proportionality, disclosure should only be required for newly originated loans and only where data are available for a minimum proportion of the securitised exposures. A similar comment on the introduction of a threshold was raised by another respondent for concerns of misleading information that may lead to greenwashing claims.	The Level 1 text is clear and the guidelines cannot impose additional requirements, the guidelines may only clarify the existing requirements. The interpretation is consistent also with the guidelines on non-ABCP. A sentence has been added to the 'Background and rationale' section further clarifying the rationale for the approach followed in the guidelines.	Paragraph 105 of the 'Background and rationale' section has been added.
Question 30: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Potential investor	In general, all of the respondents agree with the interpretation provided. However, a comment was raised about the disclosure requirements when the investor sells a securitisation position to another investor with the consent of the originator. In such cases, the respondent suggests clarifying that the disclosure requirements under Article 7 only apply if the originator finds the potential investor suitable.	In the EBA's view this is considered to be beyond the scope of these guidelines and relates to the definition of an investor in Regulation (EU) 2017/2402.	No change
Disclosure of private securitisations	One of the respondents requested further clarification on the disclosure of private securitisations.	In the EBA's view this request is considered to be beyond the scope of these guidelines. Regarding this request for clarification, there is a relevant	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		Q&A on the ESMA website (see Q5.1.4) with regard to reporting information for private securitisations.	
REQUIREMENTS SPECIFIC TO ON-BALANCE-SHEET SECURITISATION (Article 26e) – Article 26e(1), Article 26e(2), Article 26e(3), Article 26e(4), Article 26e(5), Article 26e(6), Article 26e(7), Article 26e(8), Article 26e(9), Article 26e(10)			
Question 31: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Cured and restructured exposures	Most of the respondents agreed with the interpretation provided. Further clarification was requested on the treatment of cured and restructured exposures.	Given that the request for clarification relates to the criterion in Article 26e(2), the EBA has decided to address this in Article 26e(2).	No change
Question 32: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Cured and restructured exposures	One respondent requested further clarification on what will happen with a credit event that has been 'cured': will the exposure be allowed to stay in the pool, should it be removed, or are both situations possible? Another respondent noted that the criteria need to go further to describe how credit protection payments should be determined in respect of restructuring. According to the same respondent restructurings should also follow an interim credit protection payment and final credit protection payment mechanism, although it should be permitted that the interim credit protection payment is determined as the negative valuation adjustment at the time of restructuring, instead of	In the case of restructuring, this would follow the normal regular payments under this article and the workout end date would be the lower of the (extended) maturity of the restructured exposure or the one from the credit protection agreement. Also, it is the EBA's understanding that these would be included in the performing portfolio again and would be also eligible for credit protection as, according to Article 26b(7), fourth subparagraph, these circumstances do not allow for a removal of the exposure from the transaction. Regarding the cured exposures, it is the EBA's understanding that these would remain	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	the provisions or regulatory LGD at such time as defined in Article 26e(2).	in the pool and the final (adjusted) payment will be returned to investors.	
Make-up interest amount	One of the respondents requested clarification on whether the make-up interest amount would meet this criterion. According to the respondent, market practice has been to include a provision known as the 'make-up interest amount'. This provision serves to account for the interest that should have been paid during the workout period if the final loss amount had been known at the time of the interim credit protection payment, which is calculated based on an assumed loss amount.	In the EBA's view the 'make-up interest' amount does not seem to contravene this requirement.	No change
Question 33: Do you agree with the interpretation of the determination of interim credit protection payments? Do you agree with the interpretation of the criterion with respect to the 'higher of' condition? Should the interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.			
Removal of 'higher of' condition	Most of the respondents agreed with the interpretation provided in the guidelines. Several comments were raised on the 'higher of' condition in this article. Two of the respondents requested removing the 'higher of' condition and including only the impairment in financial statements. According to one respondent the requirement that the initial loss amount must be calculated as the 'higher of' provisions and regulatory LGD will lead on average to a structural overestimation of losses. As the credit protection payments are contingent on the amount of losses in the transaction, this means that investors will on average structurally get paid too little in the period between initial and final	Regarding the make-up interest amount, the EBA has provided an answer in the previous question. As concerns the comment on the removal of the 'higher of' condition, this cannot be taken on board because this is a Level 1 requirement.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	loss determination. To account for this, the respondent includes what is commonly known as an 'interest make-up amount' mechanism in which the underpaid (or overpaid) protection premium will be corrected at the time of final loss determination.		
Question 34: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Request for clarification	Two respondents requested clarification that the requirement under Article 26e(3), third subparagraph, of the Securitisation Regulation is fulfilled if the credit protection premium is calculated as a fixed percentage on the protected tranche outstanding amount (which is reduced by losses that occur in the securitised reference portfolio). Furthermore, one respondent requested the guidance to be revised to clarify that the outstanding balance of the tranches should be reduced to reflect interim and final losses determined in respect of the securitised exposures. According to the same respondent this is the correct way of capturing the point otherwise being made in that paragraph as well as the Level 1 text. For completeness, it would also be useful to clarify that this does not prevent adjustment payments being made upon calculation of the final loss to reflect the difference in the protection fees that were actually calculated and the protection fees that would have been calculated if the final loss had been known at the time of the initial loss calculation (whether positive or negative, and commonly referred to in the market as 'make-up interest amounts'). The	It is the EBA's view that Article 26e(3), third subparagraph, should also be read in light of Recital 22 of Regulation (EU) 2021/557. Moreover, in the EBA's view, adjustments to final payments reflecting the difference in the protection fees that were actually calculated and the protection fees that would have been calculated if the final loss had been known at the time of the initial loss calculation (make-up interest amounts) are not prohibited under this requirement. Finally, it is the EBA's understanding that the timing of premium payments may vary across transactions, and thus it is not deemed necessary to further clarify or interpret 'at the time of the payment'.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	same respondent requested to further clarify that the reference to 'at the time of the payment' should be interpreted as referring to the balance of the protected tranche(s) at the beginning of the relevant calculation period for the payment date.		
Question 35: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Inconsistency	A number of respondents pointed out an inconsistency in paragraph 198 of the CP which refers to the sample verification prior to the issuance.	Following the feedback received, it is noted that the guidance refers to the sample verification in Article 26d(3), and it has therefore been deleted.	Paragraph 198 of the CP has been deleted.
Sample verification in the case of mezzanine transactions	Some respondents commented that in the case of mezzanine transactions, to avoid unnecessary cost to the originator, it is common for verification only to be required once the cumulative losses exceed a certain percentage of the retained junior tranche. It would be helpful for the guidelines to clarify that this is a permitted approach to sample verification.	It is the EBA's understanding that for securitisations with mezzanine positions the parties to the securitisation may agree for the verification to start after the detachment point of the first loss tranche decreases below a certain percentage of that detachment point determined at the closing date of the transaction and thus the verification of past credit events to be performed retrospectively. However, according to Article 26e(4) regarding the sample verification, investors may still request the verification of the eligibility of any underlying exposure where they are not satisfied with the sample-basis verification.	Paragraph 90 has been added to the guidelines.
Evidence for the appointment of the third-party verification agent	One of the respondents noted that the rationale stated in the Consultation Paper is that the appointment of the verification agent 'aims to ensure legal certainty for all parties involved in a transaction and to further enhance the soundness	The comment has not been taken on board. The Level 1 text is sufficiently clear and therefore no further clarification is deemed necessary.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	and accuracy of certain aspects of the credit protection agreement'. As such the respondent believes that it is necessary that investors i) have evidence of such an appointment before closing, ii) are provided with the methodology that will be used before closing and iii) are provided with the results of the verification. Also, clarification is needed whether investors must be provided with these.		
Request for clarification on the timing	A few respondents requested clarification that verification of the items in point (a) to (d) in Article 26e(4) should be required before any interim credit protection payment can be made. While this has generally been market practice, some market participants have interpreted the article to only require such verification at the time of the final credit protection payment. Points (e) and (f), referring to final loss determination and payment, would need to be verified prior to a final loss settlement.	It is the EBA's understanding that the provision does not explicitly limit the application to the final payment but refers to both the interim and final payments. Therefore, points (a) to (d) of Article 26e(4) refer to both the interim and final payments while points (e) and (f) refer to the final payment.	No change
Calculation of loss amount	One of the respondents pointed out that if, in relation to point (e) in Article 26e(4), a verification is not possible of the consistency of the loss amount calculated by the calculation agent with the losses recorded by the originator in its profit and loss statement, then the final loss amount should be zero.	The Level 1 text is clear that it shall be possible to calculate those amounts in all circumstances. In the EBA's view the credit protection agreement should specify how these cases should be dealt with.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Verification of compliance with the risk retention requirement	One of the respondents requested clarification that verifying that 'losses in relation to the underlying exposures have correctly been allocated to the investors' should include verifying that risk retention has been complied with both at the interim credit protection payment stage and final credit protection payment stage.	This comment is considered to be beyond the scope of these guidelines and therefore the comment cannot be taken on board.	No change
Further clarification request on the verification timing and relevant credit events	A respondent requested clarification that the verification of the credit event should include verification that the credit event occurred in the relevant credit protection period for the exposure, which should start from the closing date of the transaction for the initial portfolio and the date of the exposure inclusion for any exposures added as a replenishment. In line with the respondent's comment in Q11, interpretations where credit events occurring before the closing of the transaction have been eligible for credit protection payments due to the 'inclusion date' of the initial portfolio being the portfolio cut-off date, which is typically several weeks (sometimes months) before the closing of the transaction. Further, this verification should be extended to ensure that a failure to pay by an obligor before the closing of the transaction which has not yet become a credit event due to a grace period in the loan documentation should not qualify as a credit event that is eligible for credit protection payments.	The Level 1 text is sufficiently clear on the requirements of the verification. In a similar way to the EBA's response to a similar comment in Q6, Article 26e(1) specifies the minimum credit events that should be covered under the credit protection agreement. The parties may agree on additional credit events as long as the minimum requirements are met. Therefore, the EBA does not see merit in further clarifying this situation in the guidelines.	
Question 36: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Calculation of the WAL	A comment was raised on the calculation of the WAL which excludes prepayments assumptions.	For consistency purposes with the CRR requirements on the calculation of the WAL the comment on prepayments cannot be taken on board.	No change
Replenishment or revolving period	Two respondents pointed out that the proposal in paragraph 200 means that the actual call date could not be known in advance, as it would depend on the actual WAL at the end of the replenishment period. Having this uncertainty as to when the time call may be exercised is problematic for both originators and investors because it makes it more difficult for them to model the transaction, and is inconsistent with the goals of simplicity and transparency underpinning the STS framework. It is therefore proposed that paragraph 201 be amended so that it specifies that the earliest scheduled time call should be a fixed date specified in the transaction documentation which is not earlier than the scheduled replenishment period plus the WAL of the securitised portfolio at closing. While we acknowledge that this is not consistent with the EBA's proposals for time calls in its SRT report from November 2020 (see Recommendation 3, para (c)), the reality is that virtually all transactions executed since that date which include a time call have a fixed date for the earliest exercise of the time call specified in the transaction documentation, without that having attracted adverse comment from competent authorities as part of the SRT assessment process.	To address the comments by the stakeholders, for transactions with a replenishment or revolving period, the EBA has aligned the guidance on the calculation of the WAL with the EBA Guidelines on the determination of the weighted average maturity (WAM) of the contractual payments due under the tranche (EBA/GL/2020/04).	Paragraph 93 has been amended accordingly.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Request for clarification	A few respondents pointed out that subparagraph (b) of Article 26e(5) permits the originator to terminate the transaction due to a failure by the investor to pay protection payments or a breach by the investor of its other material obligations. In the case of a securitisation involving a SSPE, this would not technically be correct, as the investor will be holding notes issued by the SSPE, under which it would have no obligations. Instead, the reference to the investor in that context should be read as a reference to the SSPE. It should therefore be clarified in the guidelines that the reference to the investor in this subparagraph should be interpreted as including a reference to any protection provider which has entered into the credit protection agreement with the originator. In addition, another respondent requested clarification that a transaction involving an SSPE may be terminated by either the originator or the investors in circumstances where there is an event outside the control of the SSPE or the originator, such as an illegality, force majeure or tax event in respect of any payment owed to investors by the SSPE (and the originator is not required to pay any additional amount in order to enable the SSPE to make the payment gross of tax). Similarly, Article 26e(5)(b) should be deemed to include a reference to the SSPE where the investor(s) face an SSPE rather than the originator directly.	The EBA has taken note of the comment. To address this, a new paragraph has been added to the guidelines clarifying that, for the purposes of point (b) of this article, in the case of a CLN the investor could be the SSPE which has issued the CLN.	Paragraph 102 has been added to the guidelines.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Question 37: Do you consider it necessary to provide interpretation of the term 'breach by the investor of any material obligation'? Please provide information on such material breaches applied in securitisation practice.			
Request for clarification	Most of the respondents agree that it is not necessary to provide further interpretation of the term 'breach by the investor of any material obligation'. Only one respondent requested clarification that the originator may terminate the securitisation on the grounds of illegality, as it is clearly not viable for it to be obliged to continue in a transaction where to do so would be illegal.	In the EBA's view the clarification is not deemed necessary, therefore no change has been made to the guidelines.	No change
Question 38: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. For example, do you consider it necessary to provide interpretation of the term 'material breach' of contractual obligations by the originator? Please substantiate your reasoning.			
Breach by the originator in any capacity under the securitisation documentation	One of the respondents requested clarification that the reference to a material breach by the originator of its contractual obligations should be understood as encompassing a material breach by the originator of its contractual obligations in any capacity under the securitisation documentation.	In the EBA's view the material breach refers to any contractual obligation the originator may have in any capacity under the securitisation documentation. For example, if the originator also acts as an account bank.	No change
Breach with respect to the impact on expected losses	A comment was raised by one respondent pointing out that material breach of contractual obligations should include breaches of obligations which would reasonably be expected to be prejudicial to investors in respect of the expected losses they may be exposed to.	It is the EBA's understanding that the material breach of contractual obligations could include breaches that are not limited to the impact on expected losses but refer to any other contractual obligation the originator may have under the securitisation documentation.	No change
Question 39: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Alignment with final draft RTS on SES	A few comments were raised by some respondents on the consistency of the guidelines with the RTS on SES. Given that the guidelines were published prior to the final draft RTS on SES, amendments to the guidelines are deemed necessary to ensure alignment with the RTS on SES.	At the time these guidelines were published for consultation, the final draft RTS on the determination of the exposure value of SES in synthetic securitisations (final draft RTS on SES) was still under development. Following the feedback received, several amendments to the guidelines have been made to ensure consistency with the version of the final draft RTS that the EBA published on 25 April 2023.	Paragraphs 95, 96 and 97 have been amended.
Amount of SES committed per year	One respondent raised an inconsistency between subparagraph (a) of Article 26e(7) and the specification in subparagraphs (c) and (d) that the amount of SES that can be committed per year cannot be higher than the one-year expected losses. This is inconsistent with both market practice and the draft RTS on SES. This was also supported by another respondent.	Following the feedback received several amendments to the guidelines have been made to ensure consistency with the version of the final draft RTS on SES that the EBA published on 25 April 2023.	Paragraphs 95 and 96 have been amended.
Clarification on calculation of one-year expected loss	Two respondents commented on the fact that, where an originator not using the IRB Approach calculates its one-year expected loss at closing, the result may be too low and may not provide an accurate indication of the lifetime expected losses.	Based on the feedback received, amendments to the guidelines were deemed necessary. In line with the approach followed in the final draft RTS on SES, for cases where the originator is not using the IRB Approach the guidelines have been amended to allow for institutions to use ICAAP and the expected losses treatment under the accounting framework.	Paragraph 97 of the guidelines has been amended to include the ICAAP risk parameters, which is also in line with the RTS on SES.
Payment period	One of the respondents requested clarification in the guidelines that the reference to ‘payment period’ in subparagraph (a) should be read as	Following the feedback received a new paragraph has been added to the guidelines to provide further clarity on the term ‘payment period’.	Paragraph 99 has been added to the guidelines.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	referring to the SES accrual period specified in the transaction documentation, in line with the definition of 'SES period' set out in Article 1(4) of the draft RTS on SES.		
Question 40: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.			
	All respondents agree that it is not necessary to further specify this criterion.		No change
Question 41: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Complies with the law	Some respondents raised comments about the term 'complies with the law' in paragraph 205. According to one of the respondents, this is not in line with market practice and also goes beyond the usual standard of legal opinion required for credit protection arrangements and synthetic securitisations under Articles 194(1) and 245(4)(g) of the CRR, which is also reflected in the Level 1 text of this criterion.	Based on the feedback received, paragraph 205 of the CP has been removed.	Paragraph 205 of the CP has been deleted.
Necessary legal expertise	Another respondent raised a comment on the term 'necessary legal expertise' in paragraph 206. This appears to introduce a subjective aspect beyond being qualified in the jurisdiction which is basically impossible to due diligence or verify and will add substantial uncertainty to whether the criterion is met.	Based on the feedback received, paragraph 206 of the CP has been removed.	Paragraph 206 of the CP has been deleted.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Question 42: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.			
Further clarification on CQS ratings	Several respondents requested further clarification on the CQS ratings and how to deal with more than one rating (in the case of split ratings or in the case of short and long ratings). One of the respondents requested including reference in the guidelines to Commission Implementing Regulation (EU) 2022/2365 of 2 December 2022.	As concerns the use of ECAI credit assessments, it is the EBA's understanding that the same requirements apply pursuant to Article 138 of the CRR. In addition, according to Article 270e of the CRR the EBA has developed draft ITS to map the credit quality steps to the relevant credit assessments of all ECAIs. Regulation (EU) 2022/2365 has amended the ITS laid down in Implementing Regulation (EU) 2016/1801 as regards the mapping tables correspondence of credit assessments of external credit assessment institutions for securitisation in accordance with Regulation (EU) No 575/2013.	No change
Cash on deposit	One respondent requested clarification that Article 26e(10)(b) of the Securitisation Regulation allows cash collateral to be provided, including in the form of a guarantee or letter of credit given by a qualifying third-party credit institution. According to the respondent's understanding of the term 'cash on deposit', the reference to collateral in the form of 'cash held with' a third-party credit institution in Article 26e(10)(b) of the Securitisation Regulation must be read as collateral in the form of an undertaking to pay cash by a third-party credit institution. It should not make a difference if the undertaking of the third-party credit institution which meets the rating requirements to pay cash is established as a result of a cash deposit or	The Level 1 text is clear. This is considered to be beyond the scope of these guidelines.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	otherwise (e.g. under a bank guarantee or letter of credit), provided that the terms of the undertaking and its treatment in an insolvency or resolution scenario are equivalent.		
Chargeback structure	On a similar note, another respondent requested clarification on whether a 'chargeback' structure would fall within the scope of this requirement. According to the respondent the criterion does not specify how the recourse should be achieved. It could take the form of 'chargeback' structure, where the protection provider (whether the investor directly or an SSPE) places a cash deposit with the originator (regardless of its rating), with the originator opening a cash or securities account with a third-party bank or custodian that meets the requirements of subparagraphs (a)(iii) or (b) of Article 26e(10), and granting security through that account in favour of the protection provider to secure repayment of the cash deposit. Such a structure would give the investor recourse to the high-quality collateral posted by the originator in the event that the originator fails to repay the cash deposit, while of course the originator remains the owner of that high-quality collateral and thus also has recourse to it by being entitled to have the collateral released from the security as protection payments are due under the securitisation.	This is considered to be beyond the scope of these guidelines. In the EBA's view, the question raised in the feedback to the CP should follow the formal EBA Q&A process.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
CQS waiver	One of the respondents requested clarification of whether the CQS waiver is for the entire market or case by case for each originator.	The Level 1 text is sufficiently clear in this regard. It is the EBA's understanding that this could only be granted to all participants in a certain market that are within the scope of this waiver. The competent authority has to demonstrate or provide proof of market difficulties for institutions meeting CQS2 and concentration problems in a jurisdiction and therefore the waiver is for all institutions. If the waiver is granted it should be for all entities in the jurisdiction; this would ensure a level playing field with the other originators.	No change
Payment frequency of the high-quality collateral	Comments were raised on the payment frequency of the acceptable high-quality collateral. One of the respondents pointed out that the requirement for payment dates to be quarterly is too restrictive given that the Level 1 text only requires the collateral to mature by no later than the next payment date. According to another respondent the interpretation in the guidelines prohibits the use of longer-dated zero-coupon collateral securities for the purpose of Article 26e(10), first subparagraph, point (a)(i).	The guidance has been amended to accurately reflect the intent of the legislator. The objective is that there should be no mismatch between the maturity date of the collateral securing that payment and the next payment date under the credit protection agreement.	Paragraph 101 has been amended.
STS criteria not specified above			
Grandfathering	Most of the respondents commented on the need for grandfathering for the outstanding STS transactions. It is argued that since the introduction of the STS framework for on-balance-sheet securitisations a large number of transactions have	The EBA has noted the comment and the guidelines are not expected to apply retroactively.	This has been considered in the date of application of these and the amending guidelines.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	been executed that may risk losing the STS status due to a different interpretation of the Level 1 requirements.		
Amending guidelines			
Question 44: Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/09? Should additional aspects be clarified? Please substantiate your reasoning.			
Feedback regarding amendments to Guidelines on the STS criteria for non-ABCP securitisation	A few comments were raised by the respondents relating to the targeted amendments to the guidelines on non-ABCP securitisation. Some of the respondents pointed to the responses provided in relation to the 'at least one payment' criterion. According to one of the respondents, in the case of equipment leases with more than one existing loan/lease with the originator, these should be excluded from the 'at least one payment' criterion in a similar way to paragraph 46. According to the respondent, the fact that the debtor has fulfilled the requirement in one loan or lease contract should be a strong mitigant against fraud and operational risk. In addition, with regard to any other kind of ordinary payment there is a request to specify whether a one-off administration fee (type) or EUR 1 (amount) would satisfy the requirement in paragraph 47. This is particularly relevant for warehousing deals. On a similar note, another respondent requested allowing a minimal amount as an initial payment and therefore suggested deleting the 'economic substance' from the guidelines. Regarding the verification of a sample of	All of the points raised have been addressed in the guidelines for OBS and where necessary those amendments will also be reflected in the guidelines for non-ABCP securitisation. Regarding paragraph 80b, the wording will also be amended to reflect the difference in the requirement between the non-ABCP and OBS securitisations.	Various amendments to the guidelines on non-ABCP securitisation as a result of the feedback to the comments on the OBS securitisations.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	underlying exposures criterion (Article 26d(2)) one respondent requested that the verification of those eligibility criteria that relate to certain legal and factual requirements which are extremely burdensome should not fail the requirement. A comment was raised by two respondents pointing out a typo in paragraph 80b, suggesting deleting the term 'credit protection agreement'. Another comment relates to Article 22(1) requesting other types of performance data to be allowed (such as rating migration etc.).		
Question 45: Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/08? Should additional aspects be clarified? Please substantiate your reasoning.			
Feedback regarding amendments to the Guidelines on the STS criteria for ABCP securitisation	The same feedback as for non-ABCP was also provided for the targeted amendments to the guidelines on ABCP securitisation, highlighting that the feedback related to the 'at least one payment' criterion is more relevant for ABCP securitisations.	All of the points raised have been addressed in the guidelines for OBS and where necessary those amendments will also be reflected in the guidelines for ABCP securitisation.	Various amendments to the guidelines on ABCP securitisation as a result of the feedback to the comments on the OBS securitisations.