BANCO DE ESPAÑA
Eurosistema

Guidelines on the STS criteria for ABCP securitisation

(EBA/GL/2018/08)

The Guidelines have been developed by the European Banking Authority (EBA) according to Article 23(3) of Regulation (EU) No 2017/2402[1] (hereinafter the Regulation) in close cooperation with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA). The guidelines are addressed to the competent authorities referred to in Article 29(1) and (5) and to the other addresses under the scope of the 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, as set out in Articles 24 to 26 of the Regulation, with a view to ensuring their harmonised application throughout the European Union. The Guidelines do not address each and every criterion, but only those where areas of possible lack of clarity or ambiguity have been considered. Notwithstanding the foregoing, all the criteria must be considered to be of equal importance, and failure to comply with any of them will result in ineligibility for STS securitisation.

The Guidelines will be applied on a cross-sectoral basis throughout the Union with the aim of facilitating the adoption of the criteria and ensuring 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.

The Guidelines have been developed by the EBA in accordance with Article 16 of Regulation (EU) No 1093/2010. The EBA published the English version of the Guidelines on 12 December 2018 (the Spanish version was released on 21 March 2019). They will be in force from 15 May 2019.

[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. https://eur-lex.europa.eu/legal-content/es/TXT/?uri=CELEX%3A32017R2402

The Executive Commission of the Banco de España, in its role of competent authority for the direct supervision of the less significant credit institutions, adopted these Guidelines as its own on 23 May 2019 within the framework of the competences set out in Article 29.1(e) of the Regulation (supervision of compliance with the due diligence requirements for institutional investors).

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Final Report

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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:

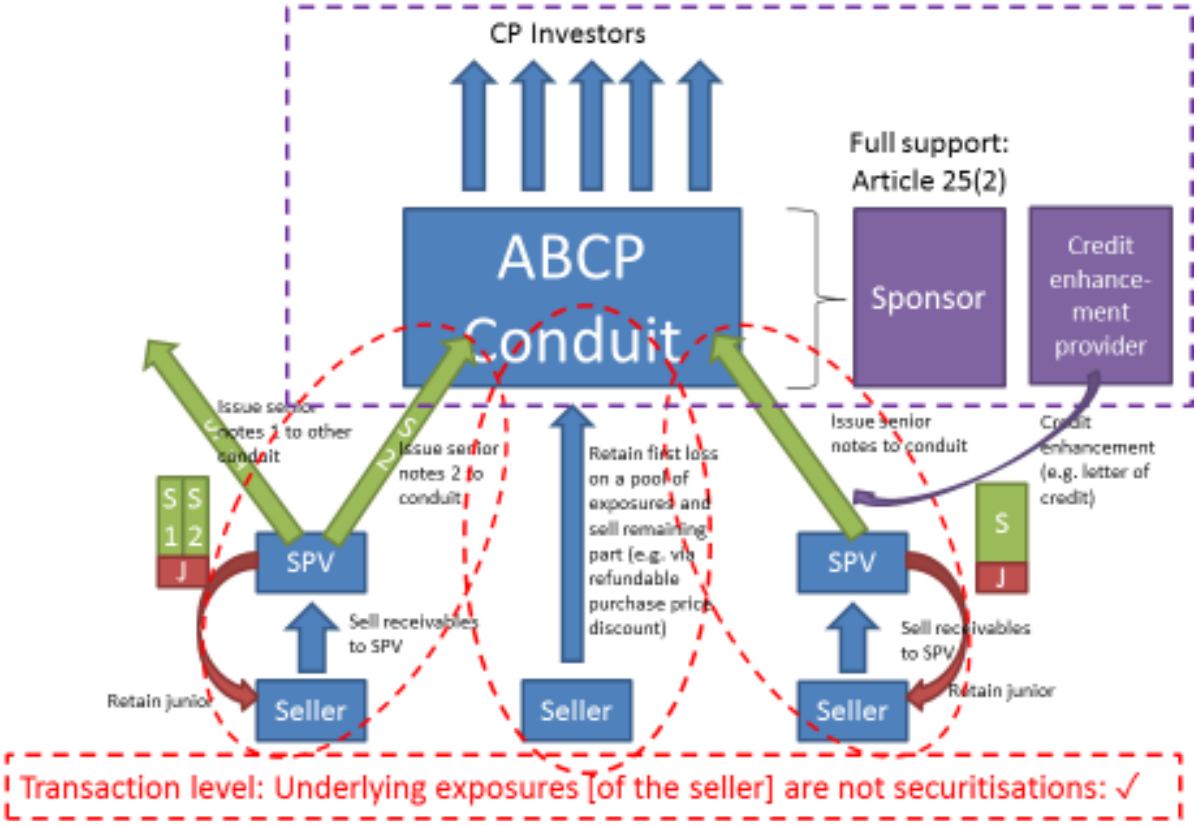
(a) criteria for determining the expertise of the servicer: it is expected that information on the assessment of the expertise should be provided in sufficient detail in the STS notification;

(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

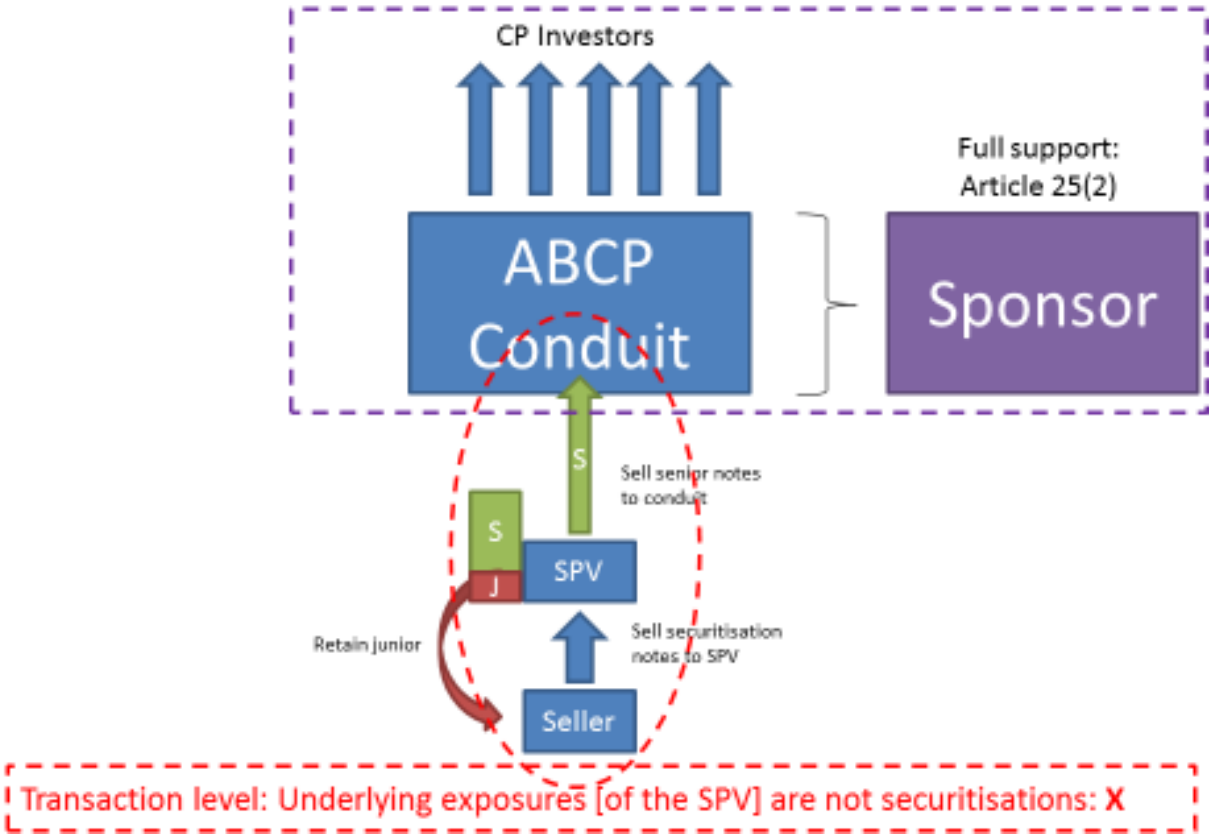
86. Figure 1 provides an example of ABCP transactions that should be deemed compliant with the requirements of Article 24(8) of Regulation (EU) 2017/2402.

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



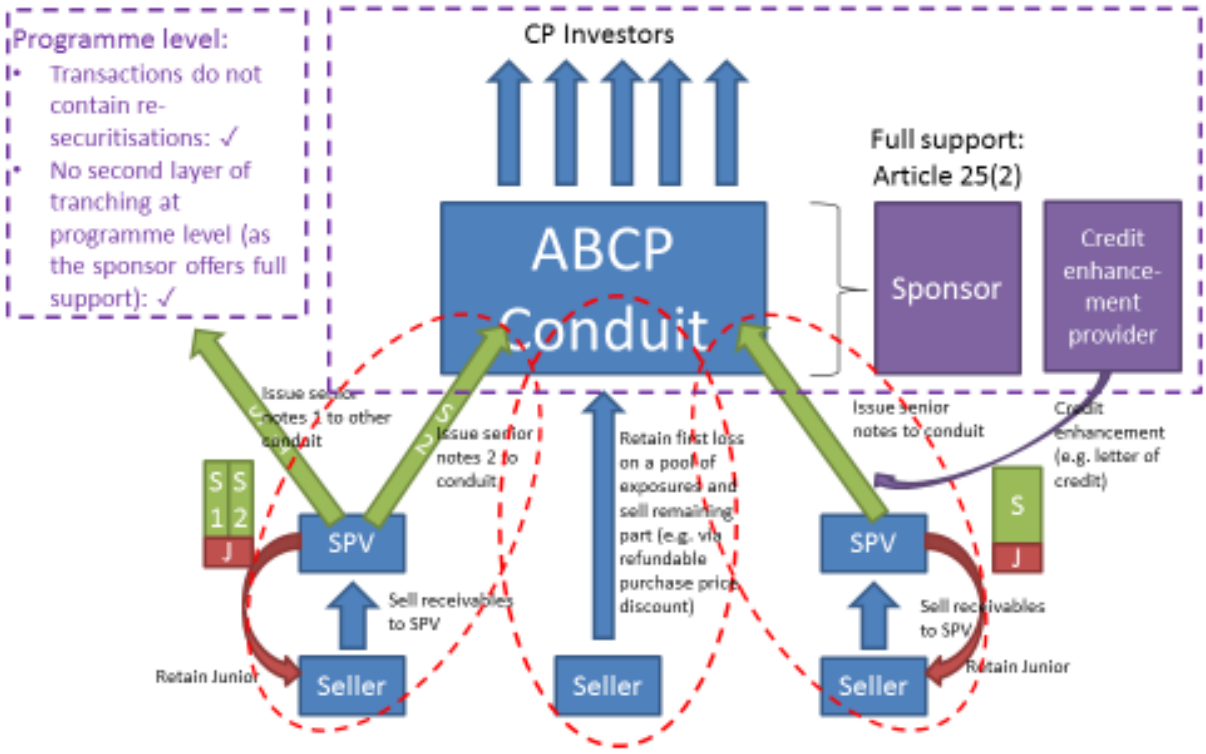
87. Figure 2 provides an example of an ABCP transaction that should not be deemed compliant with the criterion in Article 24(8), so that such an ABCP transaction may not be considered STS, as the exposures transferred by the seller to the SSPE, which constitute the underlying exposures of the junior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

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



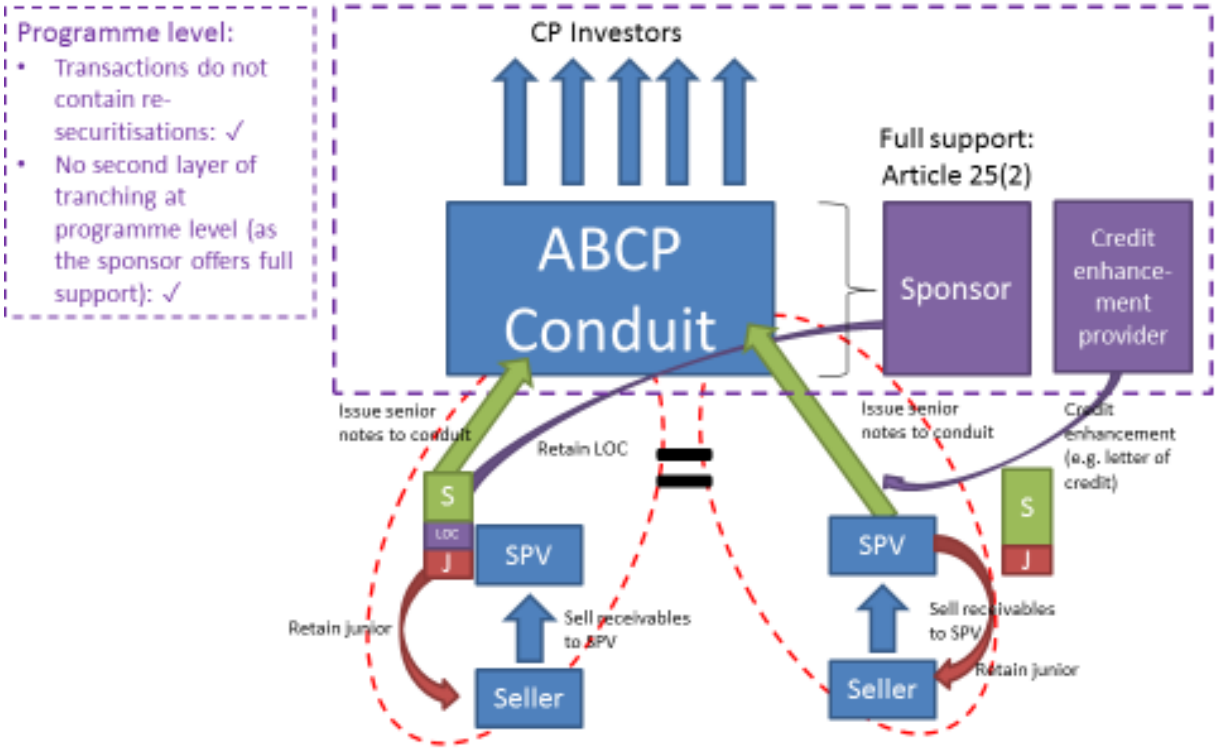
88. Figures 3 and 4 provide examples of credit enhancements that should be deemed compliant with the criterion in Article 26(4) of Regulation (EU) 2017/2402 as further interpreted in these guidelines and with the requirements set out in Article 8(4) of that Regulation. In the example provided in Figure 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



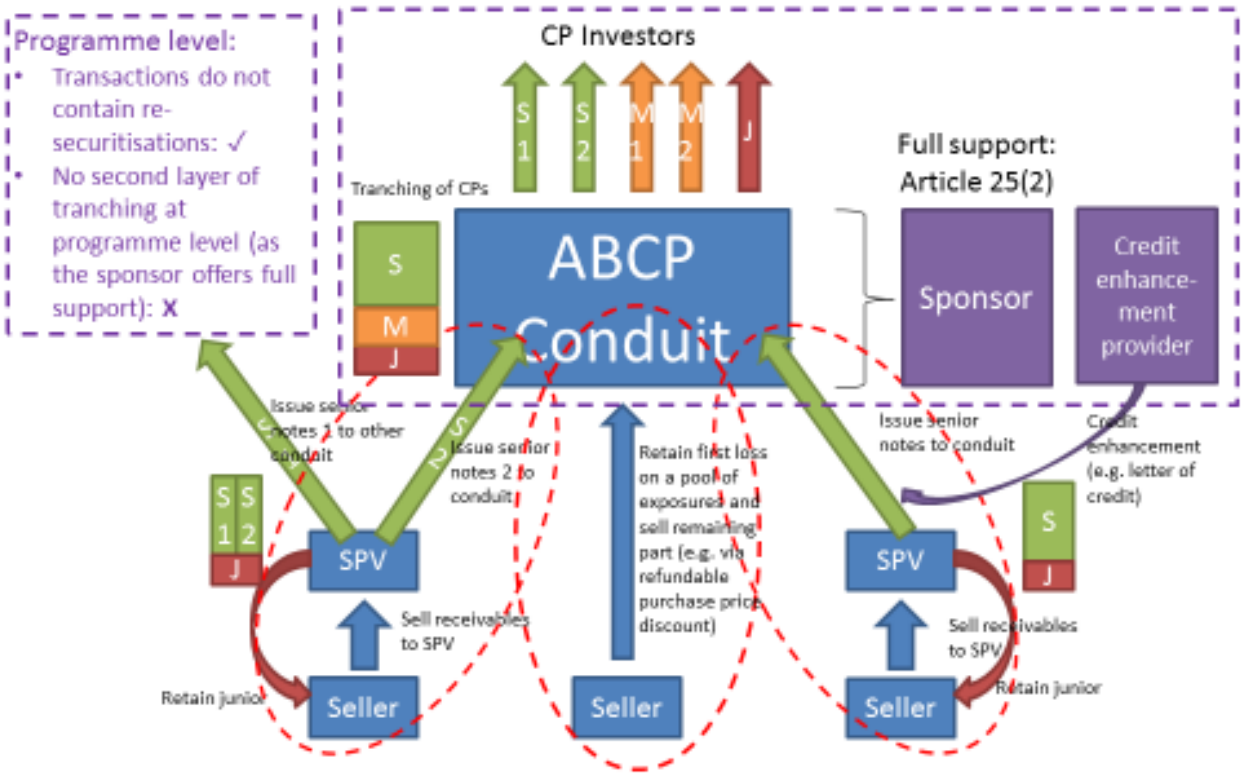
89. In the example provided in Figure 4, in both transactions the first loss - up to the amount of the junior tranche - is taken by the seller, and the second loss - up to the amount of the letter of credit - is taken by the provider of the letter of credit, while the senior loss is taken by the ABCP 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.			