

**Guidelines on the STS criteria for non-ABCP securitisation**  
**(EBA/GL/2018/09)**

The Guidelines have been developed by the European Banking Authority (EBA) according to Article 19(2) of Regulation (EU) No 2017/2402<sup>1</sup> (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 criteria for simple, transparent and standardized non-ABCP securitisation, as set out in Articles 20 to 22 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 STS 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.

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<sup>1</sup> Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012. <https://eur-lex.europa.eu/legal-content/es/TXT/?uri=CELEX%3A32017R2402>

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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).

EBA/GL/2018/09

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12 December 2018

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# Final Report

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on Guidelines

on the STS criteria for non-ABCP securitisation

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# Contents

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<b>1. Executive summary</b>	<b>3</b>
<b>2. Background and rationale</b>	<b>4</b>
<b>3. Guidelines on the STS criteria for non-ABCP securitisation</b>	<b>21</b>
1. Compliance and reporting obligations	23
2. Subject matter, scope and definitions	24
3. Implementation	25
4. Criteria related to simplicity	26
5. Criteria related to standardisation	38
6. Criteria related to transparency	44
<b>4. Accompanying documents</b>	<b>47</b>
4.1 Cost-benefit analysis/impact assessment	47
4.2 Feedback statement	50

# 1. Executive summary

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

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

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

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

## 2. Background and rationale

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1. In January 2018, the new EU securitisation framework, which comprises Regulation (EU) 2017/2402<sup>1</sup> (the Securitisation Regulation) and Regulation (EU) 2017/2401<sup>2</sup> containing targeted amendments to the Capital Requirements Regulation (CRR) with regard to capital treatment of securitisations held by credit institutions and investment firms, entered into force with the aim of building and reviving a sound and safe securitisation market in the EU. Regulation (EU) 2017/2402 establishes a set of criteria for identifying simple, transparent and standardised (STS) securitisation; the amended CRR sets out a framework for a more risk-sensitive regulatory treatment of exposures to securitisations complying with such criteria. In June 2018, a Delegated Regulation entered into force that amends capital treatment of securitisations held by insurance and reinsurance undertakings<sup>3</sup>.
2. Regulation (EU) 2017/2402 establishes two sets of criteria for such STS securitisation, one for term (i.e. non-ABCP) securitisations, and the other for short-term (i.e. ABCP) securitisation. The criteria are largely similar, with a few differences in the criteria for ABCPs, adapted to reflect the specificities of the short-term securitisation: while the criteria for non-ABCP securitisation focus on the simplicity, transparency and standardisation, those for ABCP securitisation focus on the distinction between transaction-, sponsor- and programme-level criteria. In addition, the ABCP criteria include some additional criteria that are not found in the criteria applicable to non-ABCP securitisation, and vice versa.
3. Regulation (EU) 2017/2402 assigns the EBA the mandate to develop, in close cooperation with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), two sets of guidelines and recommendations, by 18 October 2018: (i) guidelines and recommendations that interpret the criteria on simplicity, standardisation and transparency applicable to non-ABCP securitisation; and (ii) guidelines and recommendations that interpret the transaction-level and programme-level criteria applicable to ABCP securitisation (sponsor-level criteria are outside the scope of the EBA's mandate).
4. Concretely, Article 19(2), applicable to non-ABCP securitisation, sets out that 'by 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations

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<sup>1</sup> 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>

<sup>2</sup> 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>

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

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

5. Article 23(3), applicable to ABCP securitisation, establishes a similar mandate for ABCP securitisation, according to which, ‘by 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised interpretation and application of the requirements set out in Articles 24 [Transaction-level requirements] and 26 [Programme-level requirements].’
6. Recital 20 provides additional guidance for both non-ABCP and ABCP securitisation and specifies that ‘implementation of the STS criteria throughout the EU should not lead to divergent approaches. Divergent approaches would create potential barriers for cross-border investors by obliging them to familiarise themselves with the details of the Member State frameworks, thereby undermining investor confidence in the STS criteria. The EBA should therefore develop guidelines to ensure a common and consistent understanding of the STS requirements throughout the Union, in order to address potential interpretation issues. Such a single source of interpretation would facilitate the adoption of the STS criteria by originators, sponsors and investors. ESMA should also play an active role in addressing potential interpretation issues.’
7. Lastly, recital 37 specifies that ‘The requirements for using the designation ‘simple, transparent and standardised’ (STS) are new and will be further specified by EBA guidelines and supervisory practice over time’.
8. The present guidelines address the mandate under Article 19(2) of Regulation (EU) 2017/2402 to interpret the criteria on simplicity, transparency and standardisation applicable to non-ABCP securitisation. The mandate under Article 23(3) to interpret the programme and transaction level criteria for ABCP securitisation is addressed in separate guidelines.
9. In accordance with the mandate, the EBA has developed an interpretation of all STS criteria applicable to non-ABCP securitisation, while focusing on clarifying the main areas of potential unclarity and ambiguity in each criterion.
10. To the extent possible and where appropriate, the existing recommendations in the ‘EBA report on the qualifying securitisation’<sup>4</sup> and the ‘Basel III revisions to the securitisation framework’<sup>5</sup> have been taken into account when developing the interpretation.
11. The main objective of the guidelines is to ensure consistent interpretation and application of the STS criteria by the originators, original lenders, sponsors, SSPEs, investors involved in the STS securitisation, the competent authorities designated to supervise the compliance of the

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<sup>4</sup> The EBA report on qualifying securitisation (July 2015):

<http://www.eba.europa.eu/documents/10180/950548/EBA+report+on+qualifying+securitisation.pdf>

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

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

12. The guidelines are interlinked with the ESMA regulatory technical standards (RTS) and implementing technical standards (ITS) on STS notification<sup>6</sup>. While the EBA guidelines are focused on providing guidance on the content of the STS criteria, the ESMA RTS and ITS are focused on specifying the format for notification of compliance of the STS criteria. It is expected that the guidance in the EBA guidelines for each single STS criterion should be appropriately reflected in the disclosures on the compliance with the STS criteria, in the STS notification, and/or in the transaction documentation, as appropriate.
13. The guidelines aim to cover all the STS criteria in a comprehensive manner. Recommendations may be developed, if necessary, at a later stage to address particular aspects arising from the practical application of Regulation (EU) 2017/2402 and the EBA guidelines. This approach is also consistent with the legal nature of these two legal instruments: while in terms of their legal power they are both non-legally binding instruments subject to the comply or explain mechanism, guidelines are instruments of general application 'erga omnes' (towards all), while recommendations are instruments of specific application, e.g. applying to a particular set of addressees or for a limited period of time only.
14. With respect to the structure of the guidelines, while the main interpretation of the STS criteria is provided in section 3, 'Guidelines on the STS criteria for non-ABCP securitisation', this section, 'Background and rationale', includes additional information on the objectives and rationale of each single criterion and the interpretation that these guidelines focus on.
15. Unless otherwise stated, in this section all references to individual Articles refer to Articles of Regulation (EU) 2017/2402.

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



## 2.1 Background and rationale for the criteria related to simplicity

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

16. The criterion specified in Article 20(1) aims to ensure that the underlying exposures are beyond the reach of, and are effectively ring-fenced and segregated from, the seller, its creditors and its liquidators, including in the event of the seller's insolvency, enabling an effective recourse to the ultimate claims for the underlying exposures.
17. The criterion in Article 20(2) is designed to ensure the enforceability of the transfer of legal title in the event of the seller's insolvency. More specifically, if the underlying exposures sold to the SSPE could be reclaimed for the sole reason that their transfer was effected within a certain period before the seller's insolvency, or if the SSPE could prevent the reclaim only by proving that it was unaware of the seller's insolvency at the time of transfer, such clauses would expose investors to a high risk that the underlying exposures would not effectively back their contractual claims. For this reason, Article 20(2) specifies that such clauses constitute severe clawback provisions, which may not be contained in STS securitisation.
18. Whereas, pursuant to Article 20(2), contractual terms and conditions attached to the transfer of title that expose investors to a high risk that the securitised assets will be reclaimed in the event of the seller's insolvency should not be permissible in STS securitisations, such prohibition should not include the statutory provisions granting the right to a liquidator or a court to invalidate the transfer of title with the aim of preventing or combating fraud, as referred to in Article 20(3).
19. Article 20(4) specifies that, where the transfer of title occurs not directly between the seller and the SSPE but through one or more intermediary steps involving further parties, the requirements relating to the true sale, assignment or other transfer with the same legal effect, apply at each step.
20. The objective of the criterion in Article 20(5) is to minimise legal risks related to unperfected transfers in the context of an assignment of the underlying exposures, by specifying a minimum set of events subsequent to closing that should trigger the perfection of the transfer of the underlying exposures.
21. The objective of the criterion in Article 20(6), which requires the seller to provide the representations and warranties confirming to the seller's best knowledge that the transferred exposures are neither encumbered nor otherwise in a condition that could potentially adversely affect the enforceability of the transfer of title, is to ensure that the underlying exposures are not only beyond the reach not only of the seller but equally of its creditors, and to allocate the commercial risk of the encumbrance of the underlying exposures to the seller.
22. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:

- (a) how to substantiate the confidence of third parties with respect to compliance with Article 20(1): it is understood that this should be achieved by providing a legal opinion. While the guidance does not explicitly require the provision of a legal opinion in all cases, the guidance expects a legal opinion to be provided as a general rule, and omission to be an exception;
- (b) the triggers to effect the perfection of the transfer if assignments are perfected at a later stage than at the closing of the transaction.

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

- 23. The objective of this criterion in Article 20(7) is to ensure that the selection and transfer of the underlying exposures in the securitisation is done in a manner which facilitates in a clear and consistent fashion the identification of which exposures are selected for/transferred into the securitisation, and to enable the investors to assess the credit risk of the asset pool prior to their investment decisions.
- 24. Consistently with this objective, the active portfolio management of the exposures in the securitisation should be prohibited, given that it adds a layer of complexity and increases the agency risk arising in the securitisation by making the securitisation's performance dependent on both the performance of the underlying exposures and the performance of the management of the transaction. The payments of STS securitisations should depend exclusively on the performance of the underlying exposures.
- 25. Revolving periods and other structural mechanisms resulting in the inclusion of exposures in the securitisation after the closing of the transaction may introduce the risk that exposures of lesser quality can be transferred into the pool. For this reason, it should be ensured that any exposure transferred into the securitisation after the closing meets the eligibility criteria, which are no less strict than those used to structure the initial pool of the securitisation.
- 26. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:
  - (a) the purpose of the requirement on the portfolio management, and the provision of examples of techniques which should not be regarded as active portfolio management: this criterion should be considered without prejudice to the existing requirements with respect to the similarity of the underwriting standards in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, which requires that all the underlying exposures in a securitisation be underwritten according to similar underwriting standards;
  - (b) interpretation of the term 'clear' eligibility criteria;

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

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

- 27. The criterion on the homogeneity as specified in the first subparagraph of Article 20(8) has been further clarified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402.
- 28. The objective of the criterion specified in the third sentence in the first subparagraph and in the second subparagraph of Article 20(8) is to ensure that the underlying exposures contain valid and binding obligations of the debtor/guarantor, including rights to payments or to any other income from assets supporting such payments that result in a periodic and well-defined stream of payments to the investors.
- 29. The objective of the criterion specified in the third subparagraph is that the underlying exposures do not include transferable securities, as they may add to the complexity of the transaction and of the risk and due diligence analysis to be carried out by the investor.
- 30. To facilitate consistent interpretation of this criterion, a clarification should be provided with respect to:
  - (a) interpretation of the term ‘contractually binding and enforceable obligations’;
  - (b) a non-exhaustive list of examples of exposures types that should be considered to have defined periodic payment streams. The individual examples are without prejudice to applicable requirements, such as the requirement with respect to the defaulted exposures in accordance with Article 20(11) of Regulation (EU) 2017/2402 and the requirement with respect to the residual value in accordance with Article 20(13) of that regulation.

### **No resecuritisation (Article 20(9))**

- 31. The objective of this criterion is to prohibit resecuritisation subject to derogations for certain cases or for resecuritisation as specified in Regulation (EU) 2017/2402. This is a lesson learnt from the financial crisis, when resecuritisations were structured into highly leveraged structures in which notes of lower credit quality could be re-packaged and credit enhanced, resulting in transactions whereby small changes in the credit performance of the underlying assets had severe impacts on the credit quality of the resecuritisation bonds. The modelling of the credit risk arising in these bonds proved very difficult, also due to high levels of correlations arising in the resulting structures.
- 32. The criterion is deemed sufficiently clear and does not require any further clarification.

## Underwriting standards (Article 20(10))

33. The objective of the criterion specified in the first subparagraph of Article 20(10) is to prevent cherry picking and to ensure that the exposures that are to be securitised do not belong to exposure types that are outside the ordinary business of the originator, i.e. types of exposures in which the originator or original lender may have less expertise and/or interest at stake. This criterion is focused on disclosure of changes to the underwriting standards and aims to help the investors assess the underwriting standards pursuant to which the exposures transferred into securitisation have been originated.
34. The objective of the criterion specified in the second subparagraph of Article 20(10) is to prohibit the securitisation of self-certified mortgages for STS purposes, given the moral hazard that is inherent in granting such types of loans.
35. The objective of the criterion specified in the third subparagraph of Article 20(10) is to ensure that the assessment of the borrower's creditworthiness is based on robust processes. It is expected that the application of this article will be limited in practice, given that the STS is limited to originators based in the EU, and the criterion is understood to cover only exposures originated by the EU originators to borrowers in non-EU countries.
36. The objective of the criterion specified in the fourth subparagraph of Article 20(10) is for the originator or original lender to have an established performance history of credit claims or receivables similar to those being securitised, and for an appropriately long period of time.
37. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:
  - (a) the term 'similar exposures', with reference to requirements specified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402;
  - (b) the term 'no less stringent underwriting standards': independently of the guidance provided in these guidelines, it is understood that, in the spirit of restricting the 'originate-to-distribute' model of underwriting, where similar exposures exist on the originator's balance sheet, the underwriting standards that have been applied to the securitised exposures should also have been applied to similar exposures that have not been securitised, i.e. the underwriting standards should have been applied not solely to securitised exposures;
  - (c) clarification of the requirement to disclose material changes from prior underwriting standards to potential investors without undue delay: the guidance clarifies that this requirement should be forward-looking only, referring to material changes to the underwriting standards after the closing of the securitisation. The guidance clarifies the interactions with the requirement for similarity of the underwriting standards set out

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

- (d) the scope of the criterion with respect to the specific types of residential loans as referred to in the second subparagraph of Article 20(10) and to the nature of the information that should be captured by this criterion;
- (e) clarification of the criterion with respect to the assessment of a borrower's creditworthiness based on equivalent requirements in third countries;
- (f) identification of criteria on which the expertise of the originator or the original lender should be determined:
  - (i) when assessing if the originator or the original lender has the required expertise, some general principles should be set out against which the expertise should be assessed. The general principles have been designed to allow a robust qualitative assessment of the expertise. One of these principles is the regulatory authorisation: this is to allow for more flexibility in such qualitative assessments of the expertise if the originator or the original lender is a prudentially regulated institution which holds regulatory authorisations or permissions that are relevant with respect to origination of similar exposures. The regulatory authorisation in itself should, however, not be a guarantee that the originator or original lender has the required expertise;
  - (ii) irrespective of such general principles, specific criteria should be developed, based on specifying a minimum period for an entity to perform the business of originating similar exposures, compliance with which would enable the entity to be considered to have a sufficient expertise. Such expertise should be assessed at the group level, so that possible restructuring at the entity level would not automatically lead to non-compliance with the expertise criterion. It is not the intention of such specific criteria to form an impediment to the entry of new participants to the market. Such entities should also be eligible for compliance with the expertise criterion, as long as their management body and senior staff with managerial responsibility for origination of similar exposures, have sufficient experience over a minimum specified period.

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

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

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

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

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

- (a) Interpretation of the term 'exposures in default': given the differences in interpretation of the term 'default', the interpretation of this criterion should refer to additional guidance on this term provided in the existing delegated regulations and guidelines developed by the EBA, while taking into account the limitation of scope of that additional guidance to certain types of institutions;
- (b) Interpretation of the term 'exposures to a credit-impaired debtor or guarantor': the interpretation should also take into account the interpretation provided in recital 26 of Regulation (EU) 2017/2402, according to which the circumstances specified in points (a) to (c) of Article 24(9) of that regulation are understood as specific situations of credit-impairedness to which exposures in the STS securitisation may not be exposed. Consequently, other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be outside the scope of this requirement. Moreover, taking into account the role of the guarantor as a risk bearer, it should be clarified that the requirement to exclude 'exposures to a credit-impaired debtor or guarantor' is not meant to exclude (i) exposures to a credit-impaired debtor when it has a guarantor that is not credit impaired; or (ii) exposures to a non-credit-impaired debtor when there is a credit-impaired guarantor;
- (c) Interpretation of the term 'to the best knowledge of': the interpretation should follow the wording of recital 26 of Regulation (EU) 2017/2402, according to which an originator or original lender is not required to take all legally possible steps to determine the debtor's credit status but is only required to take those steps that the originator/original lender usually takes within its activities in terms of origination, servicing, risk management and use of information that is received from third parties. This should not require the originator or original lender to check publicly available information, or to check entries in at least one credit registry where an originator or original lender does not conduct such checks within its regular activities in terms of origination, servicing, risk management and use of information received from third

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

- (d) Interpretation of the criterion with respect to the debtors and guarantors found on the credit registry: it is important to interpret this requirement in a narrow sense to ensure that the existence of a debtor or guarantor on the credit registry of persons with adverse credit history should not automatically exclude the exposure to that debtor/guarantor from compliance with this criterion. It is understood that this criterion should relate only to debtors and guarantors that are, at the time of origination of the exposure, considered entities with adverse credit history. Existence on a credit registry at the time of origination of the exposure for reasons that can be reasonably ignored for the purposes of the credit risk assessment (for example due to missed payments which have been resolved in the next two payment periods) should not be captured by this requirement. Therefore, this criterion should not automatically exclude from the STS framework exposures to all entities that are on the credit registries, taking into account that this would unintentionally exclude a significant number of entities given that different practices exist across EU jurisdictions with respect to entry requirements of such credit registries, and the fact that credit registries in some jurisdictions may contain both positive and negative information about the clients;
- (e) Interpretation of the term ‘significantly higher risk of contractually agreed payments not being made for comparable exposures’: the term should be interpreted with a similar meaning to the requirement aiming to prevent adverse selection of assets referred to in Article 6(2) of Regulation (EU) 2017/2402, and further specified in the Article 16(2) of the Delegated Regulation specifying in greater detail the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402<sup>7</sup>, given that in both cases the requirement (i) aims to prevent adverse selection of underlying exposures and (ii) relates to the comparison of the credit quality of exposures transferred to the SSPE and comparable exposures that remain on the originator’s balance sheet. To facilitate the interpretation, a list is given of examples of how to achieve compliance with the requirement.

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

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

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

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

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

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

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

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

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

- (a) the term 'predominant dependence' on the sale of assets securing the underlying exposures should be further interpreted:
  - (i) when assessing whether the repayment of the holders of the securitisation positions is or is not predominantly dependent on the sale of assets, the following three aspects should be taken into account: (i) the principal balance at contract maturity of underlying exposures that depend on the sale of assets securing those underlying exposures to repay the balance; (ii) the distribution of maturities of such exposures across the life of the transaction, which aims to reduce the risk of correlated defaults due to idiosyncratic shocks; and (iii) the granularity of the pool of exposures, which aims to promote sufficient distribution in sale dates and other characteristics that may affect the sale of the underlying exposures.
  - (i) no types of securitisations should be excluded ex ante from the compliance with this criterion and from the STS securitisation as long as they meet all the requirements specified in the guidance. For example, this criterion does not aim to exclude leasing transactions and interest-only residential mortgages from STS securitisation, provided they comply with the guidance provided and all other applicable STS requirements. However, it is expected that commercial real



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

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

## 2.2 Background and rationale for the criteria related to standardisation

### **Risk retention (Article 21(1))**

47. The main objective of the risk retention criterion is to ensure an alignment between the originators'/sponsors'/original lenders' and investors' interests, and to avoid application of the originate-to-distribute model in securitisation.
48. The content of the criterion is deemed sufficiently clear that no further guidance in addition to that provided by the Delegated Regulation further specifying the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402 is considered necessary.

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

49. The objective of this criterion is to reduce any payment risk arising from different interest-rate and currency profiles of assets and liabilities. Mitigating or hedging interest-rate and currency risks arising in the transaction enhances the simplicity of the transaction, since it helps investors to model those risks and their impact on the credit risk of the securitisation investment.
50. It should be clarified that hedging (through derivative instruments) is only one possible way of addressing the risks mentioned. Whichever measure is applied for the risk mitigation, it should, however, be subject to specific conditions so that it can be considered to appropriately mitigate the risks mentioned.
51. One of these conditions aims to prohibit derivatives that do not serve the purpose of hedging interest-rate or currency risk from being included in the pool of underlying exposures or entered into by the SSPE, given that derivatives add to the complexity of the transaction and to the complexity of the risk and due diligence analysis to be carried out by the investor. Derivatives hedging interest-rate or currency risk enhance the simplicity of the transaction,

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

52. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:
- (a) conditions that the measures should comply with so that they can be considered to appropriately mitigate the interest-rate and currency risks;
  - (b) clarification with respect to the scope of derivatives that should and should not be captured by this criterion;
  - (c) clarification of the term 'common standards in international finance'.

### **Referenced interest payments (Article 21(3))**

53. The objective of this criterion is to prevent securitisations from making reference to interest rates that cannot be observed in the commonly accepted market practice. The credit risk and cash flow analysis that investors must be able to carry out should not involve atypical, complex or complicated rates or variables that cannot be modelled on the basis of market experience and practice.
54. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified:
- (a) the scope of the criterion (by specifying the common types and examples of interest rates captured by this criterion);
  - (b) the term 'complex formulae or derivatives'.

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

55. The objective of this criterion is to prevent investors from being subjected to unexpected repayment profiles and to provide appropriate legal comfort regarding their enforceability, for instances where an enforcement or an acceleration notice has been delivered.
56. STS securitisations should be such that the required investor's risk analysis and due diligence do not have to factor in complex structures of the payment priority that are difficult to model, nor should the investor be exposed to complex changes in such structures throughout the life of the transaction. Therefore, it should be ensured that junior noteholders do not have inappropriate payment preference over senior noteholders that are due and payable.
57. In addition, taking into account that market risk on the underlying collateral constitutes an element of complexity in the risk and due diligence analysis to be carried out by investors, the objective is also to ensure that the performance of STS securitisations does not rely, due to contractual triggers, on the automatic liquidation at market price of the underlying collateral.

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

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

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

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

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

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

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

#### **Transaction documentation (Article 21(7))**

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

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

#### **Expertise of the servicer (Article 21(8))**

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

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

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

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

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

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

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

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

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

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

## **2.3 Background and rationale for the criteria related to transparency**

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

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

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

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

- (a) its application to external data;
- (b) the term 'substantially similar exposures'.

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

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

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

- (a) requirements on the sample of the underlying exposures subject to external verification;
- (b) requirements on the party executing the verification;
- (c) scope of the verification;
- (d) requirement on the confirmation of the verification.

#### **Liability cash flow model (Article 22(3))**

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

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

- (a) interpretation of the term 'precise' representation of the contractual relationships;
- (b) implications when the model is provided by third parties.

### **Environmental performance of assets (Article 22(4))**

78. It should be clarified that this is a requirement of disclosure about the energy efficiency of the assets when this information is available to the originator, sponsor or SSPE, rather than a requirement for a minimum energy efficiency of the assets.
79. To facilitate consistent interpretation of this criterion, the term ‘available information related to the environmental performance’ should be further clarified.

### **Compliance with transparency requirements (Article 22(5))**

80. The objective of this criterion is to ensure that investors have access to the data that are relevant for them to carry out the necessary risk and due diligence analysis with respect to the investment decision.
81. The criterion is deemed sufficiently clear and not requiring any further clarification.

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

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EBA/GL/2018/09

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12 December 2018

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# Guidelines

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## on the STS criteria for non-ABCP securitisation



# 1. Compliance and reporting obligations

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## Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>8</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and the other addressees of the guidelines referred to in paragraph 8 must make every effort to comply with the guidelines.
2. Guidelines set the European Banking Association (EBA) view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

## Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to [compliance@eba.europa.eu](mailto: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).

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

## 2. Subject matter, scope and definitions

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### Subject matter

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

### Scope of application

6. These guidelines apply in relation to the criteria of simplicity, standardisation and transparency of non-ABCP securitisations.
7. Competent authorities should apply these guidelines in accordance with the scope of application of Regulation (EU) 2017/2402 as set out in its Article 1.

### Addressees

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

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<sup>9</sup> Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L347, 28.12.2017, p. 35).

## 3. Implementation

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### Date of application

9. These guidelines apply from 15.05.2019.

## 4. Criteria related to simplicity

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

#### True sale, assignment or transfer with the same legal effect

10. For the purposes of Article 20(1) of Regulation (EU) 2017/2402 and in order to substantiate the confidence of third parties, including third parties verifying simple, transparent and standardised (STS) compliance in accordance with Article 28 of that Regulation and competent authorities meeting the requirements specified therein, all of the following should be provided:
- (a) confirmation of the true sale or confirmation that, under the applicable national framework, the assignment or transfer segregate the underlying exposures from the seller, its creditors and its liquidators, including in the event of the seller's insolvency, with the same legal effect as that achieved by means of true sale;
  - (b) confirmation of the enforceability of the true sale, assignment or transfer with the same legal effect referred to in point (a) against the seller or any other third party, under the applicable national legal framework;
  - (c) assessment of clawback risks and re-characterisation risks.
11. The confirmation of the aspects referred to in paragraph 10 should be achieved by the provision of a legal opinion provided by qualified external legal counsel, except in the case of repeat issuances in standalone securitisation structures or master trusts that use the same legal mechanism for the transfer, including instances in which the legal framework is the same.
12. The legal opinion referred to in paragraph 11 should be accessible and made available to any relevant third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402 and any relevant competent authority from among those referred to in Article 29 of that regulation.

#### Severe deterioration in the seller credit quality standing

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

### Insolvency of the seller

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

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

### Active portfolio management

15. For the purposes of Article 20(7) of Regulation (EU) 2017/2402, active portfolio management should be understood as portfolio management to which either of the following applies:
- (a) the portfolio management makes the performance of the securitisation dependent both on the performance of the underlying exposures and on the performance of the portfolio management of the securitisation, thereby preventing the investor from modelling the credit risk of the underlying exposures without considering the portfolio management strategy of the portfolio manager;
  - (b) the portfolio management is performed for speculative purposes aiming to achieve better performance, increased yield, overall financial returns or other purely financial or economic benefit.
16. The techniques of portfolio management that should not be considered active portfolio management include:
- (a) substitution or repurchase of underlying exposures due to the breach of representations or warranties;
  - (b) substitution or repurchase of the underlying exposures that are subject to regulatory dispute or investigation to facilitate the resolution of the dispute or the end of the investigation;
  - (c) replenishment of underlying exposures by adding underlying exposures as substitutes for amortised or defaulted exposures during the revolving period;
  - (d) acquisition of new underlying exposures during the ‘ramp up’ period to line up the value of the underlying exposures with the value of the securitisation obligations;
  - (e) repurchase of underlying exposures in the context of the exercise of clean-up call options, in accordance with Article 244(3)(g) of Regulation (EU) 2017/2401;
  - (f) repurchase of defaulted exposures to facilitate the recovery and liquidation process with respect to those exposures;

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

### Clear eligibility criteria

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

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

18. For the purposes of Article 20(7) of Regulation (EU) 2017/2402, 'meeting the eligibility criteria applied to the initial underlying exposures' should be understood to mean eligibility criteria that comply with either of the following:
- (a) with regard to normal securitisations, they are no less strict than the eligibility criteria applied to the initial underlying exposures at the closing of the transaction;
  - (b) with regard to securitisations that issue multiple series of securities including master trusts, they are no less strict than the eligibility criteria applied to the initial underlying exposures at the most recent issuance, with the results that the eligibility criteria may vary from closing to closing, with the agreement of securitisation parties and in accordance with the transaction documentation.
19. Eligibility criteria to be applied to the underlying exposures in accordance with paragraph 18 should be specified in the transaction documentation and should refer to eligibility criteria applied at exposure level.

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

### Contractually binding and enforceable obligations

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

### Exposures with periodic payment streams

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

- (a) exposures payable in a single instalment in the case of revolving securitisation, as referred to in Article 20(12) of Regulation (EU) 2017/2402;
- (b) exposures related to credit card facilities;
- (c) exposures with instalments consisting of interest and where the principal is repaid at the maturity, including interest-only mortgages;
- (d) exposures with instalments consisting of interest and repayment of a portion of the principal, where either of the following conditions is met:
  - (i) the remaining principal is repaid at the maturity;
  - (ii) the repayment of the principal is dependent on the sale of assets securing the exposure, in accordance with Article 20(13) of Regulation (EU) 2017/2402 and paragraphs 47 to 49;
- (e) exposures with temporary payment holidays as contractually agreed between the debtor and the lender.

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

##### Similar exposures

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

- (a) the exposures belong to one of the following asset categories referred to in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402:
  - (i) residential loans secured with one or several mortgages on residential immovable property, or residential loans fully guaranteed by an eligible protection provider among those referred to in Article 201(1) of Regulation (EU) No 575/2013 qualifying for credit quality step 2 or above as set out in Part Three, Title II, Chapter 2 of that regulation;
  - (ii) commercial loans secured with one or several mortgages on commercial immovable property or other commercial premises;
  - (iii) credit facilities provided to individuals for personal, family or household consumption purposes;
  - (iv) auto loans and leases;
  - (v) credit card receivables;

- (vi) trade receivables;
- (b) the exposures fall under the asset category of credit facilities provided to micro-, small-, medium-sized and other types of enterprises and corporates including loans and leases, as referred to in Article 2(d) of the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, as underlying exposures of a certain type of obligor;
- (c) where they do not belong to any of the asset categories referred to in points (a) and (b) of this paragraph and as referred to in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous for the purposes of Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, the underlying exposures share similar characteristics with respect to the type of obligor, ranking of security rights, type of immovable property and/or jurisdiction.

#### No less stringent underwriting standards

- 23. For the purposes of Article 20(10) of Regulation (EU) 2017/2402, the underwriting standards applied to securitised exposures should be compared to the underwriting standards applied to similar exposures at the time of origination of the securitised exposures.
- 24. Compliance with this requirement should not require either the originator or the original lender to hold similar exposures on its balance sheet at the time of the selection of the securitised exposures or at the exact time of their securitisation, nor should it require that similar exposures were actually originated at the time of origination of the securitised exposures.

#### Disclosure of material changes from prior underwriting standards

- 25. For the purposes of Article 20(10) of Regulation (EU) 2017/2402, material changes to the underwriting standards that are required to be fully disclosed should be understood to be those material changes to the underwriting standards that are applied to the exposures that are transferred to, or assigned by, the SSPE after the closing of the securitisation in the context of portfolio management as referred to in paragraphs 15 and 16.
- 26. Changes to such underwriting standards should be deemed material where they refer to either of the following types of changes to the underwriting standards:
  - (a) changes which affect the requirement of the similarity of the underwriting standards further specified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402;
  - (b) changes which materially affect the overall credit risk or expected average performance of the portfolio of underlying exposures without resulting in substantially



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

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

### Residential loans

29. For the purposes of Article 20(10) of Regulation (EU) 2017/2402, the pool of underlying exposures should not include residential loans that were both marketed and underwritten on the premise that the loan applicant or intermediaries were made aware that the information provided might not be verified by the lender.
30. Residential loans that were underwritten but were not marketed on the premise that the loan applicant or intermediaries were made aware that the information provided might not be verified by the lender, or become aware after the loan was underwritten, are not captured by this requirement.
31. For the purposes of Article 20(10) of Regulation (EU) 2017/2402, the 'information' provided should be considered to be only relevant information. The relevance of the information should be based on whether the information is a relevant underwriting metric, such as information considered relevant for assessing the creditworthiness of a borrower, for assessing access to collateral and for reducing the risk of fraud.
32. Relevant information for general non-income-generating residential mortgages should normally be considered to constitute income, and relevant information for income-generating residential mortgages should normally be considered to constitute rental income. Information that is not useful as an underwriting metric, such as mobile phone numbers, should not be considered relevant information.

### Equivalent requirements in third countries

33. For the purposes of Article 20(10) of Regulation (EU) 2017/2402, the assessment of the creditworthiness of borrowers in third countries should be carried out based on the following principles, where appropriate, as specified in Directives 2008/48/EC and 2014/17/EC:
  - (a) before the conclusion of a credit agreement, on the basis of sufficient information, the lender assesses the borrower's creditworthiness on the basis of sufficient information, where appropriate obtained from the borrower and, where necessary, on the basis of a consultation of the relevant database;

- (b) if the parties agree to change the total amount of credit after the conclusion of the credit agreement, the lender should update the financial information at its disposal concerning the borrower and should assess the borrower's creditworthiness before any significant increase in the total amount of credit;
- (c) the lender should make a thorough assessment of the borrower's creditworthiness before concluding a credit agreement, taking appropriate account of factors relevant to verifying the prospect of the borrower's meeting his or her obligations under the credit agreement;
- (d) the procedures and information on which the assessment is based should be documented and maintained;
- (e) the assessment of creditworthiness should not rely predominantly on the value of the residential immovable property exceeding the amount of the credit or the assumption that the residential immovable property will increase in value unless the purpose of the credit agreement is to construct or renovate the residential immovable property;
- (f) the lender should not be able to cancel or alter the credit agreement once concluded to the detriment of the borrower on the grounds that the assessment of creditworthiness was incorrectly conducted;
- (g) the lender should make the credit available to the borrower only where the result of the creditworthiness assessment indicates that the obligations resulting from the credit agreement are likely to be met in the manner required under that agreement;
- (h) the borrower's creditworthiness should be re-assessed on the basis of updated information before any significant increase in the total amount of credit is granted after the conclusion of the credit agreement unless such additional credit was envisaged and included in the original creditworthiness assessment.

#### Criteria for determining the expertise of the originator or original lender

34. For the purposes of determining whether an originator or original lender has expertise in originating exposures of a similar nature to those securitised in accordance with Article 20(10) of Regulation (EU) 2017/2402, both of the following should apply:
- (a) the members of the management body of the originator or original lender and the senior staff, other than the members of the management body, responsible for managing the originating of exposures of a similar nature to those securitised should have adequate knowledge and skills in the origination of exposures of a similar nature to those securitised;
  - (b) any of the following principles on the quality of the expertise should be taken into account:

- (i) the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;
- (ii) the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;
- (iii) the involvement of the members of the management body and the senior staff within the governance structure of the function of originating the exposures should be appropriate;
- (iv) in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to origination of exposures of a similar nature to those securitised.

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

- (a) the business of the entity, or of the consolidated group to which the entity belongs for accounting or prudential purposes, has included the originating of exposures similar to those securitised, for at least five years;
- (b) where the requirement referred to in point (a) is not met, the originator or original lender should be deemed to have the required expertise where they comply with both of the following:
  - (i) at least two of the members of the management body have relevant professional experience in the origination of exposures similar to those securitised, at a personal level, of at least five years;
  - (ii) senior staff, other than members of the management body, who are responsible for managing the entity's originating of exposures similar to those securitised, have relevant professional experience in the origination of exposures of a similar nature to those securitised, at a personal level, of at least five years.

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

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

##### **Exposures in default**

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

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

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

#### Exposures to a credit-impaired debtor or guarantor

39. For the purposes of Article 20(11) of Regulation (EU) 2017/2402, the circumstances specified in points (a) to (c) of that paragraph should be understood as definitions of credit-impairedness. Other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be considered to be excluded from this requirement.
40. The prohibition of the selection and transfer to SSPE of underlying exposures 'to a credit-impaired debtor or guarantor' as referred to in Article 20(11) of Regulation (EU) 2017/2402 should be understood as the requirement that, at the time of selection, there should be a recourse for the full securitised exposure amount to at least one non-credit-impaired party, irrespective of whether that party is a debtor or a guarantor. Therefore, the underlying exposures should not include either of the following:
- (a) exposures to a credit-impaired debtor, when there is no guarantor for the full securitised exposure amount;
  - (b) exposures to a credit-impaired debtor who has a credit-impaired guarantor.

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

41. For the purposes of Article 20(11) of Regulation (EU) 2017/2402, the 'best knowledge' standard should be considered to be fulfilled on the basis of information obtained only from any of the following combinations of sources and circumstances:
- (a) debtors on origination of the exposures;
  - (b) the originator in the course of its servicing of the exposures or in the course of its risk management procedures;
  - (c) notifications to the originator by a third party;

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

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

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

#### Credit registry

- 43. The requirement referred to in Article 20(11)(b) of Regulation (EU) 2017/2402 should be limited to exposures to debtors or guarantors to which both of the following requirements apply at the time of origination of the underlying exposure:
  - (a) the debtor or guarantor is explicitly flagged in a credit registry as an entity with adverse credit history due to negative status or negative information stored in the credit registry;
  - (b) the debtor or guarantor is on the credit registry for reasons that are relevant to the purposes of the credit risk assessment.

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

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

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

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

- (a) the underlying exposures do not include exposures that are classified as doubtful, impaired, non-performing or classified to the similar effect under the relevant accounting principles;
- (b) the underlying exposures do not include exposures whose credit quality, based on credit ratings or other credit quality thresholds, significantly differs from the credit quality of comparable exposures that the originator originates in the course of its standard lending operations and credit risk strategy.

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

##### **Scope of the criterion**

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

##### **At least one payment**

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

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

##### **Predominant dependence on the sale of assets**

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

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

- (b) the maturities of the underlying exposures referred to in point (a) are not subject to material concentrations and are sufficiently distributed across the life of the transaction;
- (c) the aggregate exposure value of all the underlying exposures referred to in point (a) to a single obligor does not exceed 2% of the aggregate exposure value of all underlying exposures in the securitisation.

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

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

50. The exemption referred to in the second subparagraph of Article 20(13) of Regulation (EU) 2017/2402 with regard to the repayment of holders of securitisation positions whose underlying exposures are secured by assets, the value of which is guaranteed or fully mitigated by a repurchase obligation of either the assets securing the underlying exposures or of the underlying exposures themselves by another third party or parties, the seller or the third parties should meet both of the following conditions:
- (a) they are not insolvent;
  - (b) there is no reason to believe that the entity would not be able to meet its obligations under the guarantee or the repurchase obligation.

## 5. Criteria related to standardisation

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

#### Appropriate mitigation of interest-rate and currency risks

51. For the purposes of Article 21(2) of Regulation (EU) 2017/2402 in order for the interest-rate and currency risks arising from the securitisation to be considered ‘appropriately mitigated’, it should be sufficient that a hedge or mitigation is in place, on condition that it is not unusually limited with the effect that it covers a major share of the respective interest-rate or currency risks under relevant scenarios, understood from an economic perspective. Such a mitigation may also be in the form of derivatives or other mitigating measures including reserve funds, overcollateralisation, excess spread or other measures.
52. Where the appropriate mitigation of interest-rate and currency risks is carried out through derivatives, all of the following requirements should apply:
- (a) the derivatives should be used only for genuine hedging of asset and liability mismatches of interest rates and currencies, and should not be used for speculative purposes;
  - (b) the derivatives should be based on commonly accepted documentation, including International Swaps or Derivatives Association (ISDA) or similar established national documentation standards;
  - (c) the derivative documentation should provide, in the event of the loss of sufficient creditworthiness of the counterparty below a certain level, measured either on the basis of the credit rating or otherwise, that the counterparty is subject to collateralisation requirements or makes a reasonable effort for its replacement or guarantee by another counterparty.
53. Where the mitigation of interest-rate and currency risks referred to in Article 21(2) of Regulation (EU) 2017/2402 is carried out not through derivatives but by other risk-mitigating measures, those measures should be designed to be sufficiently robust. When such risk-mitigating measures are used to mitigate multiple risks at the same time, the disclosure required by Article 21(2) of Regulation (EU) 2017/2402 should include an explanation of how the measures hedge the interest-rate risks and currency risks on one hand, and other risks on the other hand.
54. The measures referred to in paragraphs 52 and 53, as well as the reasoning supporting the appropriateness of the mitigation of the interest-rate and currency risks through the life of the transaction, should be disclosed.



## Derivatives

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

## Common standards in international finance

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

## 5.2 Referenced interest payments (Article 21(3))

### Referenced rates

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

- (a) interbank rates including the Libor, Euribor and other recognised benchmarks;
- (b) rates set by monetary policy authorities, including FED funds rates and central banks' discount rates;
- (c) sectoral rates reflective of a lender's cost of funds, including standard variable rates and internal interest rates that directly reflect the market costs of funding of a bank or a subset of institutions, to the extent that sufficient data are provided to investors to allow them to assess the relation of the sectoral rates to other market rates.

### Complex formulae or derivatives

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

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

### Exceptional circumstances

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

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

#### Amount trapped in the SSPE in the best interests of investors

61. For the purposes of Article 21(4)(a) of Regulation (EU) 2017/2402, the amount of cash to be considered as trapped in the SSPE should be that agreed by the trustee or other representative of the investors who is legally required to act in the best interests of the investors, or by the investors in accordance with the voting provisions set out in the transaction documentation.
62. For the purposes of Article 21(4)(a) of Regulation (EU) 2017/2402, it should be permissible to trap the cash in the SSPE in the form of a reserve fund for future use, as long as the use of the reserve fund is exclusively limited to the purposes set out in Article 21(4)(a) of Regulation (EU) 2017/2402 or to orderly repayment to the investors.

#### Repayment

63. The requirements in Article 21(4)(b) of Regulation (EU) 2017/2402 should be understood as covering only the repayment of the principal, without covering the repayment of interest.
64. For the purposes of Article 21(4)(b) of Regulation (EU) 2017/2402, non-sequential payments of principal in a situation where an enforcement or an acceleration notice has been delivered should be prohibited. Where there is no enforcement or acceleration event, principal receipts could be allowed for replenishment purposes pursuant to Article 20(12)) of that Regulation.

#### Liquidation of the underlying exposures at market value

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

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

#### Performance-related triggers

66. For the purposes of Article 21(5) of Regulation (EU) 2017/2402, the triggers related to the deterioration in the credit quality of the underlying exposures may include the following:
- (a) with regard to underlying exposures for which a regulatory expected loss (EL) can be determined in accordance with Regulation (EU) 575/2013 or other relevant EU regulation, cumulative losses that are higher than a certain percentage of the regulatory one-year EL on the underlying exposures and the weighted average life of the transaction;

- (b) cumulative non-matured defaults that are higher than a certain percentage of the sum of the outstanding nominal amount of tranche held by the investors and the tranches that are subordinated to them;
- (c) the weighted average credit quality in the portfolio decreasing below a given pre-specified level or the concentration of exposures in high credit risk (probability of default) buckets increasing above a pre-specified level.

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

### Insolvency-related event with regard to the servicer

67. For the purposes of Article 21(6)(b) of Regulation (EU) 2017/2402, an insolvency-related event with respect to the servicer should lead to both of the following:
- (a) it should enable the replacement of the servicer in order to ensure continuation of the servicing;
  - (b) it should trigger the termination of the revolving period.

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

### Criteria for determining the expertise of the servicer

68. For the purposes of determining whether a servicer has expertise in servicing exposures of a similar nature to those securitised in accordance with Article 21(8) of Regulation (EU) 2017/2402, both of the following should apply:
- (a) the members of the management body of the servicer and the senior staff, other than members of the management body, responsible for servicing exposures of a similar nature to those securitised should have adequate knowledge and skills in the servicing of exposures similar to those securitised;
  - (b) any of the following principles on the quality of the expertise should be taken into account in the determination of the expertise:
    - (i) the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;
    - (ii) the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;
    - (iii) the involvement of the members of the management body and the senior staff within the governance structure of the function of servicing the exposures should be appropriate;

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

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

- (a) the business of the entity, or of the consolidated group, to which the entity belongs, for accounting or prudential purposes, has included the servicing of exposures of a similar nature to those securitised, for at least five years;
- (b) where the requirement referred to in point (a) is not met, the servicer should be deemed to have the required expertise where they comply with both of the following:
  - (i) at least two of the members of its management body have relevant professional experience in the servicing of exposures of a similar nature to those securitised, at personal level, of at least five years;
  - (ii) senior staff, other than members of the management body, who are responsible for managing the entity's servicing of exposures of a similar nature to those securitised, have relevant professional experience in the servicing of exposures of a similar nature to those securitised, at a personal level, of at least five years;
  - (iii) the servicing function of the entity is backed by the back-up servicer compliant with point (a).

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

#### Exposures of similar nature

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

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

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

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

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

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

### Clear and consistent terms

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

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

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

73. For the purposes of Article 21(10) of Regulation (EU) 2017/2402, provisions of the transaction documentation that 'facilitate the timely resolution of conflicts between different classes of investors', should include provisions with respect to all of the following:
- (a) the method for calling meetings or arranging conference calls;
  - (b) the maximum timeframe for setting up a meeting or conference call;
  - (c) the required quorum;
  - (d) the minimum threshold of votes to validate such a decision, with clear differentiation between the minimum thresholds for each type of decision;
  - (e) where applicable, a location for the meetings which should be in the Union.
74. For the purposes of Article 21(10) of Regulation (EU) 2017/2402, where mandatory statutory provisions exist in the applicable jurisdiction that set out how conflicts between investors have to be resolved, the transaction documentation may refer to these provisions.

## 6. Criteria related to transparency

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

#### Data

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

#### Substantially similar exposures

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

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

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

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

#### Sample of the underlying exposures subject to external verification

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

#### Party executing the verification

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

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

- (b) it is none of the following:
  - (i) a credit rating agency;
  - (ii) a third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402;
  - (iii) an entity affiliated to the originator.

### Scope of the verification

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

- (a) verification of the compliance of the underlying exposures in the provisional portfolio with the eligibility criteria that are able to be tested prior to issuance;
- (b) verification of the fact that the data disclosed to investors in any formal offering document in respect of the underlying exposures is accurate.

### Confirmation of the verification

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

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

### Precise representation of the contractual relationship

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

### Third parties

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

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

### Available information related to the environmental performance

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



## 4. Accompanying documents

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### 4.1 Cost-benefit analysis/impact assessment

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

#### Problem identification

2. The guidelines have been developed in accordance with the mandate assigned to the EBA in Article 19(2) of Regulation (EU) 2017/2402 (Regulation (EU) No 2017/2402), which requests the EBA to develop guidelines on the harmonised interpretation and application of the criteria on STS for the non-ABCP securitisation.
3. The guidelines are expected to play a crucial role in the consistent and correct implementation of the STS criteria, and the new EU securitisation framework in general. They should lead to consistent interpretation and application of the criteria by the originators, sponsors, SSPEs and investors involved in the STS securitisation, the competent authorities designated to supervise the compliance of the entities with the criteria, and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402. The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is a prerequisite for the application of preferential risk weights under the amended capital framework, as well as by severe sanctions imposed by Regulation (EU) 2017/2402 for negligence or intentional infringement of the STS criteria. The guidelines are also directly interlinked with ESMA mandates, such as with the ESMA RTS on the STS notifications. Lastly, the guidelines will be applied on a cross-sectoral basis, i.e. by different types of financial institutions that will act as originators, original lenders, investors, sponsors and SSPEs with respect to the STS securitisation) as well as by a large number of competent authorities that will be designed to supervise the compliance of such market participants with the STS criteria.

#### Policy objectives

4. The main objective of the guidelines is to ensure harmonised interpretation and application of the STS criteria, and a common and consistent understanding of the STS criteria throughout the Union.
5. The introduction of the simple, transparent and standardised securitisation product, and establishment of the criteria that such a product need to comply with, are a core pillar of the new EU securitisation framework, consisting of Regulation (EU) 2017/2402 and accompanying changes in the CRR for credit institutions and investment firms, which entered into force in the

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

6. The guidelines should therefore contribute to the original general objective of this reform, which is to revive a safe securitisation market by introducing STS securitisation instruments, which address the risks inherent in highly complex, opaque and risky securitisation instruments and are clearly differentiated from such complex structures. This should lead to improvement of the financing of the EU economy, weakening the link between banks deleveraging needs and credit tightening in the short run, and creating a more balanced and stable funding structure for the EU economy in the long run.
7. By playing an important role in the effective implementation of the new EU securitisation framework, the guidelines should also contribute to the general objective of the EBA, which is to ensure a high, effective and consistent level of EU regulation, and hence maintain the stability of the EU financial system.

#### Baseline scenario

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

#### Assessment of the option adopted

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

### Cost-benefit analysis

10. It is expected that implementation of the guidelines will bring about substantial benefits for the originators, original lenders, investors, sponsors, SPEs, competent authorities and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402, given that it should provide a single source of interpretation of the STS criteria and should therefore substantially facilitate their consistent adoption across the EU.
11. The guidelines should help achieve the objectives of the new EU securitisation framework as set out above, in a more efficient and effective way. They should help introduce an immediately recognisable STS product in EU securitisation markets, increase investors' trust in the STS products that will be eligible for a more risk sensitive capital treatment and thereby allow investors and originators to reap the benefits of simple, transparent and standardised instruments.
12. With respect to the costs, while it is expected that the implementation of the new EU securitisation framework itself will be accompanied by considerable administrative, compliance and operational costs for both market participants and competent authorities<sup>10</sup>, the guidelines should contribute to the mitigation of such costs, by providing clarity on Level 1 requirements. Beyond the costs for market participants and competent authorities to adapt to the new regulatory framework, there should be no relevant social and economic costs.
13. It is assessed that the guidelines will affect a large number of stakeholder groups. Given the inherently cross-sectoral nature of the securitisation, different types of prudentially regulated and non-regulated institutions and other entities will be brought under the scope of Regulation (EU) 2017/2402 and the guidelines, on both the origination and investment sides. The guidelines will also need to be implemented by the competent authorities that will be designated to supervise the compliance of the market participants with the STS criteria. In addition, third parties that will be authorised to verify compliance with the STS criteria in accordance with Article 28 of Regulation (EU) 2017/2402 will need to rely on the interpretation provided in the guidelines.
14. It is expected that costs and benefits related to the implementation of the guidelines will be ongoing, and applicable for each single securitisation instrument issued.

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<sup>10</sup> 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](https://ec.europa.eu/info/publications/impact-assessment-accompanying-proposals-securitisation_en)

## 4.2 Feedback statement

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

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

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

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

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

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

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

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

- True sale, assignment or transfer with the same legal effect (Article 20(1)-(5)): in response to concerns about the requirement to provide the legal opinion to confirm the true sale in all cases, the guidance expects the legal opinions to be provided as a general rule and omission to be an exception.
- Underwriting standards (Article 20(10)): concerns were raised about the strict guidance with respect to the requirement to 'disclose material changes from prior underwriting standards', which would require disclosure of changes made up to five years prior to the securitisation. It was proposed that that this requirement should be only forward-looking, i.e. requiring disclosure of material changes only following the issuance of securitisation. Taking into account the existing disclosure requirement on the underwriting standards in prospectus, the guidance has been amended to refer to changes to underwriting standards only from the closing of the transaction.
- Exposures in default and to credit-impaired debtors/guarantors (Article 20(11)): concerns were raised about the guidance that only exposures where neither the debtor nor the guarantor is credit impaired can be included in the securitisation. The guidance has been

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

- No predominant dependence on the sale of assets (Article 20(13)): concerns were raised about the conditions specified in the guidance that determine in which cases the repayment of investors 'predominantly' depends on the sale of assets (value of assets no more than 30% of the total exposure value, no material concentration of dates of sales, granularity more than 500 exposures). While the guidance keeps the requirement preventing the material concentration of dates of sale of assets unchanged, it includes an amended percentage to determine the 'predominant' dependence, which has been raised to 50%. The guidance has also been amended to ensure a maximum concentration limit for exposures to a single obligor of 2%.
- Appropriate mitigation of interest-rate and currency risks (Article 21(2)): the requirements with respect to the derivatives have been adjusted and simplified to ensure a balanced approach to interpretation of the term 'appropriate mitigation'.

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

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

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

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

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



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

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

triggers in the transaction to include events corresponding to sub-paragraphs (a) and (c) of Article 20(5).

#### Representations and warranties (Article 20(6))

##### Q5. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Difficult or impossible to obtain representations and warranties (paragraph 16)	Several respondents expressed their concerns that the representations and warranties could not be provided in some situations, such as when there is no direct relationship between the seller and original lender as a result of multiple times of asset purchases and sales; or when the assets are acquired from insolvency officials or resolution authority. The guidance was also considered inconsistent with the Level 1 text, which is focused on provision of the representations and warranties by the seller.	It is noted that the guidance does not provide additional value to the Level 1 text, while it raises additional complexities, and it has therefore been deleted.	Paragraph 16 has been deleted.
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#### Eligibility criteria for the underlying exposures/active portfolio management (Article 20(7))

##### Q6. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Clear eligibility criteria (paragraph 20)	A few respondents suggested extending the interpretation of the term 'clear eligibility criteria' to clarify that the eligibility criterion is 'clear' if a court or other tribunal could determine whether the criterion was met or not, whether as a matter of fact or law or both.	The wording of the guidance has been enhanced to acknowledge that there may be questions of pure fact or mixed fact and law that are not appropriate for purely legal determination.	Paragraph 20 has been amended.
Eligibility criteria to be met for exposures transferred to the SSPE after the closing of the transaction (paragraph 21)	A number of respondents pointed out that the guidance should be clarified for the master trusts or other repeat issuance securitisation structures such that exposures transferred to the SSPE after any given closing of a transaction should have to meet the eligibility criteria applied as at the most recent closing, but that the eligibility criteria may be varied from closing to closing. Therefore, the consistency of the eligibility of criteria should be met at the level of each issuance so that if a new issuance occurs and new assets will	The guidance has been extended with respect to the repeat issuance structures and it clarifies that the eligibility criteria applied to exposures transferred to the SSPE after the closing should be no less strict than the eligibility criteria applied to the initial underlying exposures at the most recent issuance.	Paragraph 21 has been amended.

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

**Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 20(8))**
**Q8. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.**

Exposures with periodic payment streams	Some respondents proposed clarifying further that the list of examples of exposures with periodic payment streams is non-exhaustive. In addition, they provided examples of exposures that should be considered exposures with defined period payment streams.	The wording of the guidance (in particular the use of the term 'include') ensures that the list of examples is non-exhaustive. The non-exhaustive list of examples has been extended to include some specific types of exposures that are considered to have periodic payment streams consistently with the Level 1 requirements.	Paragraph 24 has been amended.
Contractually binding and enforceable obligations (paragraphs 22-23)	One respondent asked that the guidelines clarify that 'with full recourse to debtors' (Article 20(8)) should not be read as excluding leases where the lessee has the option to return the vehicle under certain conditions during the life of the lease or at maturity, or other specific limitations on recourse in certain jurisdictions, such as exposures with voluntary termination rights.	Following the legal review, and given the lack of clarity with respect to possible interpretations of the guidance in paragraph 23, paragraph 23 has been deleted.	Paragraph 23 has been deleted.

**Q9. Do you believe that additional guidance should be provided in these guidelines with respect to the homogeneity requirement, in addition to the requirements specified in the Delegated Regulation (EU) 2018/.... further specifying which underlying exposures are deemed homogeneous?**

Further clarification of the homogeneity requirement	The majority of respondents agreed that no further clarification of the homogeneity requirement, in addition to that in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, was necessary. One respondent asked if the guidelines could provide examples of 'homogeneous' transactions.	Given that the majority of respondents supported no further clarifications on homogeneity in the STS guidelines, and that many of the concerns raised on this point have already been addressed in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, no further clarifications regarding the homogeneity requirement are made in the final guidelines.	No change.
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<b>Underwriting standards, originator's expertise (Article 20(10))</b>			
<b>Q10. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.</b>			
No less stringent underwriting standards (paragraphs 26-27)	One respondent asked for further clarification on how to apply this criterion in the case, for example, of a mortgage origination platform where all (or all eligible) exposures originated are securitised, i.e. to clarify that, where the originator or original lender securitises all or substantially all of the exposures (or eligible exposures) it originates, this element of Article 20(10) does not apply.	It is understood that this example is consistent with the Level 1 requirement and the guidance.	No change.
Originators who purchase a third party's exposures on their own account and then securitise them	One respondent proposed that originators who, under Regulation (EU) 2017/2402 Article 2(3)(b), purchase a third party's exposures on their own account and then securitise them should meet the underwriting requirements as set out in Article 10 paragraph 1 by applying similar due diligence to exposures to be securitised to those which are not to be securitised.	The requirement set out in Article 10 paragraph 1 refers to 'the originator or original lender'. Therefore, in this case the original lender would need to meet the requirements set out under this paragraph.	No change.
Originator expertise regarding servicing and collection standards	One respondent suggested that the 'no less stringent underwriting standards' requirements should also refer to servicing and collections policies.	Quality of servicing is covered in the requirement for the servicer to have well-documented and adequate policies, procedures and risk management controls relating to the servicing of exposures in Article 21(8) of Regulation (EU) 2017/2402, and it is therefore not necessary to cover it here.	No change.
Disclosure of changes to underwriting standards (paragraphs 28-29)	A number of respondents argued that the requirement for the disclosure of changes to underwriting standards applied over a period of five years was unduly burdensome to the originators, with limited benefit for investors. A number of respondents proposed that the requirement to disclose material changes should be forward-looking only (from the date of establishment or last disclosure in an offering document). They argued that this, when combined with a summary description of the underwriting standards	The EBA acknowledges that this requirement is forward-looking only. The guidance has been amended to refer to changes to underwriting standards only from the closing of the transaction. Practically, this relates to underwriting standards of exposures that are transferred to securitisation after the closing in the context of portfolio management.	Paragraph 28a has been deleted.

	disclosed before closing (in the offering document, prospectus or similar), would achieve the relevant regulatory objectives.		
Definition of 'material' changes (paragraph 28)	Some respondents asked for a higher bar or further clarification with respect to the 'material changes' to be disclosed after the origination of the securitisation.	<p>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.</p> <p>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).</p> <p>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</p>	Paragraph 28 has been amended.

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



the type that give rise to the securitised exposures, and if no such standards are used then the criterion should be treated as inapplicable.

**Q11. Do you agree with this balanced approach to the determination of the expertise of the originator? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?**

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

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

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

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

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

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

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

	<p>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.</p> <p>One respondent proposed that the denominator consider only securitisation positions held by investors.</p>	<p>of the underlying exposures that depend on the sale of the assets.</p> <p>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.</p>	
Voluntary termination	<p>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.</p>	<p>It is understood that during a stress in market conditions it is more likely that individuals exercise their voluntary termination rights (as the value of their car or equipment has fallen), so they act in a similar way to other types of exposures where the principal depends on the sale of assets that are considered under Article 20(13).</p> <p>Therefore, exposures that are subject to voluntary termination should be considered under the scope of the requirement.</p>	No change.
Timing of the requirement	<p>One respondent requested clarification regarding whether the requirement applied at the initiation of the transaction/revolving period or on an ongoing basis.</p>	<p>The guidance has been amended to clarify that paragraph 53(a)-(c) is applicable (i) at the transaction inception, in cases of amortising securitisation, or (ii) during the revolving period for only replenishing transactions.</p>	Paragraph 53 has been amended.
<b>REQUIREMENTS RELATED TO STANDARDISATION</b>			
<b>Appropriate mitigation of interest-rate and currency risks (Article 21(2))</b>			
<b>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.</b>			
No interest-rate and currency risks	<p>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.</p>	<p>It is understood that this reading is consistent with the Level 1 requirement.</p>	No change.



Derivatives (paragraph 57)	<p>A number of comments were received from some respondents on the paragraph with respect to derivatives, including disagreement with the limited list of counterparties, and a request to clarify that the measure of creditworthiness of the derivative counterparty does not need to be tied to a rating. In addition, several respondents found excessively burdensome the requirement to demonstrate the appropriateness of the mitigation of interest-rate and currency risk through derivatives in a sensitivity analysis illustrating the effectiveness of the hedge. They also requested more clarity on the scenarios to be used. It was also noted that the requirement would discourage the use of derivatives and make due diligence by investors more complex.</p>	<p>The requirements with respect to the derivatives have been adjusted to ensure a balanced approach to interpretation of the term ‘appropriate mitigation’. The list of counterparties has been deleted and the focus is now on a general requirement for a sufficient creditworthiness of the counterparty, without imposing unnecessary limitations on the types of counterparties. The requirement for the sensitivity analysis has been deleted, also taking into account that no similar requirement exists for the non-derivative instruments.</p>	Paragraph 57 has been amended.
Non-derivative instruments (paragraph 58)	<p>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.</p>	<p>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.</p> <p>The guidance should allow for the non-derivative instruments to cover multiple risks as long as an explanation is provided of how the measures hedge the interest-rate risks and currency risks on one hand and other risks on the other hand.</p>	Paragraph 58 has been amended.
Continuous disclosure (paragraph 59)	<p>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.</p>	<p>While the requirement for the disclosure has been kept, the requirement has been amended to no longer require such disclosure on a continuous basis.</p> <p>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.</p>	Paragraph 59 has been amended.

**Referenced interest payments (Article 21(3))**
**Q20. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.**

Referenced rates (paragraph 62)	Some respondents proposed that the standard variable rates that are widely used in the residential mortgage market should be allowed. Other respondents noted that successors of Libor and Euribor should also be allowed.	It is acknowledged that standard variable rates are commonly used and should be allowed, as long as sufficient data are provided to investors to allow them to assess their relation to other market rates. Taking into account that LIBOR and EURIBOR will soon be replaced, a reference to future recognised benchmarks has been included in the guidance.	Paragraph 62 has been amended.
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**Requirements in case of enforcement or delivery of an acceleration notice (Article 21(4))**
**Q21. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.**

Amount trapped in the SSPE in the best interests of investors (paragraph 67)	A few respondents proposed to remove the reference to 'in the next payment period' to allow the use of the reserve fund for as long as necessary in the best interests of investors. One respondent proposed clarifying that the money does not need to be held in a segregated account, but can be retained in the SSPE operating account and any balance included in available funds for the next period.	The reference to 'in the next payment period' has been removed to allow the use of a reserve fund for a longer period as long as the use of the reserve fund is exclusively limited to the purposes set out in Article 21(4)(a) or to the orderly repayment to the investors. The EBA does not agree with the interpretation that the money does not need to be held in a segregated account. The Level 1 text is clear in referring to a trapped amount.	Paragraph 67 has been amended.
Repayment (paragraph 68)	A number of respondents disagreed with the proposal that the sequential repayment should apply within sub-classes. It was argued that it is very common that contractual terms include non-sequential arrangements for sub-classes, with different variations between going-concern and post-enforcement/early amortisation scenarios. A number of respondents also noted that the introduction of a mandatory sequential redemption in Article 21(4) has led to some uncertainty about the requirements of such sequential redemption, as in practice transactions often provide for	It is acknowledged that the requirement with respect to sub-classes may pose complications, also taking into account differing terminologies between the transactions applied with respect to sub-classes. The reference to sub-classes has therefore been deleted. A new clarification has been included in the guidance that the requirements in Article 21(4)(b) cover only the repayment of the principal, without covering the payment of interests. In addition, it is clear that Article 21(4) covers only a phase of the transaction when	Paragraph 68 has been amended.

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

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

**Q26. Do you agree with this balanced approach to the determination of the expertise of the servicer? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?**

Criteria for determining the experience of the servicer (paragraphs 74-76)	Several respondents supported the approach that the requirements for the determination of the expertise of the servicer should be aligned with those of the originator. Additional comments (from a limited number of respondents) included the following: (i) the requirements should be applicable only to servicers without experience or those not subject to prudential regulation requirements; (ii) five years' length of experience should be the minimum; (iii) the five years requirement could impact negatively on the diversification of the knowledge of the team; (iv) the terms 'management body' and 'senior staff' should be further defined.	Given the support, no major changes have been introduced in the guidance apart from aligning the guidance with the requirements applicable to originators.	Paragraphs 74-76 have been slightly amended.
Back-up servicing function (paragraph 75(b)(i ii))	One respondent did not agree with the requirement for the back-up servicing function.	It should be clarified that the back-up servicing function is required only in cases where the servicer is a newly established entity, to ensure that there is a minimum level of experience of newly constituted servicing entities. The back-up service function is not required for well-established servicers. In addition, the non-existence of a back-up servicer should not restrict the servicer from being assessed for the required expertise against the general principles mentioned in paragraph 74.	No change.

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

**Q27. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.**

Clear and consistent terms (paragraph 70)	A few respondents noted that additional clarification would be welcome on the following points: (i) whether a generic description of the origination/servicing process is deemed sufficient; (ii) that the templates and processes may change over time, without the changes being necessarily material. It	The guidance is clear in specifying that 'clear' does not focus on the level of detail. In addition, the Level 1 text specifies that 'any change in the priorities of payments which will materially adversely affect the repayment shall be reported to investors', and therefore focuses on only	Minor amendment to paragraph 79.
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	should be clarified that no update is necessary unless the change is significant.	material changes. No additional clarification is considered necessary.	
<b>Resolution of conflicts between different classes of investors (Article 21(10))</b>			
<b>Q28. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.</b>			
Clear provisions facilitating the timely resolution of conflicts between different classes of investors (paragraph 80)	<p>A few respondents suggested amending the guidance so that the required documentation provides for a maximum time for the organisation of a meeting and not the maximum time for the resolution of the conflict, as the latter is difficult to guarantee in advance.</p> <p>A few respondents highlighted that in a number of EU (civil law) jurisdictions there are mandatory legal provisions that set out how conflicts between investors have to be resolved. The guidelines should clarify that, where such provisions apply, it is sufficient for the documentation to refer to them.</p>	<p>The comments have been noted. The guidance has been amended so that it solely refers to the documentation, providing for a maximum time for the organisation of a meeting (and not the maximum time for the resolution of the conflict).</p> <p>In the same vein, the amended guidance also clarifies that, where legal provisions apply on how to resolve conflicts between investors, a reference to them should be deemed sufficient for the purpose of Article 21(10).</p>	Paragraph 80 has been amended.
<b>REQUIREMENTS RELATED TO TRANSPARENCY</b>			
<b>Data on historical default and loss performance (Article 22(1))</b>			
<b>Q29. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.</b>			
Data (paragraph 81)	<p>A few respondents suggested clarifying that, when static and dynamic data are not both available, only one method should be required, depending on data availability (for instance, for securitisations of short-term receivables a static presentation is not possible). Other respondents suggested that, when an originator cannot provide at least five years of historical default data, the securitisation should not be considered STS. Moreover, they did not favour the use of external data for the purpose of STS.</p>	Regulation (EU) 2017/2402 clearly says that the originator and the sponsor shall make available data on static 'and' dynamic historical default and loss performance.	No change.
Substantially similar exposures (paragraph 82)	<p>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</p>	The inconsistency has been noted. To ensure the workability of the guidance, it has been clarified that the test is used only to identify which exposures are	Paragraph 82 has been amended.

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

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



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

to be verified, as part of the STS process, is the identity of the person that assumes responsibility for the Article 7 disclosures. Another reading is that Article 22(5) imports into the STS criteria all the Article 7 disclosure requirements. According to this interpretation (importation of Article 7 requirements into STS), the issuer would need to certify the Article 7 disclosures and a third party verifying the STS compliance would need to verify all such disclosures. The interpretations differ in terms of the scope of work and liability.

transparency requirements as specified in Article 7, these being by the parties jointly responsible for STS notification in accordance with Article 27(1) of that regulation, i.e. the originator and the sponsor. With respect to the enquiry by the respondent, it is understood that the second reading (as mentioned in the comment from the respondent) is consistent with the Level 1 text.

#### **Non-specified Articles of Regulation (EU) 2017/2402**

**Q35. Do you agree that no other requirements are necessary to be specified further? If not, please provide reference to the relevant provisions of the STS Regulation and their aspects that require such further specification.**

Proposed comments have been included under the questions above.