

EBA/CP/2018/04

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Consultation Paper

Draft Guidelines on the STS criteria for ABCP securitisation

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 9.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 20 July 2018. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

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

The main objective of the guidelines is to provide a single point of consistent interpretation of the transaction-level and programme-level criteria for ABCP securitisation by the originators, sponsors, SSPEs, investors and competent authorities throughout the Union.

The guidelines are focused on clarifying and ensuring common understanding of all the transaction-level and programme-level criteria for ABCP securitisation specified in the Securitisation Regulation. The interpretations follow the principle of proportionality i.e. the comprehensiveness of the interpretation is reflective of the perceived level of ambiguity or uncertainty embedded in each criterion.

The guidelines will be applied on a cross-sectoral basis throughout the Union with the aim of facilitating the adoption of the criteria, which is one of 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 with the aim to build and revive a sound and safe securitisation market in the EU.

Next steps

The proposed guidelines are published for a three months public consultation, from 20 April 2018 to 20 July 2018. Following their finalisation, they will be translated into the official EU languages and published on the EBA website.

3. Background and rationale

1. In January 2018 the new EU securitisation framework, which comprises of the Regulation (EU) 2017/2402¹ (later referred to as the Securitisation Regulation) and of the Regulation (EU) 2017/2401² containing targeted amendments to the CRR with regards to securitisation, has entered into force with the aim to build and revive a sound and safe securitisation market in the EU. The Securitisation Regulation establishes a set of criteria for identifying simple, transparent and standardised (STS) securitisation, while the amended CRR sets out a framework for a more risk-sensitive regulatory treatment of exposures to securitisations complying with such criteria.
2. The Securitisation Regulation establishes two sets of criteria for such STS securitisation, for term (i.e. non-ABCP) securitisations, and for short-term (i.e. ABCP) securitisations, respectively. The criteria are largely similar, with a few differences in the criteria for ABCPs, adapted to reflect the specificities of the short term securitisation: while the criteria for non-ABCP securitisation focus on the distinction between simplicity, transparency and standardisation, those for ABCP securitisation focus on the distinction between transaction, sponsor and programme level criteria. In addition, the ABCP criteria include some additional criteria that are not found in the criteria applicable to non-ABCP.
3. The Securitisation Regulation assigns the EBA the mandate to develop two sets of guidelines and recommendations, by 18 October 2018: (i) first, guidelines and recommendations interpreting the criteria on simplicity, standardisation and transparency applicable to non-ABCP securitisation; and (ii) second, guidelines and recommendations interpreting the transaction level and programme level criteria applicable to ABCP securitisation (sponsor level criteria are outside of the scope of the EBA mandate).
4. Concretely, Article 19(2) applicable to non-ABCP securitisation sets out that *“by 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised 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*

¹ Securitisation Regulation: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2402&from=EN>

² Amendments to the CRR: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2401&from=EN>

requirements set out in Articles 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 draft guidelines address the mandate under Article 23(3) of the Securitisation Regulation to interpret transaction-level and programme-level criteria applicable to ABCP securitisation. The mandate under Article 19(2) to interpret the criteria with respect to the simplicity, transparency and standardisation of non- ABCP securitisation is addressed in separate guidelines.
9. In accordance with the mandate, the EBA has developed interpretation of all STS criteria applicable to ABCP securitisation, while focusing on clarifying the main areas of unclarity and ambiguity embedded in each criterion. The interpretations follow the principle of proportionality i.e. the comprehensiveness of the interpretation is reflective of the perceived level of ambiguity or uncertainty embedded in each STS requirement. For those criteria that have been assessed as containing a substantial element of uncertainty or ambiguity, and for which provision of a clear interpretation has been assessed as crucial in terms of ensuring their correct implementation, comprehensive interpretation has been provided in the guidelines. For those criteria that have been assessed as either self-explanatory or fairly straightforward, potentially including a certain element of ambiguity, a concise/specific guidance has been provided that has been assessed as beneficial for the correct implementation of the STS regime. For a small number of STS criteria no interpretation has been provided, given they have been assessed as sufficiently clear and no further guidance has been assessed as necessary.

10. To the extent possible and where appropriate, the existing recommendations in the ‘EBA report on the qualifying securitisation’³ and ‘Basel III revisions to the securitisation framework’⁴ have been taken into account, when developing the interpretation.
11. The main objective of the guidelines is to ensure a consistent interpretation and application of the STS 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 authorised to check the compliance of the securitisation with the STS criteria. The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is a prerequisite for application of preferential risk weights under the amended CRR, as well as by severe sanctions imposed by the Securitisation Regulation for negligence or intentional infringement of the STS criteria. Also, given the inherent cross-sectoral nature of securitisation the guidelines will be applied on a cross-sectoral basis i.e. by different types of entities that will act as originators, investors, sponsors and SSPEs with respect to the STS securitisation, as well as by an extensive number of competent authorities that will be designated to supervise the entities involved.
12. The guidelines are interlinked with the ESMA RTS/ITS on STS notifications. While these EBA guidelines are focused on providing guidance on the content of the STS requirements, the ESMA RTS/ITS are focused on specifying the format of notification of compliance with the STS requirements. It is expected that the guidance in the EBA guidelines for each single STS criterion should be appropriately reflected in the disclosures on the compliance with the STS criteria, in the STS notifications.
13. The proposed guidelines aim to cover in a comprehensive manner all the STS criteria. Recommendations may be developed, if necessary, at a later stage to address particular aspects arising from the practical application of the Securitisation Regulation and the EBA guidelines. This approach is also consistent with the legal nature of these two legal instruments (while in terms of their legal power they are both non-legally binding instruments subject to the comply or explain mechanism, guidelines are instruments of general application ‘erga omnes’ (towards all), while recommendations are instruments of specific application e.g. applying to a particular set of addressees or for a limited period of time only).
14. With respect to the structure of these guidelines, while the main interpretation of the STS criteria is provided in the section 5 “draft guidelines”, this section includes additional information on the objectives and rationale of each single interpretation, and aspects that the interpretation in these guidelines focus on.
15. Unless otherwise stated, in this section all references to individual Articles refer to Articles of Regulation (EU) 2017/2402.

³ EBA report on qualifying securitisation (July 2015):

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

⁴ Basel III Revisions to the securitisation framework (July 2016): <http://www.bis.org/bcbs/publ/d374.pdf>

Background and rationale of the individual STS criteria

Transaction-level criteria

True sale, assignment or transfer with the same legal effect (Article 24(1), 24(2), 24(3), 24(4) and 24(5))

16. The criterion specified in Article 24(1) aims to ensure that the underlying exposures are beyond the reach of, and are effectively ring-fenced and segregated from, the seller, its creditors and liquidators, including in the event of the seller's insolvency, enabling an effective recourse to the ultimate claims for the underlying exposures.
17. As stated in Recital 16 of Regulation (EU) 2017/2402, in an ABCP transaction, securitisation can be achieved through a co-funding structure, where notes, rather than the securitised exposures themselves are transferred to the purchasing entity. Such co-funding structures comply with the requirements concerning the transfer of legal title, provided that the securitised exposures are transferred to the acquiring SSPE by means of true sale, assignment or a form of transfer with the same legal effect and that the SSPE issuing the commercial paper acquires full legal title in the notes.
18. The criterion in Article 24(2) is designed to ensure the enforceability of the transfer of legal title in the event of the seller's insolvency. More specifically, if the underlying exposures sold to the SSPE could be reclaimed for the sole reason that their transfer was effected within a certain period before the seller's insolvency or if the SSPE could only prevent the reclaim by proving that it was unaware of the seller's insolvency at the time of transfer, such clauses would expose commercial paper investors to a high risk that the underlying exposures would not effectively back their contractual claims. For this reason Article 24(2) specifies that such clauses constitute severe clawback provisions, which may not be contained in STS ABCP transactions.
19. Whereas pursuant to Article 24 (2) contractual terms and conditions attached to the transfer of title that expose investors to a high risk that the securitised assets will be reclaimed in the event of the seller's insolvency should not be permissible in STS ABCP transactions, such prohibition should not include the statutory provisions granting the right to a liquidator or a court to invalidate the transfer of title with the aim to prevent or combat fraud, as referred to in Article 24(3).
20. Article 24(4) specifies that, where the transfer of title does not occur directly between the seller and the SSPE but through one or more intermediary steps involving further parties, the criteria relating to the true sale, the assignment or other transfer with the same legal effect apply at each step.
21. The objective of the criterion in Article 24(5) is to minimise legal risks related to unperfected transfers in the context of an assignment of the underlying exposures, by specifying a

minimum set of events subsequent to closing that should trigger the perfection of the transfer of the underlying exposures.

22. To facilitate a consistent interpretation of these criteria, the following aspects should be clarified:
- a. content of the legal opinion that should be provided to substantiate the confidence of third parties with respect to elements covered by the Articles 24(1) to (5) and the cases when such legal opinion should be provided;
 - b. clarification of the application of the criterion with respect to co-funding structures;
 - c. clarification with respect to the access to such legal opinion where the seller is not the original lender and the true sale (or assignment or transfer with the same legal effect) is achieved through intermediate steps, taking into account that such legal opinions, due to confidentiality reasons may not always be shared with third parties.

Representations and warranties (Article 24(6))

23. The objective of the criterion in Article 24(6) to provide representations and warranties confirming to the seller's best knowledge that the transferred exposures are not 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 of the seller, but equally of its creditors.
24. In the case of ABCP transactions, as a general rule, the entity effecting the transfer of title to the SSPE is not identical with the entity which has originated the securitised exposures (usually a corporate seller). Against this background the second subparagraph of Article 23 (2) specifies that for the purposes of inter alia assigning responsibilities with regard to the representations and warranties requested by law the "seller" means "originator" or "original lender".
25. To facilitate a consistent interpretation of this criterion, consistently with the understanding that this requirement should also apply where the seller is not the original lender, the process of provision of such representations and warranties in this case should be further clarified.

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

26. The objective of this criterion in Article 24(7) is to ensure that the selection and transfer of the underlying exposures in the ABCP transaction is based on clear processes, which facilitate in a clear and consistent fashion the identification of which exposures are selected for/transferred into the ABCP transaction, and enable the investors to assess the credit risk of the asset pool prior to their investment decisions.
27. Consistently with this objective, the active portfolio management of the exposures in the ABCP transaction should be disallowed, given that it adds a layer of complexity and increases the agency risk arising in the ABCP transaction by making the ABCP transaction's performance

dependent on both the performance of the underlying exposures and the performance of the management of the transaction. The payments of STS ABCP transactions should depend exclusively on the performance of the underlying exposures.

28. Revolving periods and other structural mechanisms resulting in the inclusion of exposures into the ABCP transaction after the closing of the transaction may introduce the risk that exposures of lesser quality can be transferred into the pool. For this reason it should be ensured that any exposure transferred into the ABCP transaction after the closing meets the eligibility criteria, which are no less strict than those used to structure the initial pool of the ABCP transaction.
29. To facilitate a consistent interpretation of this criterion, the following aspects should be clarified:
 - a. clarification with respect to the techniques of portfolio management that should and should not be considered to be 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 (EU) 2018/... on homogeneity of the underlying exposures in securitisation (developed under Article 20(14) and 24(21) of Regulation (EU) 2017/2402), which requires that all the underlying exposures in a securitisation are underwritten according to similar underwriting standards, methods and criteria;
 - b. interpretation of the term “clear” eligibility criteria and eligibility criteria that need to be met with respect to the exposures transferred to the SSPE after the closing.

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

30. The objective of this criterion is to disallow that STS ABCP transactions may qualify as a resecuritisation. This is a lesson learnt from the financial crisis, where resecuritisations have been structured into highly leveraged structures where lower credit quality notes could be re-packaged and credit enhanced, resulting in transactions where small changes in the credit performance of the underlying assets severely impacted 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 correlations arising in the resulting structures.
31. Although the purpose of the requirement is considered to be sufficiently clear, a specific clarification should be provided for ABCP programmes where the tranching (always required for a securitisation according to Article 2(1)) within an ABCP transaction (that is always a securitisation according to Article 2(8)) is achieved via the purchase of a senior note (see Recital (16) of Regulation 2017/2401) – which constitutes the ABCP transaction. It should in any case be noted that the requirement on no resecuritisations within an ABCP programme is further specified within the programme level criterion of Article 26(4), which itself reiterates the derogation from the “ban on resecuritisation” as specified in Article 8(4) of Regulation 2017/2401.

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

32. The objective of the criterion in Article 24(9) is to ensure that STS ABCP transactions are not characterised by underlying exposures whose credit risk has already been affected by certain negative events such as disputes with credit-impaired debtors or guarantors, debt-restructuring processes or default events as identified by the EU prudential regulation. Risk analysis and due diligence assessments by investors become more complex whenever the ABCP transaction includes exposures subject to certain ongoing negative credit risk developments. For the same reasons, STS ABCP transactions should not include underlying exposures to credit impaired debtors or guarantors that have an adverse credit history. Also, significant risk of default normally rises as rating grades or other scores are assigned indicating 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.
33. To facilitate a 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 of this term provided in the existing delegated regulations and guidelines developed by the EBA, while taking into account the limitation of the scope of application of these additional guidance to institutions.
 - b. interpretation of the term “exposures to a credit-impaired debtor or guarantor”: the interpretation should also take into account the interpretation provided in Recital 26 of Regulation (EU) 2017/2402, according to which the circumstances specified in points (a) to (c) of Article 24(9) of that Regulation are understood as specific situations of credit-impairedness to which exposures in an STS ABCP transaction may not be exposed. Consequently, other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be outside of the scope of this requirement. Also, it should be clarified that the wording of Article 24(9) “exposures to a credit-impaired debtor or guarantor” as well as the wording of Recital 26 clearly indicate that neither the debtor, nor the guarantor should be credit-impaired which is defined as being subject to any of the circumstances further specified in points (a) to (c) of Article 24(9). This is because risk analysis and due diligence assessments by investors become more complex if the debtor is credit-impaired (but not yet in default) and is subject to any of the circumstances further specified in points (a) to (c) of Article 24(9) but the guarantor is neither in default, nor credit-impaired because the assessment of the probability that the guarantor will be needed to ensure that all payments are being made is more complex in such cases than in cases, where the debtor is not credit-impaired. Likewise, the due diligence and risk assessment of an exposure in respect of which the debtor is neither credit-impaired, nor defaulted, but in respect of which the

guarantor is credit-impaired (but not yet in default) and is subject to any of the circumstances further specified in points (a) to (c) is more complex and the inclusion of such exposures should therefore not be allowed in STS ABCP transactions.

- c. interpretation of the term "to the best knowledge of": the interpretation should follow the wording of Recital 26 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 received from third parties (including publicly available information). Also, it should be clarified that the check of entries in at least one credit registry is not required 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 e.g. on other information that may include credit assessments provided by third parties. Such clarification is important because corporates that are not subject to EU financial sector regulation and that are acting as sellers with respect to STS ABCP transactions may not always check entries in credit registries and in line with the best knowledge standard should not be obliged to perform additional checks at origination of any exposure exclusively for the purposes of later fulfilling this criterion in terms of any credit impaired debtors or guarantors.
- d. interpretation of the criterion with respect to the debtors and guarantors found on a credit registry: it is crucial to ensure that "where applicable" and "with adverse credit history" are appropriately reflected in the interpretation of this criterion. Therefore, the existence of a credit-impaired debtor or guarantor on a credit registry of persons with adverse credit history at origination of the securitisation should not automatically exclude the underlying exposures to such debtor/guarantor, from compliance with this criterion. To avoid unintentional disqualification of a significant number of exposures, and to take into account that different practices exist across EU jurisdictions with respect to entry requirements to such credit registries, this criterion should be interpreted in a strictly narrow sense. It is understood this criterion should only relate to debtors and guarantors that are, at the time of origination of the securitisation, considered as entity with adverse credit status, and are explicitly flagged in the credit registry as persons with adverse credit status. This criterion should not automatically exclude from the STS framework exposures to all entities that are entered into credit registries, given this would unintentionally exclude a significant number of entities and given that a mere entry into the credit registry does not automatically mean that the securitisation of exposures to such entities does not comply with the qualitative STS criteria.
- e. interpretation of the term "comparable exposures" and "significantly higher" risk of contractually agreed payments not being made: Comparable exposures referred to in Article 24(9)(c) should be interpreted with the similar meaning as the comparable

assets referred to in Article 6(2), and further specified in the Article 16(2) of the Delegated Regulation (EU)... implementing the EBA draft regulatory technical standards to specify in greater detail the risk retention requirement⁵, given that in both cases the requirement 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.

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

34. STS ABCP transactions should minimise the extent to which investors are required to analyse and assess fraud and operational risk. At least one payment should therefore be made by each underlying borrower at the time of transfer, since this reduces the likelihood of the loan being subject to fraud or operational issues, unless in the case of revolving ABCP transactions where the distribution of securitised exposures is subject to constant changes because the ABCP transaction relates to exposures payable in a single instalment or with an initial legal maturity of an exposure of below one year.
35. To facilitate a consistent interpretation of this criterion, its scope the types of payments and the term “maturity” referred to therein should be further clarified.

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

36. Dependence of the repayment of parties being directly exposed to the credit risk of an ABCP transaction on the sale of assets securing the underlying exposures increases the liquidity risks, market risks and maturity transformation risks to which the ABCP transaction is exposed. It also makes the credit risk of the ABCP transaction more difficult to model and assess from the perspective of such parties.
37. The objective of this criterion is to ensure that the repayment necessary to repay the securitisation positions held in an ABCP transaction is not intended to be predominantly dependent on the sale value of the assets securing the financial obligations, and that the residual values on which the transaction relies are sufficiently low, unless the value of the assets is guaranteed or fully mitigated by a repurchase obligation.
38. To facilitate a consistent interpretation of this criterion, the term “predominant dependence” on the sale of assets securing the underlying exposures should be further interpreted. When assessing whether the repayment of the parties being directly exposed to the credit risk of an ABCP transaction is or is not predominantly dependent on the sale of assets, the following three aspects should be taken into account: (i) the residual values on which the transaction relies; (ii) the distribution of expected sale dates of assets for the underlying exposures that are dependent on the sale of assets 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

⁵ EBA consultation paper on the 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#paper_2063493

of exposures, which aims to promote sufficient distribution further characteristics that may affect the sale of the underlying exposures.

39. This criterion is aimed to exclude from STS ABCP transactions, for example, commercial real estate transactions, or ABCP transactions where the assets are commodities (oil, grain, gold), or bonds whose maturity dates fall after the maturity date of the ABCP transaction, as in all these cases it is expected that the repayment is predominantly dependent 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.
40. This criterion does not aim to exclude leasing transactions from STS ABCP transactions, provided they comply with the guidance provided and all other applicable STS requirements.

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

41. The objective of this criterion is to reduce any payment risk arising from different interest rate and currency profiles of assets and liabilities at the level of an ABCP transaction. Mitigating and/or hedging interest rate and currency risks arising in the transaction enhances the simplicity of the transaction since it facilitates the modelling of those risks and of their impact on the credit risk of the securitisation investment by parties directly exposed to the credit risk of an ABCP transaction.
42. 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 as appropriately mitigating the risks mentioned.
43. One of these conditions aims to disallow that derivatives, which are not serving the purpose of hedging interest-rate or currency risk, are included in the pool of underlying exposures or are entered into by the SSPE, given that derivatives add to the complexity of the ABCP transaction and to the complexity of the risk and due diligence analysis to be carried out by the parties directly exposed to the credit risk of an ABCP transaction. Derivatives hedging interest-rate or currency risk enhance the simplicity of the transaction since hedged transactions do not require those parties to engage in the modelling of currency and interest rate risks.
44. To facilitate a 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 as appropriately mitigating the interest rate and currency risks;
 - b. clarification with respect to the scope of derivatives that should and should not be captured by this criterion;

- c. clarification of the term “common standards in international finance”.

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

45. Parties directly being exposed to the credit risk of an ABCP transaction should be in a position to know, as they receive the transaction documentation, what procedures and remedies are foreseen in the event that adverse credit events affect the underlying exposures of the ABCP transaction. Transparency of remedies and procedures, in this respect, allow those parties to model credit risk of the underlying exposures with less uncertainty. Also, clear, timely and transparent information on the characteristics of the waterfall determining the payment priorities is necessary for those parties to correctly price the securitisation position.
46. To facilitate a consistent interpretation of this criterion, the following aspects should be further clarified:
 - a. the term “in clear and consistent terms”;
 - b. application of the requirement to report changes in the priorities of payments.

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

47. The objective is to provide potential investors with sufficient information on an asset class to conduct appropriate due diligence and to provide access to a sufficiently rich data set to enable a more accurate calculation of expected loss in different stress scenarios. This data is necessary for potential investors at ABCP transaction level to carry out proper risk analysis and due diligence, and it contributes to building confidence and reducing uncertainty regarding the market behaviour of the underlying asset class. New asset classes entering the securitisation market, for which a sufficient track record of performance has not yet been built up, may not be considered transparent in that they cannot ensure that potential investors at ABCP transaction level have appropriate tools and knowledge to carry out proper risk analysis.
48. To facilitate a consistent interpretation of this criterion, its application to external data, on substantially similar exposures, and the scope of the disclosure requirements at ABCP transaction and ABCP programme level should be further clarified.

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

49. The criterion on the homogeneity as specified in the first subparagraph of Article 24(15) has been further clarified in the Delegated Regulation (EU) 2018/.... on the homogeneity of the underlying exposures in securitisation.
50. The objective of the limits of remaining weighted average life of the pool of underlying exposures and the residual maturity of individual exposures within such pool is to constrain the degree of maturity mismatches between the maturity of the underlying exposures and the

securities issued by the ABCP programme predominantly having an original maturity of one year or less pursuant to the definition of an ABCP programme provided in point (7) of Article 2 of Regulation (EU) 2017/2402 and to thereby constrain the liquidity risks inherent to the ABCP programme and covered by the full support of the sponsor.

51. The objective of the criterion specified in the second sentence in the fourth subparagraph of Article 24(15) is to ensure that the underlying exposures contain valid and binding obligations of the debtor, including rights to payments or to any other income from assets supporting such payments that result in a periodic and well defined stream of payments to parties being directly exposed to the credit risk of the ABCP transaction.
52. The objective of the criterion specified in the fourth sentence of the fourth subparagraph is to disallow the inclusion of transferable financial instruments into the ABCP transaction as they add to the complexity of the transaction and to the complexity of the risk and due diligence analysis to be carried out by parties being directly exposed to the credit risk of the ABCP transaction.
53. To facilitate a consistent interpretation of this criterion, a clarification should be provided with respect to:
 - a. the calculation of weighted average life;
 - b. the term “contractually binding and enforceable obligations”;
 - c. specific exposure types that should be also considered to have defined periodic payment streams.

Referenced interest payments (Article 24(16))

54. The objective of this criterion is to prevent that STS ABCP transactions make reference to interest rates that cannot be observed in the commonly accepted market practice. The credit risk and cash flow analysis which parties being directly exposed to the credit risk of the ABCP transaction must be able to carry out should not involve atypical, complex or complicated rates or variables which cannot be modelled on the basis of market experience and practice.
55. To facilitate a consistent interpretation of this criterion, the scope of this criterion should be clarified by specifying the common types and examples of interest rates captured by this criterion, and by providing interpretation of the term “complex formulae or derivatives”.

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

56. The objective of this criterion is to prevent parties being directly exposed to the credit risk of the ABCP transaction being subjected to unexpected repayment profiles during the life of an ABCP transaction, and to provide appropriate legal comfort regarding their enforceability.

57. STS ABCP transactions should be such that the required risk analysis and due diligence to be conducted by parties directly being exposed to the credit risk of the ABCP transaction does not have to factor in complex structures of the payment priority that are difficult to model, nor should those parties be exposed to complex changes in such structures throughout the life of the ABCP transaction. Therefore, it should be ensured that junior liabilities should not have payment preference over senior liabilities which are due and payable, throughout the life of an ABCP transaction.
58. Also, taking into account market risk on the underlying collateral constitutes an element of complexity in the risk and due diligence analysis to be carried out by parties directly being exposed to the credit risk of the ABCP transaction, the objective is also to ensure that the performance of STS ABCP transactions does not rely, due to contractual triggers, on the automatic liquidation at market price of the underlying collateral.
59. To facilitate a consistent interpretation of this requirement, the scope and operational functioning of conditions specified under letters (a), (b), and (c) should be specified further.

Underwriting standards (Article 24(18))

60. The objective of the criterion in Article 24(18) is to prevent ‘cherry picking’ and to ensure that the exposures that are to be securitised do not belong to exposure types that are outside the ordinary business of the originator, i.e. exposure types in which the seller may have less expertise and/or interest at stake. This criterion is focused on disclosure of changes to the underwriting standards and aims to facilitate the assessment of the underwriting standards pursuant to which the exposures transferred into the ABCP transaction have been originated by the sponsor and other parties directly being directly exposed to the credit risk of the ABCP transaction.
61. The criterion also aims to ensure that the seller has an established performance history for similar credit claims or receivables to those being securitised and for an appropriately long period of time.
62. To facilitate a consistent interpretation of this criterion, the following aspects should be further clarified:
- a. scope of the full disclosure requirement;
 - b. term “similar exposures”;
 - c. term “no less stringent underwriting standards”: independently from 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 not solely have been applied to securitised exposures;

- d. clarification of the requirement to disclose material changes from prior underwriting standards, in particular which changes should be considered “material” for the purpose of the disclosure, and how to interpret the term “prior” underwriting standards: the guidance on this criterion includes interpretation with respect to disclosure of material changes made to the underwriting standards both prior and after an ABCP transaction has been conducted. This criterion should be considered without prejudice to the existing requirements with respect to the similarity of the underwriting standards in the Delegated Regulation (EU) 2018/... on homogeneity of the underlying exposures in securitisation, which requires that all the underlying exposures in securitisation are underwritten according to similar underwriting standards, methods and criteria.
- e. Identification of criteria based on which the expertise of the seller should be determined:
 - i. when assessing the expertise of the seller, some general principles should be considered. The general principles have been designed to allow for a robust qualitative assessment of qualitative aspects of experience as well as to allow for more flexibility in such qualitative assessment of the expertise for prudentially regulated institutions which hold regulatory authorisations or permissions that are relevant with respect to origination and underwriting of similar exposures;
 - ii. without prejudice to such general principles, specific criteria should be developed, based on specifying a minimum period for an entity to perform the business of originating and underwriting of similar exposures, the compliance of which would enable the entity to always be considered as having 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 incompliance 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 as well as staff with managerial responsibility for origination and underwriting of similar exposures have sufficient experience for a minimum specified period;
 - iii. it is expected that information on the assessment of the expertise should be provided in sufficient detail in the STS notification.

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

63. The objective of this criterion is to ensure that, in the presence of a revolving period mechanism, parties being directly exposed to the credit risk of the ABCP transaction are sufficiently protected from the risk that principal amounts may not be fully repaid. In all such transactions, irrespective of the nature of the revolving mechanism, such parties should be protected by a minimum set of triggers for termination of the revolving period that should be included in the transaction documentation.
64. In order to facilitate the consistent interpretation of this criterion, interactions of this criterion with the criterion under Article 26(7)(c) with respect to the insolvency-related event with respect to the servicer, should be further clarified.

Transaction documentation (Article 24(20))

65. The objective of this criterion is to help provide full transparency to parties being directly exposed to the credit risk of the ABCP transaction, assist those parties in the conduct of their due diligence and to prevent them being subject to unexpected disruptions in cash flow collections and servicing, as well as to provide them with certainty over the replacement of certain counterparties involved in the securitisation transaction.
66. To facilitate a consistent interpretation of this criterion, the following aspects should be further clarified:
- a. the interpretation of the term “clear specification” should be further clarified;
 - b. clarification with respect to the requirement that the transaction documentation should specify how the sponsor meets the requirements of Article 25(3).

Programme-level criteria

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

The objective of Article 26(1) is to provide a level of assurance that the data on and reporting of the ABCP transactions within an ABCP programme is accurate and that all such ABCP transactions meet the STS criteria at transaction level in accordance with Article 24, by ensuring checks on the data to be disclosed to the investors by an independent external entity, not affected by any potential conflict of interest. There may however be some constraints with respect to checking the compliance of all of the underlying exposures with some STS criteria applicable at the level of individual ABCP transactions referred to in that Article (specified in paragraphs 9, 10 and 11 of Article 24), as such checking process may either be (i) overly burdensome (because this may be very time consuming); (ii) not possible due to incomplete data; (iii) not relevant when relating to a very small fraction of the underlying exposures; or

(iv) such compliance may change over time due to the dynamics of the status of the underlying exposures. Consequently, the second subparagraph of Article 26(1) allows for a partial non-compliance with the aforementioned criteria and allows that up to 5% of the aggregated amount of exposures funded by the ABCP programme may be temporarily non-compliant, without being detrimental to retaining the STS status at ABCP programme level.

67. It is understood that the 5% amount of exposures that are allowed to be temporarily non-compliant should include each exposure that is non-compliant with either one, some or all of the paragraphs (9), (10) and (11). In other words, it is not the intention of the requirement to ensure that only that exposures that are simultaneously in breach of paragraphs (9), (10) and (11) can count towards such 5% amount of exposures.
68. To facilitate a consistent interpretation of this criterion, the following aspects should be clarified:
- a. the method of calculating the percentage of the aggregate exposure amount of non-compliant exposures;
 - b. the clarification of the term “temporary non-compliance with the requirement of Article 24(9), (10) or (11)”: the three month limit set for such temporariness in these guidelines is consistent with the timeframe given to the competent authorities for resolving their disagreement with another competent authority, as well as with the timeframe that the competent authorities may grant to the originator, sponsor and SSPE to rectify any erroneous use of the STS designation that they have used in good faith (in accordance with the Recital 6 of Regulation 2017/2402); and
 - c. the scope and minimum frequency of the external verification: it is assumed that the external verification for ABCP should cover only the requirements of paragraphs (9), (10) and (11) of Article 24, since the third subparagraph exclusively refers to the exemption clause in the second subparagraph (“For the purpose of the second subparagraph of this paragraph...”).
 - d. the sample of the underlying exposures subject to external verification;
 - e. the parties eligible to executing the external verification.

Remaining weighted average life (Article 26(2))

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

70. To ensure a consistent interpretation of this requirement, the term “remaining weighted average life” should be clarified.

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

71. The objective of the criterion in Article 26(3) is to ensure the full support of an ABCP programme by a sponsor in accordance with Article 25(2). This requirement is without prejudice to the definition of a ‘fully-supported ABCP programme’ provided in point (21) of Article 2.
72. The requirement is considered to be sufficiently clear and straightforward. No further guidance is considered necessary.

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

73. While the Regulation (EU) 2017/2402 introduces the ban on resecuritisation it allows for specific derogations from that ban, including for fully supported ABCP programmes subject to their compliance with two conditions: “A fully supported ABCP programme shall not be considered to be a resecuritisation for the purposes of this Article, provided that none of the ABCP transactions within that programme is a resecuritisation and that the credit enhancement does not establish a second layer of tranching at the programme level.” Therefore, if the underlying ABCP transactions are no resecuritisations and the credit enhancement of the ABCP programme does not establish a second layer of tranching at the programme level, such an ABCP programme should not be considered to be a resecuritisation.
74. Such ban on resecuritisation (as well as derogation for some fully supported ABCP programmes) is established both generally (in Article 8), as well as for STS_purposes (in Article 24(5) in connection with Article 26(1), and Article 26(4)). Additional guidance is provided by Recital (8) which states that “This Regulation introduces a ban on resecuritisation, subject to [...] clarifications as to whether asset-backed commercial paper (ABCP) programmes are considered to be resecuritisations. [...] In addition, it is important for the financing of the real economy that fully supported ABCP programmes that do not introduce any re-tranching [i.e. that are not “establishing a second layer of tranching”] on top of the transactions funded by the programme remain outside the scope of the ban on resecuritisation.”
75. In order to facilitate a consistent interpretation of this criterion, it should be clarified which credit enhancements do not establish such a second layer of tranching at the programme level. The interpretation should be based on the BCBS „Revisions to the securitisation framework“(July 2016), paragraph 5, which identifies cases where there exist two distinct tranching mechanisms, while those could economically be reduced to one single tranching mechanism (i.e. to one layer of tranching). In addition, as described in the second paragraph of Recital 16 of Regulation (EU) 2017/2402, the tranching required for establishing an ABCP transaction within the meaning of point (8) of Article 2, may be achieved, among others, (i) by the agreement on a variable purchase price discount on the pool of underlying exposures granted by the seller /original lender; or (ii) by the issuance of senior and junior notes by an

SSPE in a co-funding structure, where the senior notes are then transferred to purchasing entities of one or more ABCP programmes. All guidance provided should apply equally to both scenarios.

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

76. The objective of the criterion in Article 26(5) is to ensure that investors do not become exposed to higher risks (e.g. refinancing risk, liquidity risk) at the discretion of the seller, sponsor or SSPE, since this would complicate their due diligence and risk analysis.
77. To ensure a consistent interpretation of this criterion, types of call options and clauses not covered by this criterion should be further clarified.

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

78. While the objective of Article 24(12) is to reduce any payment risk arising from different interest rate and currency profiles of assets and liabilities at ABCP transaction level, the objective of Article 26(6) is to reduce any payment risk arising from different interest rate and currency profiles across transactions or in comparison to the liabilities (commercial paper issued) at ABCP programme level.
79. Mitigating and/or hedging interest rate and currency risks arising at ABCP programme level enhances the simplicity of the ABCP programme since it facilitates the modelling of those risks and of their impact on the credit risk of the ABCP programme by investors.
80. A second objective of this requirement is to disallow that derivatives, which are not serving the purpose of hedging interest-rate or currency risk, are entered into by the SSPE, given that derivatives add to the complexity of the transaction and to the complexity of the risk and due diligence analysis to be carried out by the investor. Derivatives hedging interest-rate or currency risk enhance the simplicity of the ABCP programme since hedged ABCP programmes do not require the investors to engage in the modelling of currency and interest rate risks.
81. Taking into account that the wording of Article 26(6) is virtually identical with the wording of Article 24(12) at transaction level, the interpretation of both these criteria should be the same.

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

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

Programme level, Article 26(7)	Transaction level, Article 24(20)	Assessment
The documentation relating to the ABCP programme shall clearly specify:	The transaction documentation shall clearly specify:	Identical, therefore no additional guidance needed
(a) the responsibilities of the trustee and other entities with fiduciary duties, if any, to investors;	The transaction documentation shall include clear provisions that facilitate [...] the responsibilities of the trustee and other entities with fiduciary duties to investors shall be clearly identified. [Article 24(19)]	Very similar requirement to Article 24(10), therefore no additional guidance needed
(b) the contractual obligations, duties and responsibilities of the sponsor, who shall have expertise in credit underwriting, the trustee, if any, and other ancillary service providers;	(a) the contractual obligations, duties and responsibilities of the sponsor, the servicer and the trustee, if any, and other ancillary service providers;	Additional guidance needed concerning the „sponsor, who shall have expertise in credit underwriting“. Such guidance should be analogue to that for the expertise of the seller.
(c) the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;	(b) the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing,	Identical, therefore no additional guidance needed
(d) the provisions for replacement of derivative counterparties, and the account bank at ABCP programme level upon their default, insolvency and other specified events, where the liquidity facility does not cover such events;	(c) provisions that ensure the replacement of derivative counterparties and the account bank upon their default, insolvency and other specified events, where applicable;	Virtually identical, therefore no additional guidance needed
(e) that, upon specified events, default or insolvency of the sponsor, remedial steps shall be provided for to achieve, as appropriate, collateralisation of the funding commitment or replacement of the liquidity facility provider; and	<i>No similar requirement at ABCP transaction level</i>	Additional guidance might be needed concerning the “specified events”. A corresponding question has therefore been included in this consultation paper.
(f) that the liquidity facility shall be drawn down and the maturing securities shall be repaid in the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry.	<i>No similar requirement at ABCP transaction level</i>	Requirement needs clarification on how to treat the case that a sponsor provides several liquidity facilities at transaction level.

83. Concerning point (f) of Article 26(7) Article 25(2) describes how the sponsor should support the ABCP programme: “The sponsor of an ABCP programme shall be a liquidity facility provider and shall support all securitisation positions on an ABCP programme level by covering all liquidity and credit risks and any material dilution risks of the securitised exposures as well as any other transaction- and programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP with such support. The sponsor shall disclose a description of the support provided at transaction level to the investors including a description of the liquidity facilities provided.”
84. It is a current market practice that a single sponsor provides several liquidity facilities at ABCP transaction level to provide full support to the ABCP programme. This is also captured by the last sentence of Article 25(2), according to which the sponsor provides support at transaction level via “liquidity facilities” (pl.). In this regard, a clarification is needed how point (f) of Article 26(7) should be interpreted, which only refers to “the liquidity facility”.
85. The expertise requirement of Article 26(7) relating to the sponsor is largely similar to the corresponding requirement of point (a) of Article 24(20) and should therefore be subject to similar clarifications.

Expertise of the servicer (Article 26(8))

86. 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 ABCP transaction being funded by an ABCP programme.
87. To facilitate a consistent interpretation of this criterion, the following aspects should be further clarified:
- a. criteria for determining the expertise of the servicer: the criteria for the expertise of the servicer should be analogue to those for the expertise of the seller. 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 should be provided in sufficient detail in the STS notification;
 - b. criteria for determining well documented policies, procedures and risk management controls of the servicer: it is to be noted that compared to the non-ABCP criterion which refers to “well-documented and adequate policies”, the ABCP criterion simply refers to “well-documented policies”. In an ABCP context, however, the policies of the servicer should also be adequate, therefore the interpretation of the criterion should be the same as for the non-ABCP securitisation.

5. Draft guidelines

In between the text of the draft guidelines that follows, further explanations on specific aspects of the proposed text are occasionally provided, which either offer examples or provide the rationale behind a provision, or set out specific questions for the consultation process. Where this is the case, this explanatory text appears in a framed text box.

EBA/GL/2018/XX

DD Month YYYY

Draft Guidelines

on the STS criteria for ABCP securitisation

6. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁶. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

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

⁶ 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).

7. Subject matter, scope and definitions

Subject matter

5. These guidelines specify the criteria relating to simplicity, standardisation and transparency for ABCP securitisations in accordance with Articles 24 and 26 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017⁷.

Scope of application

6. These guidelines apply in relation to the transaction and programme level requirements of ABCP securitisations.
7. Competent authorities should apply these guidelines in accordance with the scope of application of Regulation (EU) 2017/2402 as set out in its Article 1.

Addressees

8. These guidelines are addressed to the competent authorities referred to in Article 29(1) and (5) of Regulation (EU) No 2017/2402 and to originators, sponsors, SSPEs and institutional investors under the scope of that Regulation.

⁷ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L,347, 28.12.2017, p. 35).

8. Implementation

Date of application

9. These guidelines apply from dd.mm.yyyy [...]

9. Guidelines

9.1 Transaction-level criteria

9.1.1 True sale, assignment or transfer with the same legal effect (Article 24(1), 24(2), 24(3), 24(4) and 24(5))

Legal opinion

10. For all ABCP transactions and irrespective of the mode of transfer of the underlying exposures, in order to substantiate the confidence of third parties including third parties authorised to assess the compliance with the STS criteria and competent authorities, a legal opinion should be provided, covering the following content:
 - a. confirmation of the true sale, assignment or transfer with the same legal effect and confirmation of the enforceability of that true sale, assignment or transfer with the same legal effect, under the applicable national legal framework;
 - b. assessment of clawback risks, re-characterisation risks, commingling risks and set-off risks related to the ABCP transaction.
11. Such legal opinion should also address the additional issues in certain cases as specified in the following:
 - a. for the purposes of Article 24(1) of Regulation (EU) 2017/2402, where the title to the underlying exposures is not acquired by the SSPE by means of a true sale or assignment, a legal opinion should be provided which confirms and provides evidence that the transfer has the same legal effect as a true sale and that the segregation of the underlying exposures from the seller, its creditors and liquidators including in the event of the seller's insolvency is equal to that achieved by means of true sale or assignment, under the applicable national legal framework governing the securitisation transaction;
 - b. for the purpose of Article 24(5) of Regulation (EU) 2017/2402, where the title to the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, a legal opinion should be provided which confirms and provides evidence that there are material obstacles preventing true sale or assignment at issuance (such as for example the immediate realisation of transfer tax or the requirement to notify all obligors of the transfer) and the method of recourse to the obligors.

12. The legal opinion referred to in paragraphs 10 and 11 should be reasoned and should be provided by a qualified legal counsel.
13. Such legal opinion referred to in paragraphs 10 and 11 should be accessible and made available to third parties including third party certification agents and competent authorities. Where the seller is not the original lender and the true sale or transfer with the same legal effect is effected through intermediate steps, or where due to confidentiality reasons it is not possible to make the legal opinion accessible and available to third parties, a statement should be provided by the seller to the third parties, which should:
 - a. confirm that the seller has had sight of the legal opinion, with a summary of its main findings, where possible, and the documents confirming that the transaction meets the requirements set out in Articles 24(1) to (3) of Regulation (EU) 2017/2402;
 - b. enumerate the documents that have been checked by the legal counsels providing the legal opinion and the names of the legal counsel.

Severe deterioration in the seller credit quality standing

14. For the purposes of Article 24(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 related to the financial health of the seller that are generally used and recognised by market participants.

Insolvency of the seller

15. For the purposes of Article 24(5)(b) of Regulation (EU) 2017/2402 the trigger of “insolvency of the seller” should refer to the events of legal insolvency as defined in national legal frameworks, and to resolution as defined in Article 32 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms] where applicable.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(1): The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller’s insolvency.

Article 24(2): For the purpose of paragraph 1, any of the following shall constitute severe clawback provisions:

(a) provisions which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller's insolvency;

(b) provisions where the SSPE can only prevent the invalidation referred to in point (a) if it can prove that it was not aware of the insolvency of the seller at the time of sale.

Article 24(3): For the purpose of paragraph 1, clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in the case of fraudulent transfers, unfair prejudice to creditors or transfers intended to improperly favour particular creditors over others shall not constitute severe clawback provisions.

Article 24(4): Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to the seller, whether that true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in paragraphs 1 to 3.

Article 24(5): Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection shall include at least the following events:

(a) severe deterioration in the seller credit quality standing;

(b) insolvency of the seller; and

(c) unremedied breaches of contractual obligations by the seller, including the seller's default.

Q1. Do you agree with the interpretation of the criteria in Article 24(1) to (5) and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

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 transfer be specified further?

Q3. Do you believe that in addition to the guidance provided, additional guidance should be provided on the application of Article 24 (2)? If yes, please provide suggestions of such severe clawback provisions to be included in the guidance.

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?

9.1.2 Representations and warranties (Article 24(6))

Provision of representations and warranties where the seller is not the original lender

16. For the purposes of Article 24(6) of Regulation (EU) 2017/2402, where the seller is not the original lender, the seller should require that the representations and warranties are provided to the seller from the original lender, in view of their provision to the investors by the seller.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(6)

The seller shall provide representations and warranties that, to the best of its knowledge, the underlying exposures included in the securitisation are not encumbered or otherwise in a condition that can be foreseen to adversely affect the enforceability of the true sale or assignment or transfer with the same legal effect.

- 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.**

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

Active portfolio management

17. For the purposes of Article 24(7) of Regulation (EU) 2017/2402, active portfolio management should be understood as portfolio management that is directly related to the replacement of the underlying exposures transferred or assigned to the SSPE.
18. The following techniques of portfolio management should not be considered as active portfolio management:
- a. substitution or repurchase of underlying exposures due to the breach of representation or warranties;

- b. replenishment of underlying exposures i.e. addition of the underlying exposures as substitute for amortised exposures during the revolving period;
 - c. use of a “ramp up” period following the transfer of the underlying exposures to the SSPE, during which the proceeds from the underlying exposures are invested into additional exposures to line up the value of the underlying exposures with the value of the securitisation obligations;
19. The following techniques of the portfolio management should always be considered as active portfolio management:
- a. sale of the underlying exposure(s) for reasons other than those described in the paragraph 18;
 - b. other types of active selection of the underlying exposures on a discretionary basis not related to the sale of underlying exposures, including management of the underlying exposures for speculative purposes aiming to achieve better performance or increased investor yield.

Clear eligibility criteria

20. For the purposes of Article 24(7) of Regulation (EU) 2017/2402 “clear” criteria as referred to in Article 24(7) of Regulation (EU) 2017/2402 should be interpreted as criteria the compliance with which can be legally determined, as a matter of law, rather than as criteria which can be easily understood. “Clarity” therefore refers to the condition of legal certainty.

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

21. For the purposes of Article 24(7) of Regulation (EU) 2017/2402, the requirement that the “exposures transferred to the SSPE after the closing of the transaction shall meet the eligibility criteria” should be interpreted in a way that the eligibility criteria to be applied to exposures transferred to the SSPE after the closing as part of substitution, repurchase, replenishment and ramp-up periods in accordance with paragraph 18, should be no less strict than the eligibility criteria applied to the initial underlying exposures. Eligibility criteria to be applied to such exposures should be specified in the transaction documentation. This criterion refers to eligibility criteria applied at exposure level.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(7)

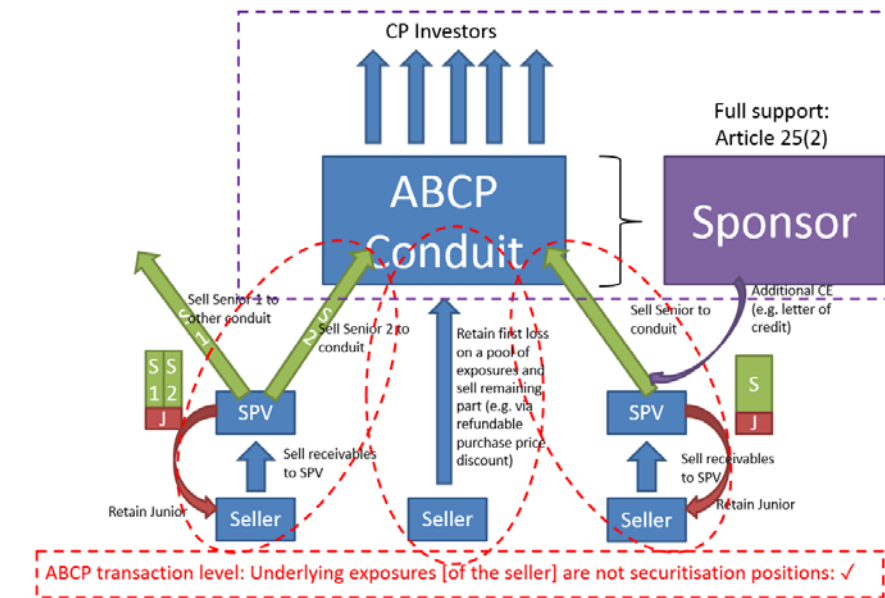
The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. For the purpose of this paragraph, substitution of exposures that are in breach of representations and warranties shall not be considered active portfolio management. Exposures transferred to the SSPE after the closing of the transaction shall meet the eligibility criteria applied to the initial underlying exposures.

- 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.**
- Q7. Do you agree with the techniques of portfolio management that are allowed and disallowed, under the criterion of the active portfolio management? Should other techniques be included or excluded?**

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

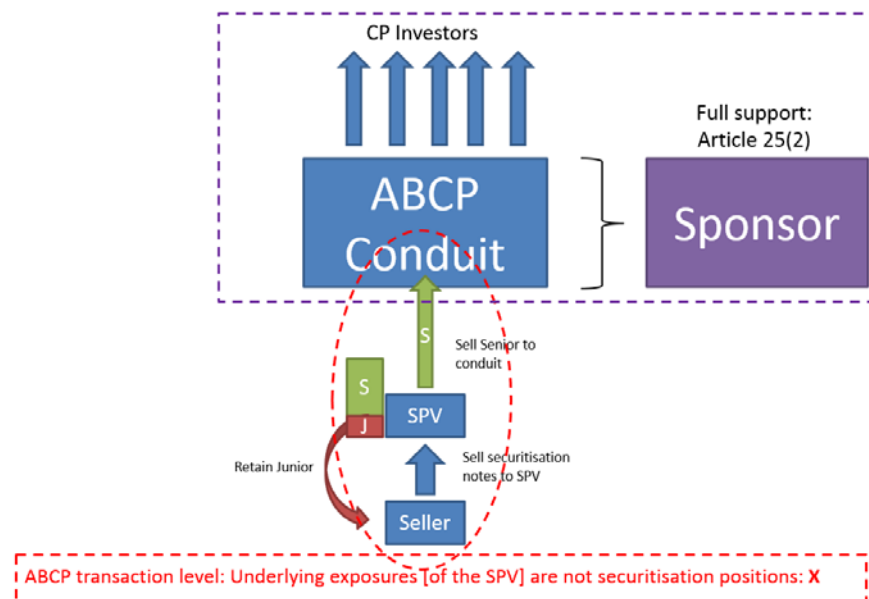
22. In line with Recital 16 of Regulation (EU) 2017/2402, the tranching within an ABCP transaction may be achieved via the issuance of senior and junior notes by an SSPE, where a single senior note is then transferred to the purchasing entity of an ABCP programme. In this case, the issuance of junior and senior notes together with the purchase of the single senior note by the purchasing entity of the ABCP programme constitute the ABCP transaction within such ABCP programme. For the purposes of Article 24(8) of Regulation (EU) 2017/2402 the underlying exposures of such an ABCP transaction should be understood as the underlying exposures of the single senior note that are subject to the securitisation within the ABCP programme, and not as the single senior note itself. Also, for the purposes of Article 24(8) of Regulation (EU) 2017/2402, where senior notes issued by an SSPE are split into two or more pari-passu (pro-rata) notes (therefore not establishing an additional tranching) within such a co-funding structure, this should not be deemed to result in a breach of the criterion contained in this paragraph.
23. The following Figure 1 provides examples of ABCP transactions that should be deemed compliant with the requirements of Article 24(8) of Regulation (EU) 2017/2402.

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



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

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



Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(8)

The underlying exposures shall not include any securitisation position.

Q12. Do you agree with the interpretation of this requirement, and the aspects that the interpretation is focused on? Should other aspects be covered? Please substantiate your reasoning.

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

Exposures in default

25. For the purposes of Article 24(9) of Regulation (EU) 2017/2402, the exposures in default should be interpreted in the meaning of Article 178(1) of Regulation (EU) 575/2013, as further specified by the Delegated Regulation (EU) 2018/171 implementing the regulatory technical standards on the materiality threshold for credit obligations past due⁸, and by the EBA Guidelines on the application of the definition of default⁹.
26. Where an originator of an ABCP transaction is not an institution and is therefore not already subject to the guidance of the EBA Guidelines on the application of the definition of default as implemented by its competent authority, such originator should comply with the guidance provided by those guidelines to the extent that such application is not to be deemed unduly burdensome because such compliance can be achieved by applying 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

27. For the purposes of Article 24(9) of Regulation (EU) 2017/2402, the circumstances specified in points (a) to (c) of that paragraph should be understood as definitions of the credit-impairedness. Other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be outside of the scope of this requirement.
28. The requirement to disallow selection, and transfer to SSPE, of underlying exposures “to a credit-impaired debtor or guarantor” as referred to in Article 24(9) of Regulation (EU) 2017/2402 should be interpreted in a way that, at the time of selection of the respective

⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R0171>

⁹ <https://www.eba.europa.eu/regulation-and-policy/credit-risk/guidelines-on-the-application-of-the-definition-of-default#>

underlying exposure, neither the debtor, nor the guarantor, should be credit-impaired i.e. be subject to any of the circumstances further specified in points (a) to (c) of that paragraph.

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

29. For the purposes of Article 24(9) of Regulation (EU) 2017/2402, the “best knowledge” standard should be considered to be fulfilled on the basis of information obtained from debtors on origination of the exposures, information obtained from the originator in the course of its servicing of the exposures or in the course of its risk-management procedures, or information notified to the originator by a third party, including publicly available information.
30. Compliance with the “best knowledge” standard therefore should not require the originator or original lender to take any legal or other steps in order to collect further information on the debtor's or guarantor's credit status (nor on any entries in one or more credit registries of persons with adverse credit history at the time of origination of an underlying exposure), beyond the information referred to in Recital 26 of Regulation (EU) 2017/2402.

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

31. For the purposes of Article 24(9)(a) of Regulation (EU) 2017/2402, the requirement to exclude exposures to credit-impaired debtors or guarantors who have undergone a debt-restructuring process with regard to their non-performing exposures refers to all the exposures of the respective debtor or guarantor, i.e. to both restructured exposures and exposures that were not themselves subject to a restructuring, provided that the conditions in accordance with points (i) and (ii) of Article 24(9)(a) of that Regulation are not met in respect of those exposures.

Credit registry

32. The requirement referred to in Article 24(9)(b) of Regulation (EU) 2017/2402 should only be limited to debtors or guarantors that, at the time of origination of the ABCP transaction, were assessed as being an entity with adverse credit status and have been explicitly flagged in a credit registry as such an entity with adverse credit status.
33. This requirement should not capture debtors or guarantors that do not have adverse credit status at the time of origination of the ABCP transaction, and in respect of which the entries in the credit registry do not refer to a situation of adverse credit status but to other reasons, such as for example to missed payments which have been resolved in the next two payment periods.

Comparable exposures

34. For the purposes of Article 24(9)(c) of Regulation (EU) 2017/2402, exposures held by the originator or original lender which are not securitised should be deemed comparable if, at the time of carrying out the selection of exposures, they are not exposures to credit-impaired

debtors or guarantors in accordance with points (a) and (b) of Article 24(9) of that Regulation and, at the time of origination of the ABCP transaction, they would have qualified as comparable assets in accordance with the specifications in Article 16(2) of the Delegated Regulation (EU)... implementing the EBA draft regulatory technical standards to specify in greater detail the risk-retention requirement¹⁰.

Significantly higher risk of contractually agreed payments not being made

35. For the purpose of Article 24(9)(c) of Regulation (EU) 2017/2402, a credit assessment or credit score of an underlying exposure should be considered to be significantly higher than for comparable exposures held by the originator which are not securitised, when the credit score or assessment for such underlying exposures is significantly higher than the average credit score or assessment of all comparable exposures held by the originator which are not securitised.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(9)

The underlying exposures shall be transferred to the SSPE after selection without undue delay and shall not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best of the originator's or original lender's knowledge:

(a) has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt-restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:

(i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE; and

(ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring;

¹⁰ EBA consultation paper on the draft regulatory technical standards specifying in greater detail the risk retention: <http://www.eba.europa.eu/regulation-and-policy/securitisation-and-covered-bonds/rts-on-risk-retention>

(b) was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or original lender; or

(c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised.

- 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.**
- Q9. Do you agree with the interpretation of the criterion with respect to exposures to a credit impaired debtor or guarantor?**
- Q10. Do you agree with the interpretation of the criterion with respect to the exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process?**

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

Scope of the criterion

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

At least one payment

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

Relevant maturity

38. The requirement in terms of a maturity of less than one year should be understood as referring to the initial legal maturity of an exposure, not to the residual maturity of an exposure.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(10)

The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of 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.

Q11. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

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

Predominant dependence on the sale of assets

39. For the purposes of Article 24(11) of Regulation (EU) 2017/2402, the requirement to disallow predominant dependence on the sale of assets securing the underlying exposures, where the underlying exposures are not secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party, should not disallow transactions where all of the following conditions apply:

- a. the residual values on which the transaction relies are sufficiently low on a relative basis i.e. the transaction relies on the sale of assets the value of which at the time of transfer of the exposures corresponds to no more than 30 % of the total initial exposure value of all securitisation positions held in this ABCP transaction, calculated according to Article 248 of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2017/2401;
- b. the dates of sale of assets securing the underlying exposures which are dependent on the sale of assets, are not subject to material concentrations across the life of the transaction;
- c. the granularity of the pool of underlying exposures is sufficiently high i.e. the pool contains at least 500 exposures.

40. Where an ABCP transaction depends with regard to all or part of the underlying exposures on the sale of assets securing the underlying exposures, such an ABCP transaction should be considered non-compliant with the requirements of Article 24(11) of Regulation (EU) 2017/2402 if the underlying exposures do not meet all three conditions referred to in points (a) to (c) of the previous paragraph.

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

41. The exemption referred to in the second subparagraph of Article 24(11) of Regulation (EU) 2017/2402 with regard to the repayment of holders of securitisation positions whose

underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by another third party, should only apply, where such third party is an eligible provider of unfunded credit protection in accordance with Article 201(1) of Regulation (EU) 575/2013, and Article 249 of Regulation (EU) 2017/2401 amending Regulation (EU) 575/2013.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(11)

The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced.

The repayment of the holders of the securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party shall not be considered to depend on the sale of assets securing those underlying exposures.

Q12. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Q13. Do you agree with the interpretation of the predominant dependence with reference to 30% of total initial exposure value of securitisation positions? Should different percentage be set dependent on different asset category securitised?

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

Appropriate mitigation of interest rate and currency risks

42. For the purposes of Article 24(12) of Regulation (EU) 2017/2402 in order for the interest rate and currency risks arising from the securitisation to be considered “appropriately mitigated”, it should not necessarily be required that a completely perfect hedge or mitigation is in place, but rather that a hedge or mitigation is in place, which is not unusually limited with the effect that it covers a major share of the respective interest rate or currency risks under relevant scenarios. Also, it should not necessarily be understood from an accounting point of view, but rather from an economic perspective. It should also not be interpreted as only being limited to hedging through derivative instruments, but could also include other mitigating measures such as reserve funds, or other measures.

43. Where the appropriate mitigation of interest rate and currency risks is carried out through derivatives, all of the following requirements should apply:
- a. the derivatives should only be used for genuine hedging of asset and liability mismatches of interest rates and currencies at the level of the ABCP transaction, and should not be used for speculative purposes;
 - b. the derivatives should be based on commonly accepted documentation (such as ISDA or similar national standards);
 - c. the derivative counterparties should be credit institutions, investment firms, insurance or reinsurance undertakings, financial institutions, CCPs, or public bodies such as central governments and other public sector entities of EU Member States, central banks of EU Member States, ECB, International Monetary Fund, European Investment Bank, Bank for International Settlements, and multilateral development banks;
 - d. the derivative documentation should provide, for the event of the loss of sufficient creditworthiness of the counterparty below a certain level, that the counterparty is subject to collateralisation requirements and, in the event of the loss of sufficient creditworthiness of the counterparty below a further level, and where the counterparty is not a public body, that such party makes reasonable effort for its replacement or guarantee by another counterparty;
 - e. the appropriateness of the mitigation of interest rate and currency risks through the life of the transaction must be demonstrated through quantitative information including the fraction of notional amounts that are hedged, as well as a concise sensitivity analysis that illustrates the effectiveness of the hedge under extreme but plausible scenarios.
44. If the appropriate mitigation of interest rate and currency risks is not carried out through derivatives, those risk-mitigating measures should only be permitted where either of the following conditions is met:
- a. they are specifically created and used for the purpose of hedging only the interest rate risks or currency risks of the respective ABCP transaction, and not for the purpose of hedging multiple risks at the same time which could render the assessment of risk coverage by the sponsor and other parties directly exposed to the credit risk of the ABCP transaction overly complex;
 - b. they are fully funded and available at all times.
45. The measures, 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 in the initial transaction documentation and on a continuous basis thereafter.

Derivatives

46. For the purpose of Article 24(12) of Regulation (EU) 2017/2402, exposures in the pool of underlying exposures that merely contain a derivative component exclusively serving the purpose to directly hedge the interest-rate or currency risk of the respective underlying exposure itself, which is not itself a derivative, should not be understood to be prohibited.

Common standards in international finance

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

Explanatory text for consultation purposes:

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(12)

The interest rate and currency risks arising from the securitisation shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

- Q14. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.**

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

Clear and consistent terms

48. For the purposes of Article 24(13) of Regulation (EU) 2017/2402, “clear and consistent terms” should not be understood as necessarily requiring that the aspects covered are described in detail, but rather that precise terms are used throughout the transaction documentation in order to facilitate the work of the sponsor and other parties directly exposed to the credit risk of the ABCP transaction.

Reporting of changes in the priorities of payments

49. The requirement to report to investors all changes in the priorities of payments which will materially adversely affect the repayment of the securitisation position without undue delay should apply with regard to all parties directly holding a securitisation position at the level of

the respective ABCP transaction as well as with regard to investors in commercial paper holding a securitisation position at the level of the ABCP programme.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(13)

The transaction documentation shall set out in clear and consistent terms definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge offs, recoveries and other asset performance remedies.

The transaction documentation shall clearly specify the priorities of payment, events which trigger changes in such priorities of payment as well as the obligation to report such events. Any change in the priorities of payments which will materially adversely affect the repayment of the securitisation position shall be reported to investors without undue delay.

Q15. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

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

External data

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

Scope of availability of data

51. The availability of detailed data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised is of particular relevance for the sponsor providing full support and other parties acting as potential investors at the level of the respective ABCP transaction as all these parties are directly exposed to the credit risk of such ABCP transaction. By contrast, potential ABCP investors investing not on the level of an individual ABCP transaction, but on the level of the ABCP programme, mainly rely on the full support provided by the sponsor and in case of specified events, default or insolvency of the sponsor on the remedial steps to achieve, as appropriate, collateralisation of the funding commitment of the sponsor or replacement of

the liquidity facility provider in accordance with point (e) of Article 26(7) of Regulation (EU) 2017/2402. The requirement to make available data on static and dynamic historical default and loss performance should therefore relate to potential investors at the level of the respective ABCP transaction, not to potential ABCP investors at ABCP programme level. Where data on static and dynamic historical default and loss performance is nevertheless made available also to potential ABCP investors at programme level, the general requirements for disclosing any confidential information in an anonymised or aggregated form in accordance with subparagraph 6 of Article 7(1) of Regulation (EU) 2017/2402 should apply accordingly.

Substantially similar exposures

52. For the purposes of Article 24(14) of Regulation (EU) 2017/2402, the term “substantially similar exposures” should be understood in the same sense as “comparable exposures” referred to in paragraph 34 above.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(14)

The originator and the sponsor shall make available data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Where the sponsor does not have access to such data, it shall obtain from the seller access to data, on a static or dynamic basis, on the historical performance, such as delinquency and default data, for exposures substantially similar to those being securitised. All such data shall cover a period no shorter than five years, except for data relating to trade receivables and other short-term receivables, for which the historical period shall be no shorter than three years.

- 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.**

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

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

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

underlying exposures. When determining the remaining weighted average life of the pool of exposures of an ABCP transaction, sellers and sponsors may use the maximum maturity of the underlying exposures in the pool as defined in the documentation of the ABCP transaction instead of the actual residual maturity of individual underlying exposures provided that appropriate safeguards for avoiding breaches of the maximum maturity limit by individual exposures are in place.

Contractually binding and enforceable obligations

54. For the purposes of Article 24(15) of Regulation (EU) 2017/2402, the requirement should refer to all obligations contained in the underlying exposures as contractually specified that are relevant to investors i.e. that relate to any obligations to make payments or provide security by the debtor.
55. Relevant obligations as referred to in the previous paragraph should be considered as contractually binding and enforceable, where such obligations are of a type, which is commonly enforced by the courts, and where such obligations are only subject to the exceptions of general application which are common under the respective national legal framework.

Exposures with periodic payment streams

56. For the purposes of Article 24(15) of Regulation (EU) 2017/2402, exposures payable in a single instalment in the case of a revolving ABCP transaction, as referred to in Article 24(10) of Regulation (EU) 2017/2402, exposures related to credit cards facilities and exposures with instalments consisting of interests only should also be considered to have defined payment streams relating to rental, principal, interest, or related to any other right to receive income from assets warranting such payments.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(15)

ABCP transactions shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the characteristics relating to the cash flows of different asset types including their contractual, credit- risk and prepayment characteristics. A pool of underlying exposures shall only comprise one asset type.

The pool of underlying exposures shall have a remaining weighted average life of not more than one year, and none of the underlying exposures shall have a residual maturity of more than three years.

By way of derogation from the second subparagraph, pools of auto loans, auto leases and equipment lease transactions shall have a remaining weighted average life of not more than three and a half years, and none of the underlying exposures shall have a residual maturity of more than six years.

The underlying exposures shall not include loans secured by residential or commercial mortgages or fully guaranteed residential loans, as referred to in point (e) of the first subparagraph of Article 129(1) of Regulation (EU) No 575/2013. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors with defined payment streams relating to rental, principal, interest, or related to any other right to receive income from assets warranting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets. The underlying exposures shall not include transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU other than corporate bonds, that are not listed on a trading venue.

Q17. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Q18. Do you 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?

9.1.12 Referenced interest payments (Article 24(16))

Referenced rates

57. For the purposes of Article 24(16) of Regulation (EU) 2017/2402 interest rates that should be considered to be an adequate reference basis for referenced interest payments, should include all of the following:
- a. interbank rates, such as the LIBOR, EURIBOR, and rates set by monetary policy authorities, such as FED funds rates, and Central Bank's discount rates;
 - b. sectoral rates reflective of a lender's cost of funds such as internal interest rates that are directly reflecting the market costs of funding of an institution or a sub-set of institutions, to the extent that sufficient data are provided to investors to allow them to assess their relation to other market rates;
 - c. with respect to referenced interest payments under the ABCP transaction's liabilities, interest rates reflective of an ABCP programme's cost of funds.

Complex formulae or derivatives

58. For the purposes of Article 24(16) of Regulation (EU) 2017/2402, a formula should be considered to be complex when it meets the definition of an exotic instrument by the Global Association of Risk Professionals (GARP), which is a financial asset or instrument with features making 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.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(16)

Any referenced interest payments under the ABCP transaction's assets and liabilities shall be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, but shall not reference complex formulae or derivatives. Referenced interest payments under the ABCP transaction's liabilities may be based on interest rates reflective of an ABCP programme's cost of funds.

- 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.**

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

Exceptional circumstances

59. For the purposes of Article 24(17) of Regulation (EU) 2017/2402, a list of "exceptional circumstances" should, to the extent possible, be included in the documentation of the ABCP transaction.
60. Given the nature of the 'exceptional circumstances' and in order to allow for some flexibility with respect to potential unusual circumstances requiring that cash is trapped in the SSPE in the best interest of investors at ABCP transaction level, where a list of 'exceptional circumstances' is included in the documentation of the ABCP transaction in accordance with paragraph 59, such a list should be non-exhaustive.

Amount trapped in the SSPE in the best interests of investors

61. For the purposes of Article 24(17) of Regulation (EU) 2017/2402, the amount of cash to be trapped in the SSPE should be that agreed by the trustee who is legally required to act in the best interest of the investors at ABCP transaction level.

62. For the purposes of Article 24(17) of Regulation (EU) 2017/2402, it should be allowed to trap the cash in the SSPE in the form of a reserve fund for future use, as long as the use of the reserve fund is exclusively limited to the purposes set out in Article 24(17)(a) of Regulation (EU) 2017/2402 or to the orderly repayment to the investors at ABCP transaction level in the next payment period.

Repayment

63. For the purposes of Article 24(17)(b) of Regulation (EU) 2017/2402, the requirements provided therein should apply both within classes of assets (e.g. Class A/Class B/Class C) as well as within sub-classes (Class A1/Class A2/Class A3 etc.), based on their seniority.
64. The objective of the requirement in Article 24(17) of Regulation (EU) 2017/2402 is to prohibit non-sequential payments of principal in a situation of a seller's default or an acceleration event. This requirement should not be interpreted as requiring the exclusive use of principal receipts from the underlying exposures to repay investors in situations, where the seller is not in default and where there is also no acceleration event. In such a situation, for example, principal receipts may be allowed for replenishment purposes consistently with Article 24(10) of Regulation (EU) 2017/2402.

Liquidation of the underlying exposures at market value

65. For the purposes of Article 24(17)(c) of Regulation (EU) 2017/2402 provisions requiring automatic liquidation of the underlying exposures at market value should not include the decision of the investors at ABCP transaction level or at ABCP programme level following a situation of a seller's default or an acceleration event.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(17)

Following the seller's default or an acceleration event:

(a) no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitisation unless exceptional circumstances require that an amount be trapped to be used, in the best interests of investors, for expenses in order to avoid the deterioration in the credit quality of the underlying exposures;

(b) principal receipts from the underlying exposures shall be passed to investors holding a securitisation position via sequential payment of the securitisation positions, as determined by the seniority of the securitisation position; and

(c) no provisions shall require automatic liquidation of the underlying exposures at market value.

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.

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

Scope of the full disclosure requirement

66. The requirement in terms of full disclosure of underwriting standards pursuant to which the underlying exposures are originated and of any material changes from prior underwriting standards exclusively applies to full disclosure to the sponsor and other parties directly exposed to the ABCP transaction, and not to ABCP investors holding a securitisation position at ABCP programme level who are not directly exposed to the individual ABCP transaction.

Similar exposures

67. For the purposes of Article 24(18) of Regulation (EU) 2017/2402, exposures should be considered to be similar where one of the following conditions is met:
- a. the exposures belong to the same asset category out of the asset categories referred to in Article 2 points (a), (b), and (e) to (g) of Delegated Regulation (EU) 2018/... 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;
 - b. where the exposures fall under the asset categories referred to in Article 2(c) and (d) of Delegated Regulation (EU) 2018/..., as underlying exposures of a certain type of credit facility, which belong to the same asset category out of those two asset categories;
 - c. where they do not belong to any asset category referred to in Article 2 (a) to (g) of Delegated Regulation (EU) 2018/..., as underlying exposures which share similar characteristics with respect to the type of obligor, credit facility, collateral and repayment characteristics.

No less stringent underwriting standards

68. For the purpose of Article 24(18) of Regulation (EU) 2017/2402, the underwriting standards applied to securitised exposures should be compared with the underwriting standards applied to similar exposures at the time of origination of the securitised exposures.
69. Compliance with this requirement does therefore neither require the originator or original lender to hold similar exposures on its balance sheet at the time of selection of the securitised

exposures or at the exact time of their securitisation, nor does it require that similar exposures have actually been originated at the time of origination of the securitised exposures.

Material changes from prior underwriting standards

70. For the purposes of Article 24(18) of Regulation (EU) 2017/2402, the requirement to fully disclose any material changes from prior underwriting standards should include material changes to the underwriting standards that are linked or related to the particular ABCP transaction and to which the following applies:
- a. with respect to the underwriting standards applied to the underlying exposures before the closing of the ABCP transaction: all material changes to the underwriting standards applied (i) over a period of 5 years before the closing of the ABCP transaction, or (ii) over the period of maturity of the exposure with the longest maturity plus one year, whichever from (i) or (ii) is shorter. For the purposes of this paragraph, changes should be deemed material where they would have affected the requirement on the similarity of the underwriting standards, methods and criteria in accordance with the Delegated Regulation (EU) 2018/... on homogeneity;
 - b. with respect to the underwriting standards applied to the underlying exposures after the closing of the ABCP transaction: all material changes to underwriting standards pursuant to which exposures have been originated in the context of (i) substitution or repurchase of underlying exposures due to the breach of representations and warranties, (ii) replenishment of underlying exposures and (iii) ramp-up periods as referred to in paragraph 18 (a) to (c). For the purposes of this paragraph, changes should be deemed material where they modify the information on the underwriting standards originally disclosed in the prospectus or made available in the initial offering document.
71. The disclosure of all changes to underwriting standards should also include a high-level explanation of the purpose of such changes.

Criteria for determining the expertise of the seller

72. For the purposes of determining the expertise of the seller in originating exposures of a similar nature to those securitised in accordance with Article 24(18) of Regulation (EU) 2017/2402, the members of the management body of the seller and the senior staff responsible for managing originating and underwriting of exposures of similar nature should have adequate knowledge and skills in the origination and underwriting of such similar exposures. In addition, any of the following principles on the quality of the expertise should be taken into account in the determination of the expertise:
- a. the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;

- b. the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;
 - c. the involvement of the members of the management body and the senior staff within the governance structure of the function of originating and underwriting of the exposures should be appropriate;
 - d. in case of prudentially regulated entity, whether such regulatory authorisations or permissions held by the entity are deemed relevant with respect to origination and underwriting of similar exposures.
73. Without prejudice to paragraph 72, a seller should be deemed to have the required expertise where either of the following applies:
- a. the business of the entity (or its consolidated group for accounting or prudential purposes) has included the originating and underwriting of exposures similar to those securitised, for at least five years;
 - b. the seller complies with both of the following:
 - i. the members of its management body have professional experience in the origination and underwriting of exposures similar to those securitised, with at least two of those members each having such experience at personal level for at least 5 years; and
 - ii. senior staff who are responsible for managing the entity's originating and underwriting of exposures similar to those securitised have relevant professional experience in the origination and underwriting of exposures of similar nature, at a personal level, for at least 5 years.
74. For the purposes of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail to permit investors to carry out their obligations under Article 5(3)(c) of Regulation (EU) 2017/2402.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(18)

The underlying exposures shall be originated in the ordinary course of the seller's business pursuant to underwriting standards that are no less stringent than those that the seller applies at the time of origination to similar exposures that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to the sponsor and other parties directly exposed to the ABCP transaction

without undue delay. The seller shall have expertise in originating exposures of a similar nature to those securitised.

- 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.
- Q22.** Do you agree with this balanced approach to the determination of the expertise of the seller? Do you believe that a more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of a minimum of 5 years of professional experience appropriate and exercisable in practice?
- Q23.** Should an alternative interpretation of “similar exposures” be provided, such as, for example, referencing the eligibility criteria (per Article 24(7)) that are applied to select the underlying exposures? Similar exposure under Article 24(18) could thus be defined as an exposure that would qualify for the portfolio, based on the exposure level eligibility criteria (not portfolio level criteria) which has not been selected for the pool and which was originated at the time of the securitised exposure (e.g. an exposure that has repaid / prepaid by the time of securitisation). Similar interpretation could be used for the term “exposures of a similar nature” under Article 24(18), and “substantially similar exposures” under Article 24(14). The eligibility criteria considered should take into account the timing of the comparison. Please provide explanations which approach would be more appropriate in providing clear and objectively determined interpretation of the “similarity” of exposures.

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

Insolvency-related event with regard to the servicer

75. The requirement in the Article 24(19)(b) of Regulation (EU) 2017/2402 should be considered as a requirement in addition to, and not as a replacement of, the requirement in the Article 24(20)(b) of that Regulation. Therefore, an insolvency-related event with respect to the servicer should trigger both (i) the processes necessary to ensure that an insolvency does not result in a termination of servicing, and (ii) the termination of the revolving period. In other words, the fact that the processes in accordance with Article 24(20)(b) of that Regulation are triggered does not mean that the termination of the revolving period is not required.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(19)

Where an ABCP transaction is a revolving securitisation, the transaction documentation shall include triggers for termination of the revolving period, including at least the following:

(a) a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold; and

(b) the occurrence of an insolvency-related event with regard to the seller or the servicer.

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.

9.1.16 Transaction documentation (Article 24(20))

Clear specification in the transaction documentation

76. For the purposes of Article 24(20) of Regulation (EU) 2017/2402, full transaction documentation should be disclosed to all parties directly exposed to the credit risk of the ABCP transaction and no other documents setting out obligations, processes and responsibilities and provisions as referred to in the points (a) to (d) of that Article may be excluded from such disclosure.
77. With regard to the disclosure to commercial paper investors on ABCP programme level, where the transaction documentation includes confidential information such information may be disclosed in an anonymised or aggregated form or in the form of a summary of the documentation concerned.

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

78. For the purposes of 24(20)(d) of Regulation (EU) 2017/2402, a sponsor should be deemed to comply with such requirement if the documentation of the ABCP transaction includes a clarification that the sponsor has met the requirement in accordance with Article 25(3) of Regulation (EU) 2017/2402 and that the competent authority did not object to the credit institution acting as a sponsor of an ABCP programme. A sponsor should however not be required to provide any details on the content of the demonstration referred to in Article 25(3) of Regulation (EU) 2017/2402 in order to comply with the requirements of Article 24(20)(d) of that Regulation.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 24(20)

The transaction documentation shall clearly specify:

(a) the contractual obligations, duties and responsibilities of the sponsor, the servicer and the trustee, if any, and other ancillary service providers;

(b) the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;

(c) provisions that ensure the replacement of derivative counterparties and the account bank upon their default, insolvency and other specified events, where applicable; and

(d) how the sponsor meets the requirements of Article 25(3).

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.

9.2 Programme-level criteria

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

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

79. For the purposes of the second subparagraph of Article 26(1) of Regulation (EU) 2017/2402, the percentage of the aggregate exposure amount of non-compliant exposures should be determined as the ratio of (a) to (b) where:
- a. is the aggregate amount of the exposures underlying the ABCP transactions net any purchase price discounts and which are funded by the ABCP programme via commercial paper, liquidity facility or other means, and which are in breach of paragraph (9) or (10) or (11);
 - b. is the aggregate amount of the exposures underlying the ABCP transactions net any purchase price discounts and which are funded by the ABCP programme via commercial paper, liquidity facility or other means.

Temporary non-compliance

80. For the purposes of the second subparagraph of Article 26(1) of Regulation (EU) 2017/2402, “temporarily” should be understood to be a period of no more than three months from the first occurrence of the non-compliance.

Scope and regularity of the external verification

81. For the purposes of the third subparagraph of Article 26(1) of Regulation (EU) 2017/2402, the external verification should cover only the transaction-level requirements referred to in paragraphs (9), (10) and (11) of Article 24 of that Regulation. As a result, the percentage of the aggregate amount of the exposures of the sample that are funded by the ABCP programme and which are non-compliant with the requirements of Article 24(9), (10) and (11) of that Regulation should be disclosed.
82. The external verification should ensure that the data disclosed to investors in any formal offering document is consistent with the result of that external verification of the sample.
83. The external verification should be understood to be carried out regularly when it is carried out at least at the earliest of either of the following:
- a. two years following the last external verification;

- b. when 75% of the aggregate amount of all exposures underlying the ABCP transactions at the date of the last external verification that have been funded by the ABCP programme have been either replenished or substituted.

Sample of the underlying exposures subject to external verification

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

Confirmation of the external verification

85. For the purposes of the third subparagraph of Article 26(1) of Regulation (EU) 2017/2402, confirmation that this verification will be conducted in accordance with the tests under paragraph 87(b) should be included in the offering circular or in the programme documentation.

Parties eligible to executing the external verification

86. For the purposes of the third subparagraph of Article 26(1) of Regulation (EU) 2017/2402, an appropriate and independent party should be deemed to be a party that has the appropriate experience and capability to carry out the verification and that is not a credit rating agency.

Additional clarification

87. For the purposes of Article 26(1), the sponsor should take appropriate steps to ensure the following:
 - a. that the aggregate amount of the non-compliant exposures does not surpass the level of 5%, including via the substitution of the underlying exposures that are non-compliant;
 - b. that, where the share of non-compliant exposures in the initial sample is above 5%, the appropriate and independent party carrying out the external verification in accordance with the third subparagraph of Article Article 26(1) of Regulation (EU) 2017/2402 either increases the sample size in order to materially improve the confidence level and repeats the external verification, or alternatively performs a verification of all of the exposures within the ABCP programme;
 - c. that, where the conditions referred to in points (a) and (b) are not met and the non-compliance in respect of individual underlying exposures surpasses the level of 5%, the sponsor should immediately notify ESMA and inform their competent authority in accordance with Article 27(4) of Regulation (EU) 2017/2402 that the requirements of Article 26(1) of that Regulation are no longer met, and the ABCP programme should no longer be considered STS.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 26(1)

All ABCP transactions within an ABCP programme shall fulfil the requirements of Article 24(1) to (8) and (12) to (20).

A maximum of 5 % of the aggregate amount of the exposures underlying the ABCP transactions and which are funded by the ABCP programme may temporarily be non-compliant with the requirements of Article 24(9), (10) and (11) without affecting the STS status of the ABCP programme.

For the purpose of the second subparagraph of this paragraph, a sample of the underlying exposures shall regularly be subject to external verification of compliance by an appropriate and independent party.

- Q26. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.**
- Q27. Do you agree that the external verification should only cover the criteria referenced in paragraphs (9), (10) and (11) of Article 24, or should it cover all criteria mentioned in Article 24? Do you agree with the approach on determining the frequency of the external verification?**
- Q28. Concerning the sample, should a minimum sample size be prescribed (in absolute or relative terms)? Should a statistical method for evaluating the outcome of the external verification of the sample be specified? Do you agree that it should be representative covering all underlying exposures of all transactions? Do you see merit in further specifying that the sample should be representative by properly representing the various asset categories of the transactions; or that representativeness may be assumed when the sample is gathered via a random selection?**

9.2.2 Remaining weighted average life (Article 26(2))

88. For the purposes of Article 26(2) of Regulation (EU) 2017/2402, when determining the weighted average life (WAL) of the pool of underlying exposures the WAL should be calculated through time-weighting only the repayments of principle amounts and should not take into account any prepayment assumptions or any payments relating to fees or interest to be paid by the obligors of the underlying exposures. When determining the remaining weighted

average life of the underlying exposures of an ABCP programme sponsors may use the maximum maturity of the underlying exposures in a certain pool as defined in the documentation of the respective ABCP transaction instead of the actual residual maturity of individual underlying exposures provided that appropriate safeguards for avoiding breaches of the maximum maturity limit by individual exposures as set out in the documentation of the respective ABCP transactions are in place.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 26(2)

The remaining weighted average life of the underlying exposures of an ABCP programme shall not be more than two years.

- Q29. **Do you agree with the interpretation of this requirement, and the aspects that the interpretation is focused on? Should other aspects be covered? Please substantiate your reasoning.**
- Q30. **Should the calculation of the weighted average life follow the concept of weighted cash flows or of weighted (residual) maturities? Should there be a facilitation for a simplified calculation of the WAL (e.g. to use the longest contractually possible remaining maturity of the exposures in a transaction as an upper bound)?**

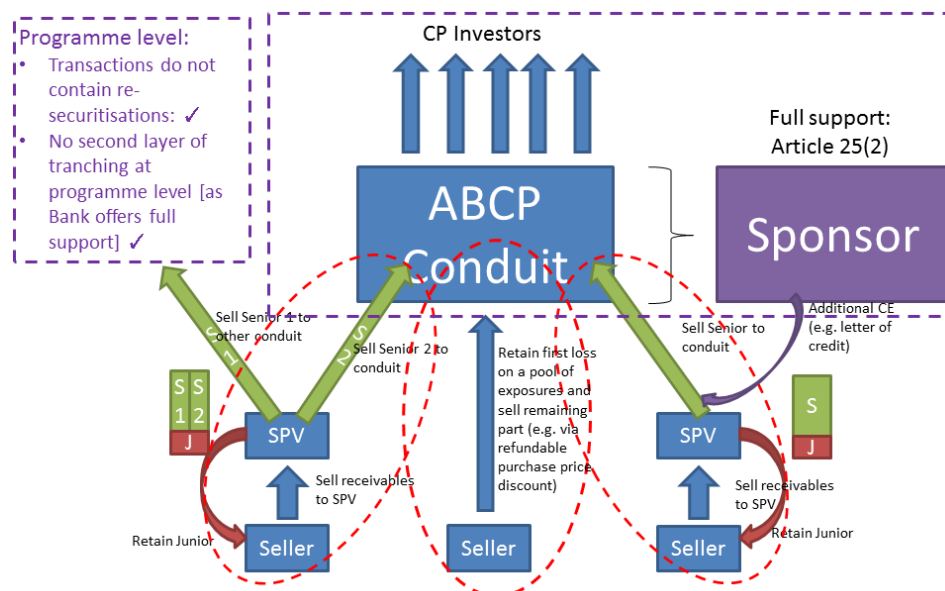
9.2.3 No resecuritisation (Article 26(4))

Second layer of tranching established by the credit enhancement

89. For the purposes of Article 26(4) of Regulation (EU) 2017/2402, a credit enhancement should not be considered to establish a second layer of tranching if the sponsor is able to demonstrate that the cash flows to and from the ABCP programme could be replicated in all circumstances and conditions by an exposure to a securitisation of a pool of exposures that contains no securitisation positions.
90. The following Figures 3 and 4 provide an example of credit enhancements that should be deemed compliant with the criterion in Article 26(4) of Regulation (EU) 2017/2401 as further interpreted in paragraph 89 and with the requirements set out in Article 8(4) of that Regulation. In the example provided in Figure 3, the application of the general principle laid down in paragraph 89 should result in the third ABCP transaction displayed in the Figure being compliant with the criterion in Article 24(8) of Regulation (EU) 2017/2402, as the cash flows to and from the transaction can be replicated in all circumstances and conditions by an

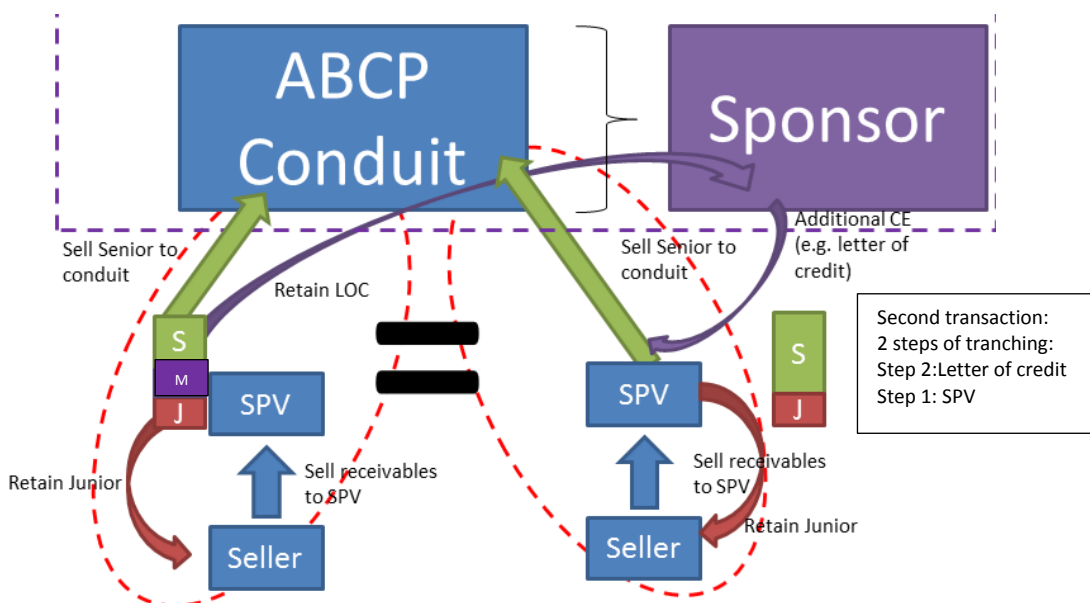
exposure to a securitisation with three tranches of a pool of exposures that contains no securitisation positions.

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



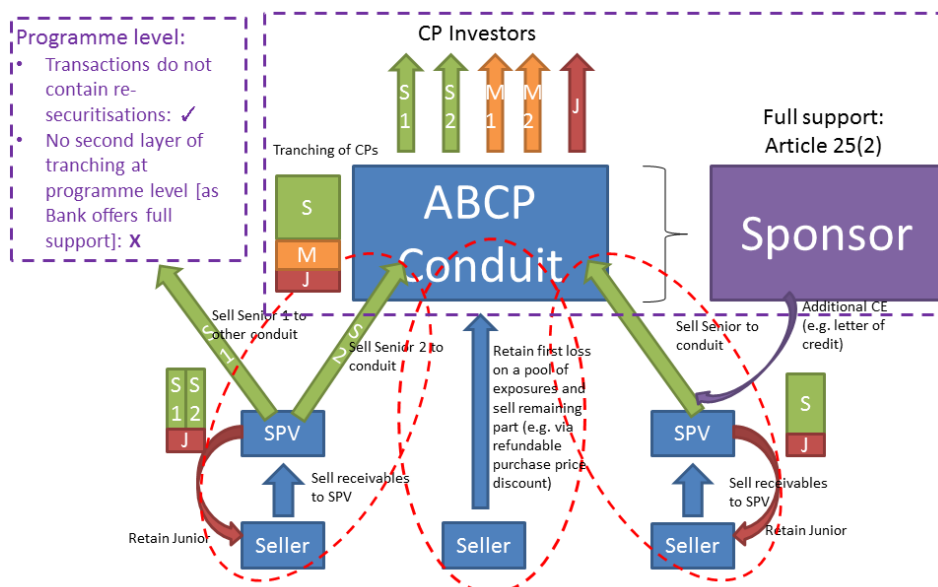
91. In the example provided in Figure 4, in both transactions the first loss - up to the amount of the junior tranche - is taken by the seller, and the second loss - up to the amount of the letter of credit - is taken by the provider of the letter of credit, while the senior loss is taken by the ABCP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

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



92. The following Figure 5 provides an example of a credit enhancement that should not be deemed compliant with the criterion in Article 26(4) of Regulation (EU) 2017/2402 as interpreted in paragraph 89 as due to the additional tranching at ABCP programme level the cash flows to and from ABCP investors at ABCP programme level cannot be replicated in all circumstances and conditions by an exposure to a securitisation of a pool of exposures that contains no securitisation positions.

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



Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 26(4)

The ABCP programme shall not contain any resecuritisation and the credit enhancement shall not establish a second layer of tranching at the programme level.

- Q55. 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.**
- Q56. Are there any other market practices – apart from the ones being covered by the clarification provided in the guidance - which would also fall within the conditions of Article 26(4), while from an economical point of view those should not be treated as resecuritisations?**
- Q57. Do you agree with the clarification which credit enhancement is to be considered as “establishing a second layer of tranching”? Would you see more merit in using an alternative clarification?**
- Q58. Do you think that the clarifications of the GL on Articles 24(8) and 26(4) interact correctly with the “ban on resecuritisation” provided for in Article 8? Should other aspects be covered? Please substantiate your reasoning.**

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

Types of call options and other clauses not covered by this criterion

93. For the purposes of Article 26(5) of Regulation (EU) 2017/2402, the securities issued by an ABCP programme may include call options, extension clauses or other clauses that have an effect on their final maturity, where such options or clauses may be exercised exclusively at the discretion of investors.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 26(5)

The securities issued by an ABCP programme shall not include call options, extension clauses or other clauses that have an effect on their final maturity, where such options or clauses may be exercised at the discretion of the seller, sponsor or SSPE.

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.

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

94. The requirement should be understood as specified in paragraphs 42 to 45 but in relation to any interest rate and currency risks at ABCP programme level.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 26(6)

The interest-rate and currency risks arising at ABCP programme level shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

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.

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

Expertise of the sponsor in credit underwriting

95. For the purposes of determining the expertise of the sponsor in credit underwriting in accordance with Article 26(7)(b) of Regulation (EU) 2017/2402, the members of the management body of the sponsor and the senior staff responsible for managing credit underwriting should have adequate knowledge and skills in the credit underwriting. In addition, any of the following principles on the quality of the expertise should be taken into account in the determination of the expertise:

- a. the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;
- b. the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;

- c. the involvement of the members of the management body and the senior staff within the governance structure of the function of originating and underwriting of the exposures should be appropriate;
 - d. in case of prudentially regulated entity, whether such regulatory authorisations or permissions held by the entity are deemed relevant with respect to origination and underwriting of similar exposures.
96. Without prejudice to paragraph 95, a sponsor should be deemed to have the required expertise where either of the following applies:
- a. the business of the entity (or its consolidated group for accounting or prudential purposes) has included the sponsoring of ABCP programmes and credit underwriting for at least five years;
 - b. the sponsor complies with both of the following:
 - i. the members of its management body have professional experience in the sponsoring of ABCP programmes and credit underwriting, with at least two of those members each having such experience at personal level for at least 5 years;
 - ii. senior staff who are responsible for managing the entity's sponsoring of ABCP programmes and credit underwriting have relevant professional experience in the sponsoring of ABCP programmes and credit underwriting, at a personal level, for at least 5 years.
97. For the purposes of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail to permit investors to carry out their obligations under Article 5(3)(c) of Regulation (EU) 2017/2402.

Liquidity facility

98. For the purposes of point (f) of Article 26(7) of Regulation (EU) 2017/2402, where the sponsor of an ABCP programme does not support all securitisation positions on an ABCP programme level via a single liquidity facility, but rather via distinct liquidity facilities for each ABCP transaction and where the sponsor does not renew the funding commitment of one specific liquidity facility for a particular ABCP transaction before its expiry, then none of the liquidity facilities provided for the other ABCP transactions within the ABCP programme have to be drawn down.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 26(7)

The documentation relating to the ABCP programme shall clearly specify:

- (a) the responsibilities of the trustee and other entities with fiduciary duties, if any, to investors;*
- (b) the contractual obligations, duties and responsibilities of the sponsor, who shall have expertise in credit underwriting, the trustee, if any, and other ancillary service providers;*
- (c) the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;*
- (d) the provisions for replacement of derivative counterparties, and the account bank at ABCP programme level upon their default, insolvency and other specified events, where the liquidity facility does not cover such events;*
- (e) that, upon specified events, default or insolvency of the sponsor, remedial steps shall be provided for to achieve, as appropriate, collateralisation of the funding commitment or replacement of the liquidity facility provider; and*
- (f) that the liquidity facility shall be drawn down and the maturing securities shall be repaid in the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry.*

Q33. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning. Should the “specified events” referred to in Article 26(7)(e) be specified in more detail e.g. as including triggers with regard to the creditworthiness of the sponsor?

9.2.7 Expertise of the servicer (Article 26(8))

99. For the purposes determining the expertise of a servicer in servicing exposures of a similar nature to those securitised in accordance with Article 26(8) of Regulation (EU) 2017/2402, the members of the management body of the servicer and the senior staff responsible for managing originating and underwriting of exposures of similar nature should have adequate knowledge and skills in the origination and underwriting of such similar exposures. In addition, any of the following principles on the quality of the expertise should be taken into account in the determination of the expertise:
- a. the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;
 - b. the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;

- c. the involvement of the members of the management body and the senior staff within the governance structure of the function of servicing of the exposures should be appropriate;
 - d. in case of prudentially regulated entity, whether such regulatory authorisations or permissions held by the entity are deemed relevant with respect to origination and underwriting of similar exposures.
100. Without prejudice to paragraph 99, a servicer should be deemed to have the required expertise where either of the following applies:
- a. the business of the entity (or its consolidated group for accounting or prudential purposes) has included the servicing of exposures of a similar nature to those securitised, for at least five years; or
 - b. the servicer complies with all of the following:
 - i. the members of its management body have professional experience in the servicing of exposures of a similar nature to those securitised, with at least two of those members each having such experience at personal level for at least 5 years;
 - ii. senior staff 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, for at least 5 years, and;
 - iii. the servicing function of the entity is backed by the back-up servicer compliant with paragraph 101(a).
101. For the purpose of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail to permit investors to carry out their obligations under Article 5(3)(c) of Regulation (EU) 2017/2402.

Well documented policies, procedures and risk management controls

102. For the purposes of Article 26(8) of Regulation (EU) 2017/2402, the servicer should be considered to have “well documented and adequate policies, procedures and risk management controls relating to servicing of exposures” if:
- a. it is an entity that is subject to prudential, capital and liquidity regulation and supervision in the Union, and the existence of well documented and adequate policies, procedures and risk management controls in this regard has been assessed and confirmed by the competent authority; or

- b. it is an entity that is not subject to prudential, capital and liquidity regulation and supervision in the Union, and a proof of existence of well documented and adequate policies and risk management controls is provided that also includes a proof of adherence to good market practices and reporting capabilities. The proof should be substantiated by a third-party review.

Explanatory text for consultation purposes

The Article or Articles of the STS Regulation to which the above provisions relate are provided here below for ease of reference.

Article 26(8)

The servicer shall have expertise in servicing exposures of a similar nature to those securitised and shall have well- documented policies, procedures and risk-management controls relating to the servicing of exposures.

- 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.**

STS criteria not specified above (i.e. no resecuritisation requirement (Art. 24(8)) and full support by sponsor (26(3))

Explanatory text for consultation purposes

This consultation paper puts forward draft guideline text only for those parts of the Securitisation Regulation that the EBA views necessary to specify further. With regard to the remaining parts EBA views that those requirements are sufficiently clear and do not necessitate any further guidance.

- 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.**

10. Accompanying documents

10.1 Draft cost-benefit analysis / impact assessment

103. As per Article 16(2) of the EBA Founding 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

104. The guidelines have been developed in accordance with the mandate assigned to the EBA in Article 23(3) of the Securitisation Regulation (Regulation (EU) No 2017/2402), which requests the EBA to develop guidelines on the harmonised interpretation and application of the transaction-level and programme-level criteria for the ABCP securitisation.
105. The guidelines are expected to play a crucial role towards the consistent and correct implementation of the STS criteria, and the new EU securitisation framework in general. They should lead to a 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 authorised to check the compliance of the securitisation with the STS criteria. The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is a prerequisite for application of preferential risk weights under the amended CRR, as well as by severe sanctions imposed by the Securitisation Regulation 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 and other entities that will act as originators, investors, sponsors and SSPEs with respect to the STS securitisation, as well as by an extensive number of competent authorities that will be designed to supervise compliance of such market participants with the STS criteria.

Policy objectives

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

107. The introduction of the simple, transparent and standardised securitisation product, and establishment of the criteria that such a product needs to comply with, is a core pillar of the new EU securitisation framework, consisting of the Securitisation Regulation and accompanying changes in the CRR which entered into force in the EU in January 2018.
108. 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 of the link between banks deleveraging needs and credit tightening in the short run, and creating a more balanced and stable funding structure of the EU economy in the long run.
109. 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

110. The baseline scenario presumes the existence of no guidelines. It is expected that this would have negative impact on the implementation of the new EU securitisation framework, given the potential ambiguities or uncertainties present in the STS criteria as specified in the Securitisation Regulation would not be addressed, leading to a lack of convergence and to divergent approaches in the implementation of the criteria throughout the EU. This could increase the costs of compliance with the requirements, and result in origination of STS securitisation instruments with differing characteristics and risk profiles, resulting from different interpretation of the criteria set out in the Securitisation Regulation. Also, this could disincentivise the originators from issuing STS securitisations, in particular in light of severe sanctions that could be imposed in case 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. Absence of clear interpretation of the rules could also increase the scope of potential use of the binding mediation, in case disagreements would arise due to inconsistent understanding of the Level 1 requirements.

Assessment of the option adopted

111. The EBA has addressed the legal mandate by providing detailed interpretation of all the STS criteria specified in the Securitisation Regulation. The interpretations follow the principle of proportionality i.e. the comprehensiveness of the interpretation is reflective of the perceived level of ambiguity or uncertainty embedded in each STS criterion. Based on this approach, the STS criteria have been divided into three groups:

- a. First, criteria for which it has been considered that they cannot be interpreted consistently without additional guidance, and for which the provision of clear interpretation has been considered crucial for the correct implementation of the STS regime: for these criteria very comprehensive interpretation has been provided;
 - b. Second, criteria that have been assessed as containing a substantial element of uncertainty or ambiguity, and for which provision of a clear interpretation has been assessed as essential for the correct implementation of the STS regime: for these criteria comprehensive interpretation has been provided;
 - c. Third, criteria that have been assessed as either self-explanatory or fairly straightforward, potentially including a certain element of ambiguity, and for which concise/specific guidance has been provided that has been assessed as beneficial for the correct implementation of the STS regime. This also includes a limited number of criteria for which no interpretation has been provided, given they have been assessed as sufficiently clear and no further guidance has been assessed as necessary.
112. The overview of the distribution of the STS criteria across these three types of criteria is provided in Figure 6 below.

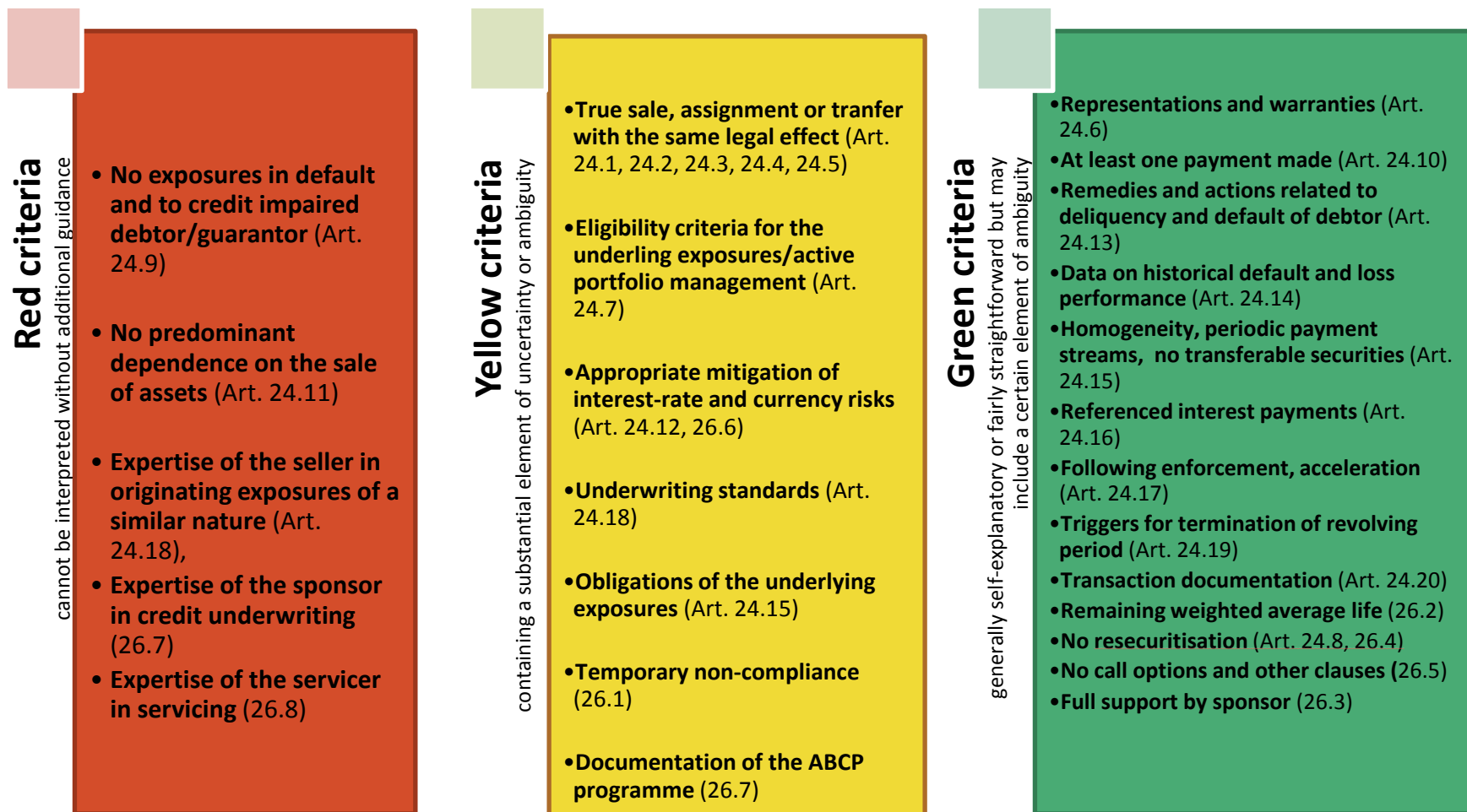
Cost-Benefit Analysis

113. It is expected that implementation of the guidelines will bring about substantial benefits for the originators, investors, sponsors, SSPEs, competent authorities and third party certifiers, given it should provide a single source of interpretation of the STS criteria and should therefore substantially facilitate their consistent adoption across the EU.
114. The guidelines should help achieve the objectives of the new EU securitisation framework as set out above, in a more efficient and effective way. They should help introduce an immediately recognisable STS product in EU securitisation markets, increase the trust by investors in the STS products that will be eligible for a more risk sensitive capital treatment, thereby allowing investors and originators to reap the benefits of simple, transparent and standardised instruments.
115. 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 authorities¹¹, the guidelines should contribute to mitigation of such costs, by providing clarity on Level 1 requirements. Beyond the costs for market participants and competent authorities to adapt to the new regulatory framework, there should be no relevant social and economic costs.

¹¹ 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

116. With respect to the stakeholders group affected, it is assessed that the guidelines will affect a large number of stakeholder groups. Given the inherent 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 the Securitisation Regulation and the guidelines, both on the origination and investment side. The guidelines will also need to be implemented by the competent authorities that will be designated to supervise the compliance of the market participants with the STS criteria. Also, third parties that will be authorised to provide assessments of the compliance with the STS criteria, will need to rely on the interpretation provided in the guidelines.
117. It is expected that costs and benefits related to the implementation of the guidelines will be on-going, and applicable for each single securitisation instrument issued.

Figure 6: Distribution of the STS criteria based on perceived level of unclarity or ambiguity



10.2 Overview of questions for consultation

Transaction-level criteria

True sale, assignment or transfer with the same legal effect (Article 24(1), 24(2), 24(3), 24(4) and 24(5))

- Q1. Do you agree with the interpretation of these criteria, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.
- 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?
- Q3. Do you believe that in addition to the guidance provided, additional guidance should be provided on the application of Article 24 (2)? If yes, please provide suggestions of such severe clawback provisions to be included in the guidance.
- 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?

Representations and warranties (Article 24(6))

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

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

- Q6. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.
- Q7. Do you agree with the techniques of portfolio management that are allowed and disallowed, under the criterion of the active portfolio management? Should other techniques be included or excluded?

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

- Q8. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.
- Q9. Do you agree with the interpretation of the criterion with respect to exposures to a credit impaired debtor or guarantor?
- Q10. Do you agree with the interpretation of the criterion with respect to the exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process?

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

- Q11. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

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

- Q12. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.
- Q13. Do you agree with the interpretation of the predominant dependence with reference to 30% of total initial exposure value of securitisation positions? Should different percentage be set dependent on different asset category securitised?

Appropriate mitigation of interest-rate and currency risks (Article 24(12))

- Q14. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

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

- Q15. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

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

Q16. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

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

Q17. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Q18. Do you believe that additional guidance should be provided in these guidelines with respect to the homogeneity requirement, in addition to the requirements specified in the Delegated Regulation (EU) 2018/.... further specifying which underlying exposures are deemed homogeneous?

Referenced interest payments (Article 24(16))

Q19. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Following enforcement or delivery of an acceleration notice (Article 24(17))

Q20. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

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

Q21. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Q22. Do you agree with this balanced approach to the determination of the expertise of the seller? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?

Q23. Should alternative interpretation of the "similar exposures" be provided, such as, for example, referencing the eligibility criteria (per Article 24(7)) that are applied to select the underlying exposures? Similar exposure under Article 24(18) could thus be defined as an exposure that would qualify for the portfolio, based on the exposure level eligibility criteria (not portfolio level criteria) which has not been selected for the pool and which was originated at the time of the securitised exposure (e.g. an exposure that has repaid / prepaid by the time of securitisation). Similar interpretation could be used for the term

“exposures of a similar nature” under Article 24(18), and “substantially similar exposures” under Article 24(14). The eligibility criteria considered should take into account the timing of the comparison. Please provide explanations which approach would be more appropriate in providing clear and objectively determined interpretation of the “similarity” of exposures.

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

Q24. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Transaction documentation (Article 24(20))

Q25. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Programme-level criteria

Temporary non-compliance (Article 26(1))

Q26. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Q27. Do you agree that the external verification should only cover the criteria referenced in paragraphs (9), (10) and (11) of Article 24, or should it cover all criteria mentioned in Article 24? Do you agree with the approach on determining the frequency of the external verification?

Q28. Concerning the sample, should a minimum sample size be prescribed (in absolute or relative terms)? Should a statistical method for evaluating the outcome of the external verification of the sample be specified? Do you agree that it should be representative covering all underlying exposures of all transactions? Do you see merit in further specifying that the sample should be representative by properly representing the various asset categories of the transactions; or that representativeness may be assumed when the sample is gathered via a random selection?

Remaining weighted average life (Article 26(2))

Q29. Do you agree with the interpretation of this requirement, and the aspects that the interpretation is focused on? Should other aspects be covered? Please substantiate your reasoning.

- Q30. Should the calculation of the weighted average life follow the concept of weighted cash flows or of weighted (residual) maturities? Should there be a facilitation for a simplified calculation of the WAL (e.g. to use the longest contractually possible remaining maturity of the exposures in a transaction as an upper bound)?

No resecuritisation (Article 26(4))

- Q31. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.
- Q32. Are there any other market practices – apart from the ones being covered by the clarification provided in the guidance - which would also fall within the conditions of Article 26(4), while from an economical point of view those should not be treated as resecuritisations? Do you agree with the clarification which credit enhancement is to be considered as “establishing a second layer of tranching”?

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

- Q33. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Appropriate mitigation of interest-rate and currency risks (Article 26(6))

- Q34. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

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

- Q35. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning. Should the “specified events” referred to in Article 26(7)(e) be specified in more detail e.g. as including triggers with regard to the creditworthiness of the sponsor?

Expertise of the servicer (Article 26(8))

- Q36. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

STS criteria non-specified above (i.e. no resecuritisation requirement (Art. 24(8)) and full support by sponsor (26(3))

Q37. Do you agree that no other requirements are necessary to be specified further? If not, please provide reference to the relevant provisions of the STS Regulation and their aspects that require such further specification.