

EBA/GL/2024/05

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# Final Report

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Guidelines on the STS criteria for on-balance-sheet securitisation

and

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

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# 1. Executive Summary

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The guidelines have been developed in accordance with Article 26a(2) of Regulation (EU) 2017/2402 that entitles the European Banking Authority (EBA) to provide guidelines on the harmonised interpretation and application of the criteria on simplicity, standardisation, transparency and of specific requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread, applicable to simple, transparent and standardised (STS) on-balance-sheet securitisation, as set out in Articles 26b to 26e of that Regulation. While addressing the mandate under Article 26a(2) of the SECR, the EBA deemed it necessary to amend the EBA guidelines on STS criteria for asset-backed commercial paper (ABCP) (EBA/GL/2018/08) and non-ABCP (EBA/GL/2018/09).

The main objective of the guidelines is to provide a single point of consistent interpretation of those criteria and ensure a common understanding of them by originators, original lenders, securitisation special purpose entities (SSPEs), investors, competent authorities and third-party verification agents verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402, throughout the Union. The amending guidelines include a limited set of targeted amendments to the existing EBA guidelines on non-ABCP and ABCP securitisation respectively, for a specific number of these requirements, to ensure that the interpretation provided by the EBA is consistent across all three guidelines.

The guidelines will be applied on a cross-sectoral basis throughout the Union with the aim of facilitating the adoption of the respective criteria, which is one of the prerequisites for the application of a more risk-sensitive regulatory treatment of exposures to securitisations compliant with such criteria, under the EU securitisation framework for originator institutions updated by the Capital Markets Recovery Package in 2021.

The guidelines should thus play an important role in the updated EU securitisation framework, which has been applicable since January 2019 and was subject to a further update in 2021, which aimed to contribute to a revival of a safe and sound securitisation market in the EU and help recovery from the COVID-19 crisis.

## Next steps

The proposed guidelines were published for a three-month public consultation, from April to June 2023. Following their finalisation, they will be translated into the official EU languages and published on the EBA website.

## 2. Background and rationale

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1. In accordance with Article 26a(2) of Regulation (EU) 2017/2402<sup>1</sup> (Securitisation Regulation or SECR) as amended by Regulation (EU) 2021/557<sup>2</sup> as part of the Capital Markets Recovery Package (CMRP), the EBA has been entitled to develop guidelines and recommendations on the harmonised interpretation of the specific requirements for on-balance-sheet securitisation (requirements related to simplicity, standardisation, transparency and specific requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread, later referred to as 'STS' requirements, as set out in Articles 26b to 26e of the SECR). Compliance with these requirements is a prerequisite for a preferential risk-weight treatment for originator institutions retaining exposures to senior tranches of such 'STS' on-balance-sheet securitisations, in accordance with specific requirements in the amended CRR<sup>3</sup>.
2. When enacted in 2017, the Securitisation Regulation introduced a similar mandate for the EBA to develop guidelines and to harmonise the interpretation of STS requirements for traditional securitisation (the mandate was twofold, requesting one set of guidelines for non-ABCP securitisation, and another set of guidelines for ABCP securitisation). Based on those mandates, the EBA developed and published two sets of guidelines, one for non-ABCP securitisation, and one for ABCP securitisation, respectively, in December 2018<sup>4</sup>.
3. In the present draft guidelines, addressing the mandate under Article 26a(2) of the SECR, the EBA has developed interpretations of the STS criteria applicable to on-balance-sheet securitisations, and focused on clarifying aspects of those requirements with potential points of ambiguity (with the exception of a small number of STS requirements that were assessed as being sufficiently clear and where no interpretation is provided).
4. When developing the guidelines, to the extent possible and where appropriate, the guidance provided in the EBA Guidelines on the STS criteria for non-ABCP securitisation<sup>5</sup> has been taken into account for those STS requirements that are similar or identical to requirements applicable to non-ABCP securitisation.

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<sup>1</sup> Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2402&from=fr>

<sup>2</sup> Regulation (EU) 2021/557 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0557&from=EN>

<sup>3</sup> Regulation (EU) 2021/558 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) No 575/2013 as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis: [EUR-Lex - 32021R0558 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0558&from=EN)

<sup>4</sup> [Guidelines on the STS criteria for ABCP and non-ABCP securitisation | European Banking Authority \(europa.eu\)](https://www.eba.europa.eu/en/guidelines/guidelines-on-the-sts-criteria-for-abc-and-non-abc-securitisation)

<sup>5</sup> [Guidelines on the STS criteria for non-ABCP securitisation.pdf \(europa.eu\)](https://www.eba.europa.eu/en/guidelines/guidelines-on-the-sts-criteria-for-non-abc-securitisation)

5. The main objective of the guidelines is to ensure a consistent interpretation and application of the STS criteria by the originators, original lenders, SSPEs and investors involved in the STS securitisation, the competent authorities designated to supervise the compliance of the entities with the criteria, and third parties authorised to check the compliance of the securitisation with the STS criteria. The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is a prerequisite for the application of preferential risk weights under the amended CRR for senior tranches retained by originators, as well as for administrative sanctions imposed by the Securitisation Regulation in the case of negligence or intentional infringement of the STS criteria. Also, given the inherent cross-sectoral nature of securitisation the guidelines will be applied on a cross-sectoral basis i.e. by different types of entities that will act as originators, original lenders, investors and SSPEs with respect to STS securitisations, as well as by competent authorities designated to supervise compliance of the above entities involved with the STS criteria.
6. The guidelines are interlinked with the ESMA RTS/ITS on the STS notifications. While the EBA guidelines are focused on providing guidance on the content of the STS requirements, the ESMA RTS/ITS are focused on specifying the format of notification of compliance with the STS requirements. It is expected that the guidance in the EBA guidelines for each single STS criterion should be appropriately reflected in the information provided on compliance with the STS criteria within the STS notifications.
7. These guidelines aim to cover in a comprehensive manner all the STS criteria for on-balance-sheet securitisations for which additional guidance is required. Recommendations may be developed, if necessary, at a later stage to address particular aspects arising from the practical application of the Securitisation Regulation and the EBA guidelines. This approach is also consistent with the legal nature of these two legal instruments: while in terms of their legal power they are both non-legally binding instruments subject to the comply-or-explain mechanism, guidelines are instruments of general application 'erga omnes' (towards all), whereas recommendations are instruments of specific application e.g. applying to specific addressees.
8. A number of the STS requirements specified in the SECR for on-balance-sheet securitisation are the same in substance as those for traditional (non-ABCP and ABCP) securitisation. To ensure consistency, the interpretation in the present guidelines for these requirements is therefore identical to the interpretation provided in the EBA guidelines on non-ABCP and ABCP securitisation (unless specificities of the on-balance-sheet securitisation require the interpretation to be adapted).
9. At the same time, for a small subset of these requirements which are identical for both traditional (non-ABCP and ABCP) and on-balance-sheet securitisation, experience with the practical implementation of these requirements identified a need to amend and 'update' the existing guidance, to ensure further clarity and to reflect on the practical implementation of the requirements. A limited set of targeted amendments is therefore proposed to the EBA guidelines on non-ABCP and ABCP securitisation respectively for a specific number of these requirements,

to ensure that the interpretation provided by the EBA is the same and consistent across all three guidelines. The amendments relate to the following requirements:

<b>Articles in the Securitisation Regulation</b>			
<b>STS criteria</b>	<b>Non-ABCP securitisation</b>	<b>ABCP securitisation</b>	<b>On-balance-sheet securitisation</b>
Underwriting standards, originator's expertise	Article 20(10)	Article 24(18)	Article 26b(10)
No exposures in default and to credit-impaired debtors/guarantors	Article 20(11)	Article 24(9)	Article 26b(11)
At least one payment	Article 20(12)	Article 24(10)	Article 26b(12)
Risk retention requirements	Article 21(1)	Article 25(5) (this Article is not covered in the EBA mandate for guidelines for ABCP securitisation)	Article 26c(1)
Referenced interest payments	Article 21(3)	Article 24(16)	Article 26c(3)
Non-sequential priority of payments	Article 21(5)	Article 24(17)(b)	Article 26c(5)
Data on historical default and loss performance	Article 22(1)	Article 24(14)	Article 26d(1)
Verification of a sample of the underlying exposures	Article 22(2)	Article 26(1)	Article 26d(2)
Liability cash flow model	Article 22(3)	Requirement not available for ABCP securitisation	Article 26d(3)
Environmental performance and sustainability disclosures of the assets	Article 22(4)	Requirement not available for ABCP securitisation	Article 26d(4)
Compliance with disclosure requirements under Article 7	Article 22(5)	Article 25(6) (this Article is not covered in the EBA mandate for guidelines for ABCP securitisation)	Article 26d(5)

10. With respect to the structure of the guidelines, while the main interpretation of the STS criteria is provided in Section 3, this section includes additional information on the objectives and the rationale of each single interpretation, and comparison with the interpretation provided in the guidelines on non-ABCP securitisation. Section 8 of the guidelines includes targeted amendments to the guidelines on non-ABCP securitisation and ABCP securitisation. Following the finalisation of the guidelines, the EBA will issue guidelines for on-balance-sheet securitisation and publish consolidated versions of the guidelines for non-ABCP and ABCP securitisation.

11. Unless otherwise stated, in this section all references to individual articles refer to articles of the SECR.

## Criteria relating to simplicity (Article 26b)

### Requirements on the originator (Article 26b(1))

12. This requirement is part of the requirements that aim to exclude arbitrage securitisations, i.e. transactions in which the protection buyer purchases exposures outside its core lending/business activity for the sole purpose of writing tranching credit protection on them (i.e. securitising them) and arbitraging on the yields resulting from the transaction. Ensuring that the risk management and servicing of exposures purchased for the purpose of securitising them are consistent with those of comparable exposures held on the balance sheet by the protection buyer and not securitised is important to avoid the occurrence of moral hazard behaviours by the protection buyer that could result in overall lesser credit quality of the securitised exposures underlying a securitisation transaction compared to those comparable exposures, ultimately affecting both retained securitisation positions and securitisation positions placed with investors.

13. This requirement is deemed sufficiently clear and no further guidance has been assessed as necessary.

#### **Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

14. No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

### Origination as part of the core business activity of the originator (Article 26b(2))

#### **Background and rationale:**

15. This requirement is part of the requirements to exclude arbitrage securitisation. This requirement is deemed sufficiently clear and no further guidance has been assessed as necessary.

#### **Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

16. No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

### Exposures held on the balance sheet (Article 26b(3))

#### **Background and rationale:**

17. This requirement is part of the requirements to exclude arbitrage securitisation. This requirement is deemed sufficiently clear. No further guidance is considered necessary.

**Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

18.No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

**No double hedging (Article 26b(4))**

**Rationale:**

19.This requirement is part of the requirements to exclude arbitrage securitisation. In order to ensure legal certainty in terms of the payment obligations of the protection seller, the protection buyer should make sure that it does not hedge the same credit risk more than once by obtaining credit protection in addition to the credit protection provided by the synthetic securitisation for such a credit risk.

20.To facilitate the consistent interpretation of this requirement, the term ‘hedge beyond the protection obtained through the credit protection agreement’ should be further clarified, in particular whether double or multiple protection is allowed, so as to ensure there are no doubts about whether a protection provider in relation to a certain underlying exposure or a tranche has the obligation to pay protection payments in the case of credit events, or not.

**Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

21.No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

**Credit risk mitigation rules (Article 26b(5))**

**Rationale:**

22.In order to ensure the robustness of the credit protection agreement, this agreement should fulfil the credit risk mitigation requirements that have to be met by institutions seeking significant risk transfer through a synthetic securitisation, in accordance with the relevant provisions of Regulation (EU) No 575/2013, in particular with those of Article 249(2) and (3) and Part Three, Title II, Chapter 4, of that Regulation.

23.This requirement is deemed sufficiently clear and no further guidance has been assessed as necessary.

**Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

24.No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

**Representations and warranties (Article 26b(6))**

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**Rationale:**

25. To enhance the legal certainty with respect to the owner of the legal title to the underlying exposures and their enforceability under the credit protection agreement, the securitisation documentation should contain specific representations and warranties provided by the protection buyer in respect of the characteristics of those underlying exposures and the correctness of the information included in the securitisation documentation. Any non-compliance of the underlying exposures with the representations and warranties should lead to non-enforceability of the credit protection, following a credit event.

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

- a. the term ‘to the best of knowledge’ as used in letters d), f) and g) of Article 26b(6): in this context, it should be clarified that an originator should not be required to take all legally possible steps to determine the aspects set out in letters d), f) and g) of Article 26b(6), but that an originator is only required to take those steps that the originator usually takes within its activities in terms of origination, servicing, risk management and use of information that is received from third parties. This should not require the originator to check publicly available information or to check entries in at least one credit registry where an originator or original lender does not conduct such checks within its regular activities in terms of origination, servicing, risk management and use of information received from third parties, but rather relies, for example, on other information that may include credit assessments provided by third parties;
- b. the term ‘no less stringent underwriting standards’: independently of the guidance provided in these guidelines, it is understood that, in the spirit of restricting the ‘originate-to-distribute’ model of underwriting, where similar exposures exist on the originator’s balance sheet, the underwriting standards that have been applied to the securitised exposures should also have been applied to similar exposures that have not been securitised, i.e. the underwriting standards should have been applied not solely to securitised exposures. To comply with this requirement, therefore, it is sufficient that the originator or the original lender has applied to securitised exposures the underwriting standards according to the underwriting policy for the respective asset class, without requiring that similar exposures: i) remain on the balance sheet after the selection of the securitisation pool (i.e. a bank can securitise an entire set of exposures originated pursuant to given underwriting standards, therefore leaving no similar exposures on its balance sheet) or ii) were originated at the time of origination of the securitised exposures;
- c. ‘an entity of the group to which the originator belongs’;
- d. ‘an entity which is included in the scope of supervision on a consolidated basis’.

### **Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

27. The requirement relating to representations and warranties to be provided in the case of on-balance-sheet securitisation differs from the requirement relating to representations and warranties to be provided for non-ABCP securitisation. The interpretation of this requirement therefore differs from the interpretation provided in the Guidelines on the STS criteria for non-ABCP securitisation.

### **Eligibility criteria, active portfolio management (Article 26b(7))**

#### **Rationale:**

28. The objective of this criterion in Article 26b(7) is to ensure that the selection of the underlying exposures in the securitisation is done in a manner which facilitates in a clear and consistent fashion the identification of which exposures are selected for the securitisation, and to enable the investors to assess the credit risk of the asset pool prior to their investment decisions.

29. In line with this objective, the active portfolio management of the exposures in the securitisation should be prohibited, given that it adds a layer of complexity and increases the agency risk arising in the securitisation by making the securitisation's performance dependent on both the performance of the underlying exposures and the performance of the active portfolio management of the transaction.

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

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

- a. the purpose of the requirement on active portfolio management, and the provision of examples of techniques which should not be regarded as active portfolio management: this criterion should be considered without prejudice to the existing requirements with respect to the similarity of the underwriting standards in the draft RTS further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(14), 24(21) and 26b(13) of Regulation (EU) 2017/2402, as amended by Regulation (EU) 2021/557, which inter alia require that all the underlying exposures in a securitisation be underwritten according to similar underwriting standards;
- b. interpretation of the term 'clear' eligibility criteria;
- c. clarification with respect to the eligibility criteria that need to be met with respect to the exposures added after the closing of the transaction.

### **Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

32. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation, with some minor differences reflecting specificities of on-balance-sheet securitisation (in the interpretation of the term ‘active portfolio management’, the list of allowed portfolio management techniques has been adapted, in particular repurchase has been deleted; and in the interpretation of the term ‘eligibility criteria to be met for exposures added after the closing of the transaction’, reference to master trusts has been deleted, given that these are not relevant for on-balance-sheet securitisation).

### **Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 26b(8))**

#### **Rationale:**

33. The criterion on homogeneity as specified in the first subparagraph of Article 26b(8) of the SECR has been clarified in Delegated Regulation (EU) 2019/1851<sup>6</sup> on the homogeneity of the underlying exposures in the securitisation as amended by Delegated Regulation (EU) 2024/584<sup>7</sup>.

34. The objective of the criteria specified in the second and third subparagraphs of Article 26b(8) of Regulation (EU) 2017/2402 is to ensure that the underlying exposures contain valid and binding obligations of the debtor/guarantor, including rights to payments or to any other income from assets supporting such payments that result in a periodic and well-defined stream of payments from the underlying exposures.

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

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

- a. the interpretation of the term ‘contractually binding and enforceable obligations’;
- b. a non-exhaustive list of examples of exposure types which should be considered to have defined periodic payment streams. The individual examples are without prejudice to applicable requirements, such as the requirement with respect to the

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<sup>6</sup> Commission Delegated Regulation (EU) 2019/1851 of 28 May 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation (OJ L 285, 6.11.2019, p. 1)

<sup>7</sup> Commission Delegated Regulation (EU) 2024/584 of 7 November 2023 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2019/1851 as regards the homogeneity of the underlying exposures in simple, transparent and standardised securitisations (OJ L 2024/584, 15.02.2024)

defaulted exposures in accordance with Article 26b(11) of Regulation (EU) 2017/2402.

37. With respect to the specific case of specialised lending exposures, for the purposes of assessing homogeneity in accordance with Delegated Regulation (EU) 2019/1851 such specialised lending exposures should generally fall under the asset category of ‘credit facilities, including loans and leases, provided to any type of enterprise or corporation’ specified in Article 1(a)(iv) of that Delegated Regulation.

38. Specialised lending exposures are an exposure type towards an entity specifically created to finance or operate physical assets, where the primary source of repayment of the obligation is the income generated by the assets being financed. Examples of specialised lending exposures include project finance, object finance and commodities finance exposures. While it is understood that the specialised lending exposures would fall under the asset category for corporate exposures, they are distinct in various aspects from other corporate exposures, including due to the strong correlation of the asset value and the creditworthiness of the obligor, and typically they are subject to different credit granting and servicing standards from the rest of the corporate exposures. For this reason, it is expected that, where these exposures are combined with other corporate exposures, the corresponding pool of exposures would not meet the homogeneity requirements applicable to on-balance-sheet securitisation.

#### **Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

39. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

#### **No resecuritisation (Article 26b(9))**

##### **Rationale:**

40. The objective of this criterion is to prohibit resecuritisation from being classified as STS on-balance-sheet securitisation. The corresponding general ban on resecuritisation subject to derogations for certain cases as specified in Article 8 of Regulation (EU) 2017/2402 has been introduced as a lesson learnt from the financial crisis, when resecuritisations were structured into highly leveraged structures in which notes of lower credit quality could be repackaged and credit enhanced, resulting in transactions whereby small changes in the credit performance of the underlying assets had severe impacts on the credit quality of the resecuritisation bonds. The modelling of the credit risk arising in these bonds proved very difficult, also due to high levels of correlation arising in the resulting structures.

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

#### **Underwriting standards, originator’s expertise (Article 26b(10))**

**Rationale:**

42. The objective of the criterion specified in the first subparagraph of Article 26b(10) is to prevent cherry-picking and to ensure that the exposures that are to be securitised do not belong to exposure types that are outside the ordinary business of the originator, i.e. exposure types in which the originator or original lender may have less expertise and/or interest at stake. This criterion is focused on disclosure of changes to the underwriting standards and aims to help the investors assess the underwriting standards pursuant to which the exposures selected for the securitisation have been originated.
43. The objective of the criterion specified in the second subparagraph of Article 26b(10) is to prohibit the securitisation of self-certified mortgages for STS purposes, given the moral hazard that is inherent in granting such types of loans.
44. The objective of the criterion specified in the third subparagraph of Article 26b(10) is to ensure that the assessment of the borrower's creditworthiness is based on robust processes. It is expected that the application of this subparagraph will be limited in practice, given that according to Article 26b(1) originators need to be authorised or licensed in the Union, and the criterion is therefore understood to cover only exposures originated by such EU originators to borrowers in non-EU countries.
45. The objective of the criterion specified in the fourth subparagraph of Article 26b(10) is for the originator or original lender to have an established performance history of credit claims or receivables similar to those being securitised, and for an appropriately long period of time.
46. To facilitate consistent interpretation of this criterion, the following aspects should be further clarified.
- a. The term 'exposures of a similar nature', with reference to requirements set out in the draft RTS further specifying which underlying exposures are deemed to be homogeneous, developed in accordance with Articles 20(14), 24(21) and 26b(13) of Regulation (EU) 2017/2402 as amended by Regulation (EU) 2021/557.
  - b. Clarification of the requirement to disclose material changes from prior underwriting standards to potential investors without undue delay: the guidance clarifies that this requirement should be forward-looking only, referring to material changes to the underwriting standards after the closing of the securitisation. The guidance clarifies the interactions with the requirement for similarity of the underwriting standards set out in Delegated Regulation (EU) 2019/1851, which requires that all the underlying exposures in a securitisation be underwritten according to similar underwriting standards.
  - c. The scope of the criterion with respect to the specific types of residential loans as referred to in the second subparagraph of Article 26b(10) and to the nature of the information that should be captured by this criterion.

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

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

**Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

48. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

**No exposures in default and to credit-impaired debtors/guarantors (Article 26b(11))**

**Rationale:**

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49. The objective of the criterion in Article 26b(11) is to ensure that STS securitisations are not characterised by underlying exposures the credit risk of which has already been affected by certain negative events such as disputes with credit-impaired debtors or guarantors, debt restructuring processes or default events as identified by the EU prudential regulation. Risk analysis and due diligence assessments by investors become more complex whenever the securitisation includes exposures subject to certain ongoing negative credit risk developments. For the same reasons, STS securitisations should not include underlying exposures to credit-impaired debtors or guarantors that have an adverse credit history. In addition, significant risk of default normally rises as rating grades or other scores are assigned that indicate highly speculative credit quality and a high likelihood of default, i.e. a scenario in which the debtor or guarantor is not able to meet its obligations becomes a real possibility. Such exposures to credit-impaired debtors or guarantors should therefore also not be eligible for STS purposes.

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

- a. Interpretation of the term 'exposures in default': given the differences in interpretation of the term 'default', the interpretation of this criterion should refer to additional guidance on this term provided in the existing delegated regulations and guidelines developed by the EBA, while taking into account the limitation of scope of that additional guidance to certain types of institutions.
- b. Interpretation of the term 'exposures to a credit-impaired debtor or guarantor': the circumstances specified in points (a) to (c) of Article 26b(11) should be understood as specific situations of credit-impairedness to which exposures in the STS securitisation may not be exposed. Consequently, other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be outside the scope of this requirement. Moreover, taking into account the role of the guarantor as a risk-bearing entity, it should be clarified that the requirement to exclude 'exposures to a credit-impaired debtor or guarantor' is not meant to exclude (i) exposures to a credit-impaired debtor when it has a guarantor that is not credit-impaired; or (ii) exposures to a non-credit-impaired debtor when there is a credit-impaired guarantor.
- c. Interpretation of the term 'to the best knowledge of': an originator or original lender should not be required to take all legally possible steps to determine the debtor's credit status but is only required to take those steps that the originator / original lender usually takes within its activities in terms of origination, servicing, risk management and use of information that is received from third parties. This should not require the originator or original lender to check publicly available information, or to check entries in at least one credit registry where an originator or original lender does not conduct such checks within its regular activities in terms of origination, servicing, risk management and use of information received from third parties, but rather relies, for example, on other information that may include

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

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

**Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**



51. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

### **At least one payment made (Article 26b(12))**

#### **Rationale:**

52. STS securitisations should minimise the extent to which investors are required to analyse and assess fraud and operational risk. Having in mind that the objective of the requirement is to address fraud and operational risk, rather than the creditworthiness of the borrower, at least one ordinary payment that is specified in the contractual agreement should therefore be made by each underlying borrower at the time of selection of an exposure, since this reduces the likelihood of the loan or other exposure being subject to fraud or operational issues. This applies except in the case of revolving securitisations in which the distribution of securitised exposures is subject to constant changes because the securitisation relates to exposures payable in a single instalment or with an initial legal maturity of an exposure of below one year.

53. The requirement for 'at least one payment' to be made should be applicable to every single exposure of a borrower. If a borrower has various exposures with the same originator (e.g. various loans on different accounts), it should be applied to every such exposure (e.g. every loan or facility provided to the borrower by the originator). However, the requirement should not be applicable to further advances and drawings of the same exposure with the same borrower or to a restructuring of the same exposures.

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

#### **Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

55. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation, with some minor differences to provide additional necessary clarifications.

## **Criteria relating to standardisation (Article 26c)**

### **Compliance with risk retention requirements (Article 26c(1))**

#### **Rationale:**

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

57. To ensure a consistent interpretation of this criterion, it should be clarified that the supervision of compliance with risk retention requirements requires the necessary coordination between the authorities responsible for the supervision of compliance with the STS requirements and the prudential supervisor (if these are different). This would avoid any duplication of work with respect to STS transactions.

### **Appropriate mitigation of interest rate and currency risks (Article 26c(2))**

#### **Rationale:**

58. The criterion set out in Article 26c(2) aims to protect both the protection buyer and the protection provider from any interest rate and/or currency risks. Mitigating or hedging interest rate and currency risks arising in the transaction enhances the simplicity of the transaction, since it helps protection buyers to model those risks and their impact on the credit risk of the securitisation investment.

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

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

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

- a. clarification with respect to the scope of derivatives that should and should not be captured by this criterion;
- b. clarification of the term 'common standards in international finance'.

#### **Comparison with the EBA Guidelines on the STS criteria for non-ABCP securitisation:**

62. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation, with some minor differences.

### **Referenced interest payments (Article 26c(3))**

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**Rationale:**

63. The objective of the criterion set out in Article 26c(3) is to prevent securitisations from making reference to interest rates that cannot be observed in the commonly accepted market practice. The credit risk and cash flow analysis that investors must be able to carry out should not involve atypical, complex or complicated rates or variables that cannot be modelled on the basis of market experience and practice.

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

- a. the scope of the criterion (by specifying the common types and examples of interest rates captured by this criterion);
- b. the term 'complex formulae or derivatives', including examples of formulae and derivatives that should not be deemed complex.

**Comparison with Guidelines on the STS criteria for non-ABCP securitisation:**

65. This criterion is less relevant for synthetics, as the repayment of the securitisation positions is not dependent on the cash flows from the underlying exposures on a pass-through basis, and consequently there is less need for investors to understand the calculation of the interest payments on the underlying exposures. However, this information might still be useful, particularly with regard to public synthetic securitisations making use of an SSPE with various investors, and the requirement should therefore be kept for consistency purposes.

66. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation for the terms 'referenced rates' and 'complex formulae or derivatives'.

**Requirements after enforcement notice (Article 26c(4))**

**Rationale:**

67. The objective of this criterion is to provide appropriate legal comfort to investors regarding their enforceability where an enforcement or an acceleration notice has been delivered. To ensure a consistent interpretation of this criterion it is proposed to further clarify what is meant by the term 'amount trapped in the SSPE'.

**Comparison with Guidelines on the STS criteria for non-ABCP securitisation:**

68. The Guidelines on on-balance-sheet STS securitisations amend the clarification currently provided in the guidelines on non-ABCP securitisation to cater for the specificities of the on-balance-sheet securitisations, which are reflected in the adapted Level 1 requirement (in particular, these

guidelines do not contain an interpretation of the terms ‘exceptional circumstances’, ‘repayment’ and ‘liquidation of the underlying exposures at market value’, as these requirements are missing in Level 1. The interpretation of the term ‘amount trapped in the SSPE’ is consistent with the one provided in the non-ABCP guidelines.

## **Allocation of losses and amortisation of tranches (Article 26c(5))**

### **Rationale:**

69.Regulation (EU) 2017/2402 specifies the allocation of losses to the holders of the securitisation position, and the application of different types of amortisation to be applied to the tranches.

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

71.Given that the minimum mandatory triggers are specified in the draft RTS on performance-related triggers in STS on-balance-sheet securitisations developed in accordance with Article 26c(5) of Regulation (EU) 2017/2402, it is not deemed necessary to include these triggers in these guidelines too.

72.As mentioned in the final draft RTS on performance-related triggers, to ensure a consistent interpretation of this criterion, the guidelines should clarify the aspect of the reversion to non-sequential amortisation for those securitisations in which the amortisation has already reverted to sequential payments. In this context, it is understood that the non-sequential amortisation subject to performance-related triggers is a derogation and therefore once a trigger is activated the derogation ends. The reversion back to non-sequential amortisation should therefore not be allowed.

73. It is not deemed necessary to clarify in the guidelines the criteria for setting the level of the triggers under Article 26c(5) laid out in Article 5 of the draft RTS on performance-related triggers in STS on-balance-sheet securitisations developed by the EBA under Article 26c(5). These should be addressed in the final draft RTS on performance-related triggers.

74.Finally, in view of the responses to the consultation on the final draft RTS on performance-related triggers it appears that there is some confusion with the coexistence and misalignment with the triggers recommended in the EBA Report on significant risk transfer. It should therefore be clarified that additional performance-related triggers beyond those specified in the RTS may be applied (including those set out in the EBA Report on significant risk transfer), as long as the requirements set out in Article 26c(5) are met and provided that those triggers do not allow for a reversion of the securitisation to non-sequential amortisation.

### **Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

75. The guidance in these guidelines is different. The guidance in the guidelines on non-ABCP securitisation focused on interpreting the term performance-related triggers, which, for STS on-balance-sheet securitisations, has in the meantime been clarified in the RTS on performance-related triggers. On top of that, these guidelines provide additional clarification of the term 'reversion to non-sequential amortisation' as a follow-up to the requirements specified in the meantime in the RTS on performance-related triggers.

### **Early amortisation provisions / triggers for termination of revolving period (Article 26c(6))**

#### **Rationale:**

76. The criterion set out in Article 26c(6) includes safeguards for investors when the securitisation includes a revolving period. Also, early amortisation provisions should be included for those securitisations that use an SSPE.

77. The content of this criterion is deemed sufficiently clear and therefore no further clarification or guidance has been proposed.

### **Comparison with the Guidelines on the STS requirements for non-ABCP securitisation:**

78. The Guidelines on the STS requirements for non-ABCP securitisation include clarification with respect to the occurrence of an insolvency-related event with regard to the originator or the servicer. As this requirement is missing in the requirements for on-balance-sheet securitisation, it is not clarified here.

### **Transaction documentation (Article 26c(7))**

#### **Rationale:**

79. The objective of this requirement is to help provide full transparency to investors, assist investors in the conduct of their due diligence and prevent investors from being subject to unexpected disruptions in cash flow collections and servicing, as well as to provide investors with certainty about the replacement of counterparties involved in the securitisation transaction. This will ensure that the credit events covered by the credit protection agreement and corresponding losses are determined correctly at each payment date.

80. Particularly when the credit risk of the securitised portfolio is transferred to more than one investor (e.g. when credit-linked notes (CLNs) of different seniority are issued by an SSPE), the appointment of an identified person with fiduciary responsibilities acting in the best interests of investors is necessary, in order to minimise the impact of potential conflicts in terms of the interpretation of certain provisions of the securitisation documentation and their applicability at payment dates.

81. From the perspective of an investor in synthetic securitisation, it is also important that, irrespective of whether the underlying exposures are serviced by the originator or by another party, at closing date and thereafter the servicer adheres to high servicing standards, in order to ensure that credit events covered by the credit protection agreement and corresponding losses are determined correctly at each payment date.

82. To ensure a consistent interpretation of the criterion, the following terms should be clarified:

- a. servicing standards;
- b. servicing procedures;
- c. third-party verification agent.

**Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

83. The guidance in these guidelines differs from the Guidelines on the STS criteria for non-ABCP securitisation, where no clarification was deemed necessary to be provided, also reflecting the difference between the requirements applicable to non-ABCP securitisation and on-balance-sheet securitisation.

**Servicer's expertise and servicing requirements (Article 26c(8))**

**Rationale:**

84. The objective of this requirement is to ensure that all the necessary conditions for proper functioning of the servicing function are in place, taking into account the crucial importance of the servicing in securitisation and the central nature of this function within any securitisation transaction. In synthetic securitisations this is particularly relevant for those transactions where the servicing is not carried out by the originator but outsourced to a third party. Considering the importance of effective servicing in synthetic securitisations and of the timely identification of the relevant credit events and identification of losses, the guidelines set out the criteria for determining the expertise of the servicer.

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

- a. criteria for determining the expertise of the servicer;
- b. exposures of a similar nature;
- c. criteria for determining well-documented and adequate policies, procedures and risk-management controls of the servicer.

86. The criteria for the expertise of the servicer should correspond to those for the expertise of the originator or the original lender. Newly established entities should be allowed to perform the

tasks of servicing, as long as the back-up servicer has the appropriate experience. It is expected that information on the assessment of the expertise will be provided in sufficient detail in the STS notification.

**Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

87. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

**Reference register (Article 26c(9))**

**Rationale:**

88. According to the criterion set out in Article 26c(9), to avoid conflicts between the protection buyer and the protection sellers and to ensure legal certainty in terms of the scope of the credit protection purchased for underlying exposures, such credit protection should reference clearly identified reference obligations, giving rise to the underlying exposures, of clearly identified entities or obligors. Therefore, the reference obligations for which protection is purchased should be clearly identified at all times via a reference register, and this reference register should always be kept up to date. This requirement is also indirectly part of the criterion defining the on-balance-sheet securitisation and excluding arbitrage securitisation from the STS framework.

89. The content of this criterion is deemed sufficiently clear and therefore no further clarification or guidance has been proposed.

**Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

90. No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation.

**Timely resolution of conflicts between investors (Article 26c(10))**

**Rationale:**

91. The requirement set out in Article 26c(10) aims to resolve any potential conflicts between investors in a timely manner, especially in the case of securitisations that use SSPEs.

92. In line with the Guidelines on the STS criteria for non-ABCP securitisations, it is proposed to clarify what is meant by the term 'clear provisions facilitating the timely resolution of conflicts between different classes of investors'.

**Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

93. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

## Criteria relating to transparency (Article 26d)

### Data on historical default and loss performance (Article 26d(1))

#### Rationale:

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

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

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

#### Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

96. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

### Verification of a sample of the underlying exposures (Article 26d(2))

#### Rationale:

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

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



- a. requirements on the sample of the underlying exposures subject to external verification;
- b. requirements on the party executing the verification;
- c. requirements on the confirmation of the verification;
- d. scope of the verification: in this context, with respect to the determination of the size of the representative sample, one may refer to guidelines on the determination of the sample size provided in the IAASB Handbook ISA 530, which is an internationally recognised standard for audit sampling;
- e. clarification of the term 'prior to the closing of the transaction'.

**Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

99. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation, with some differences in the interpretation of the scope of verification (to provide clearer guidance on the interpretation of the confidence level, and on how to determine the size of the representative sample), and in the requirements for independence of the third party (which, in addition to the guidance in the Guidelines on the STS criteria for non-ABCP securitisation, specify that the party should not be an entity affiliated to the SSPE, sponsor or investor).

**Liability cash flow model (Article 26d(3))**

**Rationale:**

100. The objective of the criterion set out in Article 26d(3) is to enable investors to appropriately model the payments flowing between the originator, investor, other third parties and when applicable the SSPE by making a liability cash flow model available to investors before pricing and on an ongoing basis thereafter.

101. To ensure a consistent interpretation of this requirement, it is suggested to clarify what is meant by the term 'precise representation of the contractual relationship' and the 'third parties'.

**Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:**

102. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

## Environmental performance and sustainability disclosures of the assets (Article 26d(4))

### Rationale:

103. It should be clarified that this is a requirement of disclosure about the energy efficiency of the assets when this information is available to the originator, sponsor or SSPE, rather than a requirement for a minimum energy efficiency of the assets.
104. To facilitate consistent interpretation of this criterion, the term ‘available information related to the environmental performance and the principal adverse impacts on sustainability indicators’ should be further clarified.
105. It is to be noted that at the time when the Guidelines on the STS criteria for non-ABCP securitisation were developed the data on energy efficiency were not available for all of the assets and a proportionate approach was taken. For the same reasons, a similar approach was also followed for the information on the principal adverse impacts of the assets on sustainability indicators.

### Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

106. Given that there are no differences between this requirement and the requirement applicable to non-ABCP securitisation, for consistency purposes the interpretation in these guidelines is identical to the one provided in the Guidelines on the STS criteria for non-ABCP securitisation.

## Compliance with disclosure requirements under Article 7 (Article 26d(5))

### Rationale:

107. According to Article 26d(5) the originator shall satisfy the disclosure requirements in accordance with Article 7. The objective of this criterion is to ensure that investors have access to the data that are relevant for them to carry out the necessary risk and due diligence analysis with respect to their investment decision.
108. To ensure a consistent interpretation of this criterion, it should be clarified that the supervision of compliance with the disclosure requirements requires the necessary coordination between the authorities responsible for the supervision of compliance with the STS requirements and the prudential supervisor (if these are different). This would avoid any duplication of work with respect to STS transactions.

### Comparison with the Guidelines on the STS criteria for non-ABCP securitisation:

109. To ensure consistency, equivalent clarification has been provided in the Guidelines on the STS criteria for non-ABCP securitisation (no equivalent clarification has been added in the Guidelines on the STS criteria for ABCP securitisation, as compliance with disclosure

requirements under Article 7 in the case of ABCP securitisation is not covered in the EBA mandate for guidelines for ABCP securitisation).

## Criteria specific to on-balance-sheet securitisation (Article 26e)

110. No equivalent requirements exist for non-ABCP securitisation and hence no interpretation has been provided in the Guidelines on the STS criteria for non-ABCP securitisation in relation to any of the specific requirements referred to in this subsection.

### Credit events covered under the credit protection agreement (Article 26e(1))

#### Rationale:

111. This requirement aims to standardise the minimum credit events to be considered in on-balance-sheet securitisations and to be included in the credit protection agreement. According to this requirement, the credit protection agreement shall include, as a minimum, the credit events referred to in point (a) of Article 215(1) (in the case of the use of guarantees) or in point (a) of Article 216(1) (in the case of the use of credit derivatives) of Regulation (EU) No 575/2013 respectively, to ensure consistency with the prudential framework. Given that these are well-established requirements it is not deemed necessary to further define them.

112. To ensure consistent interpretation of this requirement, it should be clarified that the parties under the credit protection agreement may agree on additional events or stricter specifications of the events referred to in the aforementioned requirements of Regulation (EU) No 575/2013 (e.g. failure to pay with a grace period of less than 90 days or the introduction of minimum payment thresholds for defaulted claims to qualify as 'failure to pay'), in line with the general framework provided for in the standard industry master agreements.

### Credit protection payments (Article 26e(2))

#### Rationale:

113. The requirement set out in Article 26e(2) aims to ensure that following a credit event the credit protection agreement covers the losses incurred by the originator in a timely manner. It specifies how to determine the losses in the reference portfolio, the interim and final credit protection payments and the relevant timing for these payments. From the originator's perspective, in order to ensure that the credit protection eventually covers the losses incurred by the originator, it is important that loss settlements do not fall short of the loss amounts, as worked out by the originator. In addition, aligning credit protection payments with the loss amounts worked out by the originator ensures that the protection buyer's and the protection seller's interests in the transaction are more aligned, leading to better incentives on both sides of the transaction.

114. To facilitate a consistent interpretation of this requirement, the following aspects should be clarified.

- a. Clarification of the term ‘proportional to the share of the outstanding nominal amount of the underlying exposure’.
- b. Clarification with respect to determination of the interim protection payment, in particular the ‘higher of’ condition and the term ‘where applicable’. In this context, it is understood that an ‘expected loss amount as determined in accordance with Chapter 3 of Title II of Part Three of Regulation (EU) No 575/2013’ as referred to in the second subparagraph, point (b), should be considered (under the ‘higher of’ condition) only if the originator has received permission to apply the IRB Approach to the respective underlying exposure in respect of which the ‘higher of’ condition is being assessed.
- c. Clarification on the determination of the ‘expected loss’ amount. This should also be seen in relation to the provision in the seventh subparagraph of Article 26e(2), according to which: ‘The amount of the credit protection payment shall be calculated at the level of the individual underlying exposure for which a credit event has occurred.’ Also, the clarification should be consistent with the approach set out in the RTS on the calculation of KIRB in accordance with the purchased receivables approach, developed according to Article 255(9) of Regulation (EU) No 575/2013, which allow for the calculation of expected losses for retail exposures at sub-pool level.

### **Debt workout and credit protection premiums (Article 26e(3))**

#### **Rationale:**

115. The requirement in Article 26e(3) aims to ensure the effectiveness of the credit protection agreement from the originators’ perspective and at the same time provides legal certainty for the investors on the termination date to make payments by specifying the maximum extension period for the debt workout. The requirement also specifies that only contingent credit protection premiums are allowed.

116. To facilitate a consistent interpretation of this criterion, the term ‘contingent on the outstanding nominal amount of the performing securitised exposures’ should be further clarified.

### **Third-party verification agent (Article 26e(4))**

#### **Rationale:**

117. The requirement in Article 26e(4) for the appointment of a third-party verification agent aims to ensure legal certainty for all parties involved in a transaction and to further enhance the soundness and accuracy of certain aspects of the credit protection agreement.

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

- a. requirements on the third-party verification agent;
- b. requirements on the sample verification in the case of securitisations with mezzanine positions;
- c. clarification of the term 'final loss amount'.

### **Early termination events exercisable by the originator (Article 26e(5))**

#### **Rationale:**

119. Article 26e(5) sets out the early termination events activated by the originator and specifies an exhaustive list of conditions under which the early termination of a transaction by the originator is permitted, in order to ensure the stability and continuity of the credit protection.

120. To facilitate the consistent interpretation of this criterion, the following clarifications are provided in relation to requirements for the time calls as set out in Article 26e(5), first subparagraph, point (d):

- a. clarification on the calculation of the weighted average life (WAL) of the initial reference portfolio. This clarification is consistent with the determination of WAL applicable under paragraphs 53 and 54 of the Guidelines on the STS criteria for ABCP securitisation;
- b. clarification on the calculation of WAL in the case of the existence of a replenishment period. The clarification is made on the assumption that the size of the pool of the underlying exposures and the maturity of the underlying exposures added during the replenishment period are consistent with the size of the pool of the underlying exposures and the maturity of the underlying exposures of the initial portfolio;
- c. with regard to point (f), it is suggested to provide further guidance by including the conditions for the eligibility of a guarantee as a protection provider.

### **Early termination events exercisable by the investor (Article 26e(6))**

#### **Rationale:**

121. Article 26e(6) specifies the conditions which may lead to an early termination event exercisable by the investor. The criterion is deemed sufficiently clear. No further guidance is considered necessary.

## **Synthetic excess spread (Article 26e(7))**

### **Rationale:**

122. The objective of the criterion in Article 26e(7) is to specify the requirements for the synthetic excess spread committed by the originator and available as credit enhancement for the investors.

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

- a. clarification on the calculation of 'one-year expected loss' specified in points (c) and (d) of Article 26e(7). In addition, with respect to point (d) applicable to those institutions not using the IRB Approach for the calculation of expected losses, a reference is provided to the applicable accounting framework, which is consistent with the requirements set out in the draft RTS on the determination by originator institutions of the exposure value of synthetic excess spread, developed in accordance with Article 248(4) of Regulation (EU) No 575/2013 as amended by Regulation (EU) 2021/558;
- b. additionally, it should be clarified that the requirement to 'use the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013' under Article 26e(7), point (c), only applies in those cases where the originator determines own funds requirements for the entire pool of the underlying exposures in accordance with the IRB Approach.

## **Types of credit protection agreements (Article 26e(8))**

### **Rationale:**

124. Article 26e(8) specifies the forms of credit protection agreements that are eligible for STS on-balance-sheet securitisations. The content of this criterion is deemed sufficiently clear and therefore no further clarification or guidance has been proposed.

## **Specific type of the credit protection agreement (Article 26e(9))**

125. Article 26e(9) sets out requirements for specific credit protection agreements that have the form of a guarantee, a credit derivative or a credit-linked note and are secured by collateral meeting the requirements of this paragraph and of paragraph 10 of the Article. To ensure a consistent interpretation of this criterion it is proposed to provide further guidance on the term 'legal opinion for the enforceability of the credit protection in all relevant jurisdictions'. Also, it is proposed to further clarify the requirements for a 'qualified legal counsel'.

## **Requirements for recourse to high-quality collateral (Article 26e(10))**

### **Rationale:**

126. The objective of Article 26e(10) is to mitigate the counterparty credit risk for both the originator and the investor in the case of funded credit protection. It specifies the types of acceptable high-quality collateral that both the originator and the investor, or, where the derogation according to the second subparagraph of the paragraph is applied, only the originator, should have recourse to in accordance with the type of credit protection referred to in Article 26e(8)(c).
127. To facilitate the consistent interpretation of this criterion, the following aspects should be clarified:
- a. in point (a), clarification of the term ‘collateral in the form of 0% risk-weighted debt securities referred to in Chapter 2 of Title II of Part Three of that Regulation’;
  - b. in point (a)(i), clarification with respect to the payment frequency of the acceptable high-quality collateral in the form of 0% risk-weighted debt securities;
  - c. clarification of this criterion with respect to the use of credit-linked notes.

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

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EBA/GL/2024/05

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27/05/2024

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## Guidelines

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on the STS criteria for on-balance-sheet  
securitisation

and amending Guidelines

EBA/GL/2018/08 and EBA/GL/2018/09

on the STS criteria for ABCP and non-  
ABCP securitisation

# 1. Compliance and reporting obligations

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## Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>8</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions shall make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

## Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities shall notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by [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 with the reference 'EBA/GL/2024/05'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010.

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

## 2. Subject matter, scope and definitions

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### Subject matter

5. These guidelines specify, in accordance with Article 26a of Regulation (EU) 2017/2402<sup>9</sup>, how the requirements relating to simplicity, standardisation and transparency, and the requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread, set out in Articles 26b to 26e of that Regulation, apply to on-balance-sheet securitisation for such securitisation to be deemed simple, transparent and standardised (STS). Moreover, these guidelines amend Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation, issued pursuant to Articles 19 and 23 of Regulation (EU) 2017/2402.

### Scope of application

6. These guidelines should apply in accordance with the scope of application of Regulation (EU) 2017/2402 as set out in Article 1 thereof.

### Addressees

7. These guidelines are addressed to competent authorities referred to in Article 4, point (2), of Regulation (EU) 1093/2010 that have been designated as competent authorities pursuant to Article 29(5) of Regulation (EU) 2017/2402, and to financial institutions referred to in Article 4, point (1), of Regulation (EU) 1093/2010 that are subject to regulation and supervision pursuant to Regulation (EU) 2017/2402, including third parties verifying STS compliance also in accordance with Article 2(5), last subparagraph, of Regulation 1093/2010. Competent authorities designated pursuant to Article 29(5) of Regulation (EU) 2017/2402 that do not qualify as competent authorities pursuant to Article 4, point (2), of Regulation No 1093/2010 are encouraged to apply these guidelines.

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<sup>9</sup> Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2402&from=fr>

## 3. Implementation

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### Date of application

8. These guidelines apply from DD-MM-YYYY [2 months after the last translation]. These guidelines apply to on-balance-sheet securitisations the securitisation positions of which are created in accordance with credit protection agreements adopted after DD-MM-YYYY [2 months after the last translation]. The amendments to Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation, set out in Section 8 of these guidelines, apply to securitisations the securities of which are issued in accordance with terms of agreement adopted after DD-MM-YYYY [2 months after the last translation].

## 4. Criteria relating to simplicity

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### Exposures held on the balance sheet (Article 26b(3) of Regulation (EU) 2017/2402)

#### Balance sheet

9. For the purposes of Article 26b(3) of Regulation (EU) 2017/2402, the term balance sheet should be interpreted as the accounting balance sheet of the originator or of an entity that belongs to the same group as the originator.

### No double hedging (Article 26b(4) of Regulation (EU) 2017/2402)

#### Hedge beyond the protection obtained through the credit protection agreement

10. The criterion in accordance with Article 26b(4) of Regulation (EU) 2017/2402 should be understood to disallow multiple credit protection in respect of the credit risk of the pool of underlying exposures, irrespective of whether such additional credit protection relates to protection against the credit risk of a tranche, part of a tranche or an underlying exposure, so as to ensure that the credit risk of the pool of underlying exposures is not hedged more than once.

11. For the purposes of Article 26b(4) of Regulation (EU) 2017/2402, separate credit protection provided for separate tranches, separate parts of the tranches or separate underlying exposures under the credit protection agreement should not be considered as a hedge beyond the protection obtained through the credit protection agreement.

### Representations and warranties (Article 26b(6) of Regulation (EU) 2017/2402)

#### An entity of the group to which the originator belongs

12. For the purpose of Article 26b(6) of Regulation (EU) 2017/2402, the 'group' should be interpreted as the consolidated group to which the entity belongs for accounting or prudential purposes.

#### An entity which is included in the scope of supervision on a consolidated basis

13. For the purposes of Article 26b(6) of Regulation (EU) 2017/2402, the 'entity which is included in the scope of supervision on a consolidated basis' should be interpreted within the meaning of Article 26b(3) of that Regulation.

#### No less stringent underwriting standards

14. For the purposes of Article 26b(6), point (e), of Regulation (EU) 2017/2402, the underwriting standards applied to securitised exposures should be compared to the underwriting standards applied to similar exposures at the time of origination of the securitised exposures.

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

#### To the best of the originator's knowledge

16. For the purposes of Article 26b(6), point (f), of Regulation (EU) 2017/2402, the 'best knowledge' standard should be considered to be fulfilled where the originator uses information obtained from any of the following sources and circumstances or from any combination of those sources and circumstances:

- a. information on obligors obtained at the origination of the exposures;
- b. information obtained in the course of the originator's servicing of the exposures or in the course of its risk management procedures;
- c. notifications to the originator by a third party;
- d. publicly available information or information on any entries in one or more credit registries of persons with adverse credit history at the time of origination of an underlying exposure, only to the extent that this information had already been taken into account in the context of the information referred to in points (a), (b) or (c) above, and in accordance with the applicable regulatory and supervisory requirements, including with respect to sound credit granting criteria as specified in Article 9 of Regulation (EU) 2017/2402.

#### **Eligibility criteria, active portfolio management (Article 26b(7) of Regulation (EU) 2017/2402)**

##### Active portfolio management

17. For the purposes of Article 26b(7) of Regulation (EU) 2017/2402, active portfolio management should be understood as portfolio management to which either of the following applies:

- a. the portfolio management makes the performance of the securitisation dependent on both the performance of the underlying exposures and the performance of the portfolio management of the securitisation, thereby preventing the investors from modelling the credit risk of the underlying exposures without considering the portfolio management strategy of the portfolio manager;
- b. the portfolio management is performed for speculative purposes aiming to achieve better performance, increased yield, overall financial returns or other purely financial or economic benefit.

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

- a. substitution of the underlying exposures that are subject to regulatory dispute or investigation, where the purpose of such substitution is the facilitation of the resolution of that dispute or the end of the investigation;
- b. acquisition of new underlying exposures during the 'ramp-up' period to increase the value of the underlying exposures up to the value of the securitisation obligations.

### Clear eligibility criteria

19. For the purposes of Article 26b(7) of Regulation (EU) 2017/2402, the eligibility criteria should be understood to be 'clear' where compliance with them is possible to be determined by a court or tribunal, as a matter of law or fact or both.

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

20. For the purposes of Article 26b(7) of Regulation (EU) 2017/2402, meeting 'eligibility criteria that are no less stringent than those applied in the initial selection of the underlying exposures' should be understood to mean that eligibility criteria are no less strict than the eligibility criteria applied to the initial underlying exposures at the closing of the transaction.

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

### Permitted removals

22. Article 26b(7), fourth subparagraph, of Regulation (EU) 2017/2402 lays down an exhaustive list of circumstances under which an underlying exposure may be removed from the transaction.

### **Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 26b(8) of Regulation (EU) 2017/2402)**

#### Contractually binding and enforceable obligations

23. For the purposes of Article 26b(8), second subparagraph, of Regulation (EU) 2017/2402, 'obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors' should be understood to refer to all obligations contained in the contractual specification of the underlying exposures that are relevant to investors because they affect any obligations on the debtor and, where applicable, the guarantor to make payments or provide security.

#### Exposures with periodic payment streams

24. For the purposes of Article 26b(8), third subparagraph, of Regulation (EU) 2017/2402, exposures with defined periodic payment streams should include:

- a. exposures payable in a single instalment in the case of revolving securitisation, as referred to in Article 26b(12), point (a), of Regulation (EU) 2017/2402;
- b. exposures related to credit card facilities;
- c. exposures with instalments consisting of interest and where the principal is repaid at maturity, including interest-only mortgages;
- d. exposures with instalments consisting of interest and repayment of a portion of the principal, where either of the following conditions is met:
  - (i) the remaining principal is repaid at maturity;
  - (ii) the repayment of the principal is dependent on the sale of assets securing the exposures;
- e. exposures with temporary payment holidays as contractually agreed between the debtor and the lender.

#### **Underwriting standards, originator's expertise (Article 26b(10) of Regulation (EU) 2017/2402)**

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

25. For the purposes of Article 26b(10), first subparagraph, of Regulation (EU) 2017/2402, material changes to the underwriting standards that are required to be fully disclosed should be understood to be those material changes to the underwriting standards that are applied to the exposures that are added to the pool of underlying exposures after the closing of the securitisation in the context of replenishment or portfolio management as referred to in paragraphs 20 and 21.

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

- a. changes that affect the requirement of the similarity of the underwriting standards further specified in Article 1, first paragraph, point (b), of Delegated Regulation (EU) 2019/1851;
- b. changes that materially affect the overall credit risk or expected average performance of the pool of underlying exposures without resulting in substantially different approaches to the assessment of the credit risk associated with the underlying exposures.



27. The disclosure of all changes to underwriting standards should include an explanation of the purpose of such changes.
28. With regard to trade receivables which are not originated in the form of a loan, the reference to underwriting standards in Article 26b(10), first subparagraph, of Regulation (EU) 2017/2402 should be understood to refer to credit standards applied by the seller to short-term credit of the same type giving rise to the securitised exposures in the context of payment targets agreed with its customers in relation to the sales of its products and services.

### Residential loans

29. In accordance with Article 26b(10), second subparagraph, of Regulation (EU) 2017/2402, the pool of underlying exposures has not to include residential loans that were both marketed and underwritten on the premise that the loan applicant or intermediaries were made aware that the information provided might not be verified by the lender.
30. Residential loans that were underwritten but were not marketed on the premise that the loan applicant or intermediaries were made aware that the information provided might not be verified by the lender, or that the loan applicant or intermediaries become aware after the loan was underwritten, should not be deemed to be captured by this requirement.
31. For the purposes of Article 26b(10), second subparagraph, of Regulation (EU) 2017/2402, the 'information' provided should be considered to include relevant information only. The relevance of the information should be based on whether the information is a relevant underwriting metric, such as information considered relevant for assessing a borrower's creditworthiness, for assessing access to collateral and reducing the risk of fraud.
32. Relevant information for general non-income-generating residential mortgages should normally be considered to constitute income, and relevant information for income-generating residential mortgages should normally be considered to constitute rental income. Information that is not useful as an underwriting metric, such as mobile phone numbers, should not be considered relevant information.

### Equivalent requirements in third countries

33. For the purposes of Article 26b(10), third subparagraph, of Regulation (EU) 2017/2402, the assessment of the creditworthiness of borrowers in third countries should be carried out based on the following principles, where appropriate, as specified in Directives 2008/48/EC and 2014/17/EC:
- a. before the conclusion of a credit agreement, on the basis of sufficient information, the lender assesses the borrower's creditworthiness on the basis of sufficient information, where appropriate obtained from the borrower and, where necessary, on the basis of a consultation of the relevant database;

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

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

34. For the purposes of determining whether an originator or original lender has expertise in originating exposures of a similar nature to those securitised in accordance with Article 26b(10), fourth subparagraph, of Regulation (EU) 2017/2402, both of the following should apply:

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

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

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

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

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

### Exposures of a similar nature

37. For the purposes of Article 26b(10), fourth subparagraph, of Regulation (EU) 2017/2402, exposures should be considered to be of a similar nature if one of the following conditions is met:

- a. the exposures belong to one of the asset categories referred to in Article 1, first paragraph, points (a)(i) to (a)(iii) or (a)(v) to (a)(vii), of Delegated Regulation (EU) 2019/1851;
- b. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(iv), of Delegated Regulation (EU) 2019/1851, and to the same type of obligor referred to in Article 2(3), point (a), of that Regulation;
- c. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(viii), of Delegated Regulation (EU) 2019/1851, and they share similar characteristics with respect to any of the homogeneity factors referred to in Article 2(6) of that Regulation.

### **No exposures in default and to credit-impaired debtors/guarantors (Article 26b(11) of Regulation (EU) 2017/2402)**

#### **Exposures in default**

38. For the purposes of Article 26b(11) of Regulation (EU) 2017/2402, the exposures in default should be interpreted within the meaning of Article 178(1) of Regulation (EU) No 575/2013, as further specified by the Delegated Regulation on the materiality threshold for credit obligations past due developed in accordance with Article 178(6) of that Regulation, and by the EBA Guidelines on the application of the definition of default developed in accordance with Article 178(7) of that Regulation.

39. Where an originator or original lender is not an institution and is therefore not subject to Regulation (EU) No 575/2013, the originator or original lender should comply with the guidance provided in the previous paragraph to the extent that such application is not deemed to be unduly burdensome. In that case, the originator or original lender should apply the established processes and the information obtained from debtors on origination of the exposures, information obtained from the originator in the course of its servicing of the exposures or in the course of its risk management procedures, or information notified to the originator by a third party.

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

40. For the purposes of Article 26b(11) of Regulation (EU) 2017/2402, the circumstances specified in points (a) to (c) of that paragraph should be understood as definitions of credit-impairedness. Other possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be understood to be excluded from this requirement.

41. The prohibition of the inclusion of underlying exposures ‘to a credit-impaired debtor or guarantor’ in the pool of underlying exposures as referred to in Article 26b(11) of Regulation (EU) 2017/2402 should be understood as the requirement that, at the time of selection, there should be recourse for the full securitised exposure amount to at least one non-credit-impaired party, irrespective of whether that party is a debtor or a guarantor. Therefore, the underlying exposures should not include either of the following:

- a. exposures to a credit-impaired debtor, when there is no guarantor for the full securitised exposure amount;
- b. exposures to a credit-impaired debtor who has a credit-impaired guarantor.

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

42. For the purposes of Article 26b(11) of Regulation (EU) 2017/2402, the ‘best knowledge’ standard should be considered to be fulfilled on the basis of information obtained only from any of the following combinations of sources and circumstances:

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

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

43. For the purposes of Article 26b(11), point (a), of Regulation (EU) 2017/2402, the requirement to exclude exposures to credit-impaired debtors or guarantors that have undergone a debt restructuring process with regard to their non-performing exposures should be understood to refer to both the restructured exposures of the respective debtor or guarantor and those of its exposures that were not themselves subject to restructuring. For the purposes of this paragraph, restructured exposures which meet the conditions of Article 26b(11), points (a)(i) and (a)(ii), of Regulation (EU) 2017/2402 should not result in a debtor or guarantor becoming designated as credit-impaired.

### Credit registry

44. The requirement referred to in Article 26b(11), point (b), of Regulation (EU) 2017/2402 should be understood as being limited to exposures to debtors or guarantors to which both of the following conditions apply at the time of origination of the underlying exposure:

- a. the debtor or guarantor is explicitly flagged in a credit registry as an entity with adverse credit history due to a negative status or negative information stored in the credit registry;
- b. the debtor or guarantor is on the credit registry for reasons that are relevant to the purposes of the credit risk assessment.

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

45. For the purposes of Article 26b(11), point (c), of Regulation (EU) 2017/2402, the credit-impaired debtors or guarantors of exposures should not be considered to have a 'credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures of other credit-impaired debtors or guarantors held by the originator which are not securitised' when both of the following conditions apply:

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

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

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

## **At least one payment made (Article 26b(12) of Regulation (EU) 2017/2402)**

### **Scope of the criterion**

47. For the purposes of Article 26b(12) of Regulation (EU) 2017/2402, further advances and drawings in terms of one exposure or a restructuring of the same exposure to a certain borrower should not be deemed to trigger a new 'at least one payment' requirement with respect to such an exposure.

48. For the purposes of Article 26b(12) of Regulation (EU) 2017/2402, the intended selection of a different separate exposure to the same borrower should trigger a new 'at least one payment' requirement with respect to such an exposure.

### **At least one payment**

49. For the purposes of Article 26b(12) of Regulation (EU) 2017/2402, the payment referred to in the requirement according to which 'at least one payment' should have been made at the time of the inclusion of the underlying exposures should be a rental, principal or interest payment or any other kind of ordinary payment specified in the contractual agreement related to the exposure.

## 5. Criteria relating to standardisation

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### **Compliance with the risk retention requirements (Article 26c(1) of Regulation (EU) 2017/2402)**

50. For the purposes of Article 26c(1) of Regulation (EU) 2017/2402, the competent authorities designated pursuant to Article 29(5) of that Regulation and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation should cooperate closely in accordance with Article 36 of that Regulation, where they are different.

### **Appropriate mitigation of interest and currency risks (Article 26c(2) of Regulation (EU) 2017/2402)**

#### Derivatives

51. For the purposes of Article 26c(2), third subparagraph, of Regulation (EU) 2017/2402, exposures in the pool of underlying exposures that merely contain a derivative component exclusively serving the purpose of directly hedging the interest rate risk or currency risk of the respective underlying exposure itself, which are not themselves derivatives, should not be understood to be prohibited.

#### Common standards in international finance

52. For the purposes of Article 26c(2), third subparagraph, of Regulation (EU) 2017/2402, common standards in international finance should include ISDA or similar established national documentation standards.

### **Referenced interest payments (Article 26c(3) of Regulation (EU) 2017/2402)**

#### Referenced interest rates

53. For the purposes of Article 26c(3) of Regulation (EU) 2017/2402, interest rates that should be considered to be an adequate reference basis for referenced interest payments should include all of the following:

- a. interbank rates including Libor, Euribor and other recognised benchmarks;
- b. other established reference interest rates such as €STR, SONIA, SOFR and TONA;
- c. rates set by monetary policy authorities, including federal funds rates and central banks' discount rates;
- d. sectoral rates reflective of a lender's cost of funds, including standard variable rates and internal interest rates that directly reflect the market costs of funding of a bank or a subset of institutions, to the extent that sufficient data are provided to



investors to allow them to assess the relation of the sectoral rates to other market rates.

### Complex formulae or derivatives

54. For the purposes of Article 26c(3) of Regulation (EU) 2017/2402, interest rate caps or floors should not be understood to constitute a complex formula or derivatives.

### Requirements after enforcement notice (Article 26c(4) of Regulation (EU) 2017/2402)

#### Amount trapped in the SSPE

55. For the purposes of Article 26c(4), second subparagraph, of Regulation (EU) 2017/2402, the amount of cash to be considered as trapped in the SSPE should be determined as set out in the transaction documentation.

56. For the purposes of Article 26c(4) of Regulation (EU) 2017/2402, it should be permissible to trap the cash in the SSPE in the form of a reserve fund for future use, as long as the use of the reserve fund is exclusively limited to the purposes set out in Article 26c(4), second subparagraph, of that Regulation including orderly repayment to the investors.

### Allocation of losses and amortisation of tranches (Article 26c(5) of Regulation (EU) 2017/2402)

#### Triggers

57. For the purposes of Article 26c(5) of Regulation (EU) 2017/2402, in addition to the minimum required triggers, the parties to the transaction may agree to include other performance-related triggers. The occurrence of a trigger event for any such performance-related triggers should lead to the amortisation of the securitisation tranches reverting to a sequential payment in order of seniority, irrespective of whether other triggers apply or not.

#### Reversion to non-sequential amortisation

58. For the purpose of Article 26c(5), third subparagraph, of Regulation (EU) 2017/2402, once the reversion of the amortisation to sequential payment is applied as a consequence of the breach of any performance-related trigger, a further reversion back to non-sequential amortisation should not be allowed in accordance with the transaction documentation.

### Transaction documentation (Article 26c(7) of Regulation (EU) 2017/2402)

#### Servicing standards

59. For the purposes of Article 26c(7), point (d), of Regulation (EU) 2017/2402, servicing standards should be understood as standards related to servicing specified in the transaction documentation that have to be met throughout the life of the securitisation transaction.

### Servicing procedures

60. For the purposes of Article 26c(7), point (c), of Regulation (EU) 2017/2402, the servicing procedures should be understood as actual procedures necessary to ensure compliance with the servicing standards. The procedures may be adapted throughout the life of the securitisation transaction as long as the servicing standards continue to be met.

### Transaction counterparties

61. For the purposes of Article 26c(7), point (b), of Regulation (EU) 2017/2402, the trustee and the third-party verification agent should always differ from the servicer, the investor and the originator. The third-party verification agent should additionally meet the requirements specified in paragraph 73.

### **Servicer's expertise and servicing requirements (Article 26c(8) of Regulation (EU) 2017/2402)**

#### Criteria for determining the expertise of the servicer

62. For the purposes of determining whether a servicer has expertise in servicing exposures of a similar nature to those securitised in accordance with Article 26c(8) of Regulation (EU) 2017/2402, both of the following should apply:

- a. the members of the management body of the servicer and the senior staff, other than members of the management body, responsible for servicing exposures of a similar nature to those securitised should have adequate knowledge and skills in the servicing of exposures similar to those securitised;
- b. any of the following principles on the quality of the expertise should be taken into account in the determination of the expertise:
  - i. the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;
  - ii. the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;
  - iii. the involvement of the members of the management body and the senior staff within the governance structure of the function of servicing the exposures should be appropriate;
  - iv. in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to the servicing of similar exposures to those securitised.

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

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

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

### Exposures of a similar nature

65. For the purposes of Article 26c(8) of Regulation (EU) 2017/2402, the interpretation of the term 'exposures of a similar nature' should follow the interpretation provided in paragraph 37.

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

66. For the purposes of Article 26c(8) of Regulation (EU) 2017/2402, the servicer should be considered to have 'well-documented and adequate policies, procedures and risk-management controls relating to the servicing of exposures' where either of the following conditions is met:

- a. the servicer is an entity that is subject to prudential and capital regulation and supervision in the Union and its regulatory authorisations or permissions are deemed relevant to the servicing;
- b. the servicer is an entity that is not subject to prudential and capital regulation and supervision in the Union, and a proof of existence of well-documented and adequate policies and risk-management controls is provided, which also includes a

proof of adherence to good market practices and reporting capabilities. The proof should be substantiated by an appropriate third-party review, such as by a credit rating agency or external auditor.

### **Timely resolution of conflicts between investors (Article 26c(10) of Regulation (EU) 2017/2402)**

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

67. For the purposes of Article 26c(10) of Regulation (EU) 2017/2402, provisions of the transaction documentation that ‘facilitate the timely resolution of conflicts between different classes of investors’ for securitisation transactions with more than one investor should include all of the following:

- a. the method for calling meetings or arranging conference calls;
- b. the maximum timeframe for setting up a meeting or conference call;
- c. the required quorum;
- d. the minimum thresholds of votes to validate such a decision, with clear differentiation between the minimum thresholds for each type of decision;
- e. where applicable, a location for the meetings which should be in the Union.

68. For the purposes of Article 26c(10) of Regulation (EU) 2017/2402, where mandatory statutory provisions exist in the applicable jurisdiction that set out how conflicts between investors have to be resolved, the transaction documentation may refer to those provisions.

## 6. Criteria relating to transparency

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### Data on historical default and loss performance (Article 26d(1) of Regulation (EU) 2017/2402)

#### Data

69. For the purposes of Article 26d(1) of Regulation (EU) 2017/2402, where the originator cannot provide data in line with the data requirements contained therein, external data that are publicly available or are provided by a third party, such as a rating agency or another market participant, may be used, provided that all of the other requirements of that article are met.

#### Substantially similar exposures

70. For the purposes of Article 26d(1) of Regulation (EU) 2017/2402, the term ‘substantially similar exposures’ should be understood as referring to exposures for which both of the following conditions are met:

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

71. For the purposes of Article 26d(1) of Regulation (EU) 2017/2402, the substantially similar exposures should not be limited to exposures held on the balance sheet of the originator.

### Verification of a sample of the underlying exposures (Article 26d(2) of Regulation (EU) 2017/2402)

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

72. For the purposes of Article 26d(2) of Regulation (EU) 2017/2402, the underlying exposures that should be subject to verification prior to the closing date of the transaction should be a representative sample of the provisional portfolio from which the securitised pool is extracted and which is in a reasonably final form before the closing date of the transaction.

#### Party executing the verification

73. For the purposes of Article 26d(2) of Regulation (EU) 2017/2402, a party should be deemed appropriate and independent when it meets both of the following conditions:

- a. it has the experience and capability to carry out the verification;
- b. it is none of the following:
  - i. a credit rating agency;
  - ii. a third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402;
  - iii. an entity affiliated to the originator, sponsor, investor or SSPE.

### Scope of the verification

74. For the purposes of Article 26d(2) of Regulation (EU) 2017/2402, the verification should be carried out applying an appropriate statistical method and based on a random sample of underlying exposures extracted from the underlying exposures in the securitisation, while the size of the sample should be determined so as to ensure that the probability (confidence level) to correctly reject the hypothesis that there are no exceptions to the requirement in the entire pool of the underlying exposures in the securitisation is at least 95% (i.e. the probability of the so-called type II error of falsely accepting an entire pool without exceptions should be 5%).

75. In any case, the minimum number of the underlying exposures in the sample should be 50. For securitisations where the pool of underlying exposures consists of less than 50 underlying exposures, the sample should consist of all the underlying exposures.

76. The verification should include a check of the originator's database or IT systems against the credit protection agreement and related documentation in order to confirm that the occurrence of a credit event would trigger a credit protection payment by the investor where losses on the underlying exposure subject to a credit event would be assigned to the protected tranche(s) with respect to the exposures which are subject to the verification. Where this verification is not possible using the originator's database or IT systems, the party executing the verification should check other types of documents or records to perform the verification.

77. The verification should be carried out in the form of an agreed-upon procedures report.

### Confirmation of the verification

78. For the purposes of Article 26d(2) of Regulation (EU) 2017/2402, confirmation that this verification has occurred and that no significant adverse findings have been found should be disclosed.

### Prior to the closing of the transaction

79. For the purposes of Article 26d(2) of Regulation (EU) 2017/2402, where no notes are issued under a synthetic securitisation the term prior to the closing of the transaction should be

interpreted as referring to the time prior to the guarantee or credit derivative under the credit protection agreement becoming effective.

### **Liability cash flow model (Article 26d(3) of Regulation (EU) 2017/2402)**

#### Precise representation of the contractual relationship

80. For the purposes of Article 26d(3) of Regulation (EU) 2017/2402, the liability cash flow model should be considered to have been done ‘precisely’ where it is done accurately and with an amount of detail sufficient to allow investors to model the payment obligations, including those of the SSPE, where applicable, and to price the securitisation accordingly. This may include algorithms that permit investors to model a range of different scenarios that will affect cash flows, such as different prepayment or default rates.

#### Third parties

81. For the purposes of Article 26d(3) of Regulation (EU) 2017/2402, where the liability cash flow model is developed by third-party providers the originator should remain responsible for making the information available to potential investors.

### **Environmental performance and sustainability disclosures of the assets (Article 26d(4) of Regulation (EU) 2017/2402)**

#### Available information related to the environmental performance and the principal adverse impacts on sustainability factors

82. The requirement in Article 26d(4) of Regulation (EU) 2017/2402 should be applicable only if the information on the energy performance certificates referred to in the first subparagraph is available, or where the information on the principal adverse impacts on sustainability factors of the assets financed by the underlying exposures referred to in the second subparagraph is available to the originator and the originator decides to apply that second subparagraph, and where the respective information is captured in its internal database or IT systems. Where any such information is available only for a proportion of the underlying exposures, the requirement should apply only in respect of the proportion of the underlying exposures for which information is available.

### **Compliance with disclosure requirements under Article 7 (Article 26d(5) of Regulation (EU) 2017/2402)**

83. For the purposes of Article 26d(5) of Regulation (EU) 2017/2402, the competent authorities designated pursuant to Article 29(5) of that Regulation and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation, should cooperate closely in accordance with Article 36 of that Regulation, where they are different.

## 7. Criteria specific to on-balance-sheet securitisation

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### **Credit events covered under the credit protection agreement (Article 26e(1) of Regulation (EU) 2017/2402)**

#### **Additional credit events**

84. For the purposes of Article 26e(1), first subparagraph, of Regulation (EU) 2017/2402, the requirement for the credit protection agreement to cover at least the credit events set out in that subparagraph should not prevent the parties from agreeing on additional credit events or stricter definitions of the events referred to in Chapter 4 of Title II of Part Three of Regulation (EU) No 575/2013.

### **Credit protection payments (Article 26e(2) of Regulation (EU) 2017/2402)**

#### **Proportional to the share of the outstanding nominal amount of the underlying exposure**

85. For the purposes of Article 26e(2) of Regulation (EU) 2017/2402, if the amount of the underlying exposure covered by the credit protection agreement is lower than the outstanding notional amount of the underlying exposure, the interim and final credit protection payments should be calculated in the same proportion (pro rata) to the share of the outstanding nominal amount covered by the credit protection agreement.

#### **Determination of interim credit protection payment**

86. For the purposes of Article 26e(2), second subparagraph, point (b), of Regulation (EU) 2017/2402, 'where applicable' should be understood as applicable only if the originator has received permission from the competent authority to apply the IRB Approach to determine the expected loss amount for the respective underlying exposure in respect of which the 'higher of' condition is being assessed, and where the rating system used for the underlying exposure has accordingly been assessed by the competent authority for use under the IRB Approach.

#### **Expected loss amount**

87. For the purposes of Article 26e(2) of Regulation (EU) 2017/2402, the expected loss amount should be calculated at the level of individual underlying exposures for which a credit event has occurred. As a derogation, the expected loss amount may be calculated at sub-pool level for retail exposures in accordance with the draft RTS on the calculation of KIRB in accordance with the purchased receivables approach, developed according to Article 255(9) of Regulation (EU) No 575/2013.



## **Debt workout and credit protection premiums (Article 26e(3) of Regulation (EU) 2017/2402)**

### **Contingent on the outstanding nominal amount of the performing securitised exposures at the time of the payment**

88. For the purposes of Article 26e(3), third subparagraph, of Regulation (EU) 2017/2402, where the credit protection agreement covers the performing securitised exposures only in part, the credit protection premiums to be paid under the credit protection agreement should be structured as contingent on the part of the outstanding nominal amount of the performing securitised exposures that is covered by the credit protection agreement.

## **Third-party verification agent (Article 26e(4) of Regulation (EU) 2017/2402)**

### **Party executing the verification**

89. For the purposes of Article 26e(4) of Regulation (EU) 2017/2402, the third-party verification agent should meet both of the following conditions:

- a. it has the experience and capability to carry out the verification;
- b. it is none of the following:
  - i. a credit rating agency;
  - ii. a third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402;
  - iii. an entity affiliated to the originator, sponsor, investor or SSPE.

### **Sample verification in the case of securitisations with mezzanine positions**

90. For the purposes of Article 26e(4), third subparagraph, of Regulation (EU) 2017/2402, without prejudice to the right of investors to request the verification of the eligibility of any particular underlying exposure, for securitisations with mezzanine positions the parties to the securitisation may agree for the sample verification process to start after the detachment point of the first loss tranche decreases below a certain percentage of that detachment point determined at the closing date of the transaction.

### **Final loss amount**

91. For the purposes of Article 26e(4), first subparagraph, point (e), of Regulation (EU) 2017/2402, the 'final loss amount' should be understood as the 'originator's final loss estimate' referred to in Article 26e(3), first subparagraph, of that Regulation, where no final credit protection payment has been made for an underlying exposure subject to a credit event at the end of the extension period specified in the credit protection agreement.

## Early termination events by originator (Article 26e(5) of Regulation (EU) 2017/2402)

### Calculation of the weighted average life of the initial reference portfolio

92. For the purposes of Article 26e(5), first subparagraph, point (d), of Regulation (EU) 2017/2402, the weighted average life (WAL) of the initial reference portfolio of underlying exposures should be calculated by time-weighting only the repayments of principal amounts and should not take into account any prepayment assumptions or any payments relating to fees or interest to be paid by the obligors of the underlying exposures.

### Replenishment period or revolving period

93. For the purposes of Article 26e(5), first subparagraph, point (d), of Regulation (EU) 2017/2402, in the case of the existence of a replenishment or revolving period, the WAL should be the sum of the replenishment or revolving period and the estimated WAL calculated at the end of the replenishment or revolving period. For this estimation, for each securitised exposure maturing before the end of the replenishment or revolving period, the originator should adjust the scheduled maturity to equal the sum of its current maturity and the longest permitted maturity of an exposure that is eligible to be added to the securitised portfolio during the replenishment or revolving period. The adjustments should be made as many times as necessary for that purpose when the term of the adjusted maturity is shorter than the term of the replenishment or revolving period.

### Investor

94. For the purposes of Article 26e(5), first paragraph, point (b), in the case of credit-linked notes issued by an SSPE, the reference to the investor should be understood as a reference to the SSPE or any protection provider which has entered into the credit protection agreement with the originator.

## Synthetic excess spread (Article 26e(7) of Regulation (EU) 2017/2402)

### Calculation of one-year expected loss

95. For the purposes of Article 26e(7) of Regulation (EU) 2017/2402, the one-year regulatory expected loss amounts on all underlying exposures for that year should be calculated taking into account a number of payment periods equivalent to one year, and by multiplying the percentage that the expected loss amount represented on the securitised exposures at the closing date of the transaction with the total outstanding portfolio balance of the performing securitised exposures at the beginning of that one year period.

96. For the purposes of Article 26e(7), point (a), of Regulation (EU) 2017/2402, the term 'fixed synthetic excess spread' refers to the amount of the synthetic excess spread that the originator commits to using as credit enhancement every period. This amount is expressed as the product of a fixed percentage of the outstanding performing portfolio balance every period.

97. For the purposes of Article 26e(7), point (d), of Regulation (EU) 2017/2402, for the originators not using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013 the calculation of the 'one-year expected loss' should be done in accordance with the risk provisioning under the applicable accounting framework or, where that approach results in a loss coverage that is not sufficiently representative of the expected future losses on the securitised exposures, the originator institution should model expected loss amounts based on other internal risk parameters, such as those considered in its internal capital adequacy assessment process (ICAAP), which should be clearly set out in the transaction documentation.

#### Using the IRB Approach for the purposes of point (c)

98. Article 26e(7), point (c), of Regulation (EU) 2017/2402, should apply where the originator determines the own funds requirements using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013 for the entire pool of underlying exposures.

#### Payment period

99. For the purposes of Article 26e(7), point (a), the term 'payment period' should be understood to refer to the period in which the synthetic excess spread is designated in accordance with the transaction documentation.

### Requirements for recourse to high-quality collateral (Article 26e(10) of Regulation (EU) 2017/2402)

#### Acceptable collateral

100. For the purposes of Article 26e(10), first subparagraph, point (a), of Regulation (EU) 2017/2402, the term 'collateral in the form of 0% risk-weighted debt securities' should be understood as collateral in the form of debt securities issued by those entities to which a 0% risk weight is assigned in accordance with Part Three, Title II, Chapter 2, of Regulation (EU) No 575/2013.

#### Maturity requirements with regard to acceptable high-quality collateral

101. Article 26e(10), first subparagraph, point (a)(i), of Regulation (EU) 2017/2402 should be understood to refer to debt securities which, irrespective of their original maturity, have a remaining maturity of no more than three months. Where the period until the next payment date under the credit protection agreement is less than three months, the remaining maturity of the debt securities should be no longer than that period in order to avoid any maturity mismatch between the date when the debt securities are repaid and the next payment date under the credit protection agreement.

### Investments in credit-linked notes

102. For the purposes of Article 26e(10), first subparagraph, point (b), of Regulation (EU) 2017/2402, the requirement relating to the collateral in the form of cash should be considered to be fulfilled in the case of investments in credit-linked notes issued by the originator in accordance with Article 218 of Regulation (EU) No 575/2013.

## 8. Amendments to Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation

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103. EBA/GL/2018/09 is amended as follows:

a. Paragraph 8 of the Guidelines is replaced by the following:

‘These guidelines are addressed to competent authorities referred to in Article 4, point (2), of Regulation (EU) 1093/2010 that have been designated as competent authorities pursuant to Article 29(5) of Regulation (EU) 2017/2402, and to financial institutions referred to in Article 4, point (1), of Regulation (EU) 1093/2010 that are subject to regulation and supervision pursuant to Regulation (EU) 2017/2402, including third parties verifying STS compliance also in accordance with Article 2 (5), last subparagraph, of Regulation 1093/2010. Competent authorities designated pursuant to Article 29(5) of Regulation (EU) 2017/2402 that do not qualify as competent authorities pursuant to Article 4, point (2), of Regulation No 1093/2010 are encouraged to apply these guidelines.’

b. Paragraph 22 of the Guidelines is replaced by the following:

‘For the purposes of Article 20(10), fourth subparagraph, of Regulation (EU) 2017/2402, exposures should be considered to be of a similar nature if one of the following conditions is met:

- a. the exposures belong to one of the asset categories referred to in Article 1, first paragraph, points (a)(i) to (a)(iii) or (a)(v) to (a)(vii), of Delegated Regulation (EU) 2019/1851;
- b. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(iv), of Delegated Regulation (EU) 2019/1851, and to the same type of obligor referred to in Article 2(3), point (a), of that Regulation;
- c. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(viii), of Delegated Regulation (EU) 2019/1851, and they share similar characteristics with respect to any of the homogeneity factors referred to in Article 2(6) of that Regulation.’

c. Paragraph 26 of the Guidelines is replaced by the following:

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

- a. changes that affect the requirement of the similarity of the underwriting standards further specified in Article 1, first paragraph, point (b), of Delegated Regulation (EU) 2019/1851;
- b. changes that materially affect the overall credit risk or expected average performance of the pool of underlying exposures without resulting in substantially different approaches to the assessment of the credit risk associated with the underlying exposures.’

- d. Paragraph 39 of the Guidelines is replaced by the following:

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

- e. Paragraph 44 of the Guidelines is replaced by the following:

‘For the purposes of Article 20(11), point (c), of Regulation (EU) 2017/2402, the credit-impaired debtors or guarantors of exposures should not be considered to have a “credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures of other credit-impaired debtors or guarantors held by the originator which are not securitised” when both of the following conditions apply:

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

- f. Paragraph 45 of the Guidelines is replaced by the following:

‘The conditions in the previous paragraph should be considered to have been met where either of the following applies:

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

- g. Paragraph 46 of the Guidelines is replaced by the following:

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

- h. An additional paragraph 46a is added following paragraph 46:

'For the purposes of Article 20(12) of Regulation (EU) 2017/2402, the intended transfer of a different separate exposure to the same borrower to the SSPE should trigger a new "at least one payment" requirement with respect to such an exposure.'

- i. Paragraph 47 of the Guidelines is replaced by the following:

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

- j. An additional paragraph 50a is added following paragraph 50:

'Risk retention requirements

For the purposes of Article 21(1) of Regulation (EU) 2017/2402, the competent authorities designated pursuant to Article 29(5) of that Regulation and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation should cooperate closely in accordance with Article 36 of that Regulation, where they are different.'

- k. Paragraph 57 of the Guidelines is replaced by the following:

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

- a. interbank rates including Libor, Euribor and other recognised benchmarks;
- b. other established reference interest rates such as €STR, SONIA, SOFR and TONA;
- c. rates set by monetary policy authorities, including federal funds rates and central banks’ discount rates;
- d. sectoral rates reflective of a lender’s cost of funds, including standard variable rates and internal interest rates that directly reflect the market costs of funding of a bank or a subset of institutions, to the extent that sufficient data are provided to investors to allow them to assess the relation of the sectoral rates to other market rates.’

- l. An additional paragraph 66a is added following paragraph 66:

‘For the purpose of Article 21(5) of Regulation (EU) 2017/2402, once the reversion of the amortisation to sequential payment is applied, further reversion back to non-sequential amortisation should not be allowed in accordance with the transaction documentation.’

- m. Paragraph 76 of the Guidelines is replaced by the following:

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

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

- n. An additional paragraph 78a is added<sup>10</sup> following paragraph 78:

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<sup>10</sup> This is a follow-up to the explanation provided in the feedback statement on page 77 of the guidelines on non-ABCP securitisation, according to which such a clarification should have been provided in the legal text of the guidelines but has been omitted in the final text of the guidelines.



‘For securitisations which issue multiple series of securities, including master trusts, a new verification should be completed prior to the issuance in cases where one year has passed since the previous verification.’

- o. Paragraph 79 is replaced by the following paragraph:

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

- a. it has the experience and capability to carry out the verification;
- b. it is none of the following:
  - i. a credit rating agency;
  - ii. a third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402;
  - iii. an entity affiliated to the originator, sponsor, investor or SSPE.’

- p. Paragraph 80 is replaced by the following paragraphs:

‘For the purposes of Article 22(2) of Regulation (EU) 2017/2402, the verification should be carried out applying an appropriate statistical method and based on a random sample of underlying exposures extracted from the underlying exposures in the securitisation, while the size of the sample should be determined so as to ensure that the probability (confidence level) to correctly reject the hypothesis that there are no exceptions to the requirement in the entire pool of the underlying exposures in the securitisation is at least 95% (i.e. the probability of the so-called type II error of falsely accepting an entire pool without exceptions should be 5%).

80a. In any case, the minimum number of the underlying exposures in the sample should be 50. For securitisations where the pool of underlying exposures consists of less than 50 underlying exposures, the sample should consist of all the underlying exposures.

80b. The verification should include a check of the originator’s database or IT systems against the credit protection agreement and related documentation in order to confirm that the occurrence of a credit event would trigger a credit protection payment by the investor where losses on the underlying exposure subject to a credit event would be assigned to the protected tranche(s) with respect to the exposures which are subject to the verification. Where this verification is not possible using the originator’s database or IT systems, the party executing the verification should check other types of documents in order to perform the verification.

80c. The verification should be carried out in the form of an agreed-upon procedures report.’

- q. Paragraph 83 is replaced by the following paragraph:

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

r. Paragraph 84 is replaced by the following paragraph:

‘This requirement should be applicable only if the information on the energy performance certificates referred to in the first subparagraph is available, or where the information on the principal adverse impacts on sustainability factors of the assets financed by the underlying exposures referred to in the second subparagraph is available to the originator and the originator decides to apply that second subparagraph, and where the respective information is captured in its internal database or IT systems. Where any such information is available only for a proportion of the underlying exposures, the requirement should apply only in respect of the proportion of the underlying exposures for which information is available.’

s. An additional paragraph 85 is added:

‘Compliance with disclosure requirements under Article 7

For the purposes of Article 22(5) of Regulation (EU) 2017/2402, the competent authorities designated pursuant to Article 29(5) of that Regulation and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation should cooperate closely in accordance with Article 36 of that Regulation, where they are different.’

104. EBA/GL/2018/08 is amended as follows:

a. Paragraph 8 of the Guidelines is replaced by the following:

‘These guidelines are addressed to competent authorities referred to in Article 4, point (2), of Regulation (EU) 1093/2010 that have been designated as competent authorities pursuant to Article 29(5) of Regulation (EU) 2017/2402, and to financial institutions referred to in Article 4, point (1), of Regulation (EU) 1093/2010 that are subject to regulation and supervision pursuant to Regulation (EU) 2017/2402, including third parties verifying STS compliance also in accordance with Article 2 (5), last subparagraph, of Regulation 1093/2010. Competent authorities designated pursuant to Article 29(5) of Regulation (EU) 2017/2402 that do not qualify as competent authorities pursuant to Article 4, point (2), of Regulation No 1093/2010 are encouraged to apply these guidelines.’

b. Paragraph 29 of the Guidelines is replaced by the following:

‘For the purposes of Article 24(9) of Regulation (EU) 2017/2402, the circumstances specified in points (a) to (c) of that paragraph should be understood as definitions of credit-impairedness. Other

possible circumstances of credit-impairedness that are not captured in points (a) to (c) should be understood to be excluded from this requirement.’

c. Paragraph 34 of the Guidelines is replaced by the following:

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

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

d. Paragraph 35 of the Guidelines is replaced by the following:

‘The conditions in the previous paragraph should be considered to have been met where either of the following applies:

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

e. Paragraph 36 of the Guidelines is replaced by the following:

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

- f. An additional paragraph 36a is added following paragraph 36:

‘For the purposes of Article 24(10) of Regulation (EU) 2017/2402, the intended transfer of a different separate exposure to the same borrower to the SSPE should trigger a new “at least one payment” requirement with respect to such an exposure.’

- g. Paragraph 37 of the Guidelines is replaced by the following:

‘For the purposes of Article 24(10) of Regulation (EU) 2017/2402, the payment referred to in the requirement according to which “at least one payment” should have been made at the time of transfer should be a rental, principal or interest payment or any other kind of ordinary payment specified in the contractual agreement relating to the exposure.’

- h. Paragraph 51 of the Guidelines is replaced by the following:

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

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

- i. Paragraph 57 of the Guidelines is replaced by the following:

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

- a. interbank rates including Libor, Euribor and other recognised benchmarks;
- b. other established reference interest rates such as €STR, SONIA, SOFR and TONA;
- c. rates set by monetary policy authorities, including federal funds rates and central banks’ discount rates;

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

- j. Paragraph 65 of the Guidelines is replaced by the following:

'For the purposes of Article 24(18), fourth subparagraph, of Regulation (EU) 2017/2402, exposures should be considered to be of a similar nature if one of the following conditions is met:

- a. the exposures belong to one of the asset categories referred to in Article 1, first paragraph, points (a)(i) to (a)(iii) or (a)(v) to (a)(vii), of Delegated Regulation (EU) 2019/1851;
- b. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(iv), of Delegated Regulation (EU) 2019/1851, and to the same type of obligor referred to in Article 2(3), point (a), of that Regulation;
- c. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(viii), of Delegated Regulation (EU) 2019/1851, and they share similar characteristics with respect to any of the homogeneity factors referred to in Article 2(6) of that Regulation.'

- k. Paragraph 69 of the Guidelines is replaced by the following:

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

- a. changes that affect the requirement of the similarity of the underwriting standards further specified in Article 1, first paragraph, point (b), of Delegated Regulation (EU) 2019/1851;
- b. changes that materially affect the overall credit risk or expected average performance of the pool of underlying exposures without resulting in substantially different approaches to the assessment of the credit risk associated with the underlying exposures.'

- l. Paragraph 82 is replaced by the following paragraph:

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

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

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

## 5. Accompanying documents

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### 5.1 Draft cost-benefit analysis / impact assessment

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

A similar impact assessment was conducted during the development of the guidelines on STS criteria for ABCP and non-ABCP securitisation in 2018. Given that the amending guidelines include only targeted amendments to the guidelines on STS criteria for ABCP and non-ABCP securitisation to ensure consistency across all three sets of guidelines, no separate impact assessment for the amending guidelines was deemed necessary.

#### A. Problem identification

The guidelines have been developed in accordance with the mandate assigned to the EBA in Article 26a(2) of Regulation (EU) 2017/2402 as amended by Regulation (EU) 2021/557 as part of the Capital Markets Recovery Package, under which Regulation the EBA may adopt guidelines on the harmonised interpretation and application of the criteria for STS on-balance-sheet securitisation.

When enacted in 2017, Regulation (EU) 2017/2402 introduced two similar mandates for the consistent interpretation and harmonised application of the STS requirements for ABCP and non-ABCP securitisation by the originators, original lenders, sponsors, securitisation special purpose entities (SSPEs), investors, competent authorities and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402 throughout the Union. Following these two mandates, the EBA developed and published two sets of guidelines, EBA/GL/2018/09 for non-ABCP securitisation and EBA/GL/2018/08 for ABCP securitisation, in December 2018.

In a similar way to the guidelines for non-ABCP and ABCP securitisation, these guidelines are expected to play an important role in the consistent and correct implementation of the STS criteria for on-balance-sheet securitisation, and the STS securitisation framework in general. They should lead to consistent interpretation and application of the criteria by the originators, original lenders, SSPEs and investors involved in the STS on-balance-sheet securitisation, the competent authorities designated to supervise the compliance of the entities with the criteria, and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402. The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is a prerequisite for the application of preferential risk weights under the

amended capital framework, as well as by severe sanctions imposed by Regulation (EU) 2017/2402 for negligence or intentional infringement of the STS criteria. Lastly, the guidelines will be applied on a cross-sectoral basis by different types of financial institutions that will act as originators, original lenders, investors and, where relevant SSPEs, as well as by a large number of competent authorities that supervise the compliance of such market participants with the STS criteria and the third-party verification agents.

## B. Policy objectives

The main objective of the guidelines is to ensure the harmonised interpretation and application of the STS criteria, and a common and consistent understanding of the STS criteria throughout the Union. The guidelines aim to further enhance consistency in the interpretation of the STS criteria and thus facilitate the uniform application of the STS criteria by the originators, original lenders, SSPEs, investors involved in the STS securitisation, relevant competent authorities and third-party verification agents.

The introduction of the simple, transparent and standardised on-balance-sheet securitisation product, and the establishment of the criteria that such a product needs to comply with, is one of the core pillars of the amended EU securitisation framework, consisting of Regulation (EU) 2021/557 and accompanying changes in the CRR for credit institutions and investment firms, which entered into force in the EU in April 2021.

The guidelines should therefore contribute to the original general objective of this reform, which is to revive a safe securitisation market by introducing STS securitisation instruments, which address the risks inherent in highly complex, opaque and risky securitisation instruments and are clearly differentiated from such complex structures. This should lead to improvement of the financing of the EU economy in light of the recovery from the pandemic and the ongoing geopolitical uncertainty.

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

## C. Baseline scenario

The baseline scenario presumes the existence of no guidelines for STS on-balance-sheet securitisation. It is expected that their absence would have a negative impact on the implementation of the STS framework for on-balance-sheet securitisation, given that potential ambiguities or uncertainties present in the STS criteria as specified in Regulation (EU) 2021/557 would not be addressed, leading to a lack of convergence and to divergent approaches in the implementation of the criteria throughout the EU. Taking into consideration the existence of guidelines for STS criteria for ABCP and non-ABCP securitisation, this would create an uneven



playing field between the various types of securitisations (ABCP and non-ABCP securitisation and on-balance-sheet securitisation). This could increase the costs of compliance with the requirements, and result in origination of on-balance-sheet securitisations with differing characteristics and risk profiles, resulting from different interpretation of the criteria set out in Regulation (EU) 2021/557. In addition, this could disincentivise the originators from issuing STS securitisations, in particular in the light of severe sanctions that could be imposed in cases of breach of the obligations. Lastly, such divergent application of the criteria could create barriers for investments in such securitisation and undermine investors' confidence in the STS products. The lack of clear interpretation of the rules could also increase the scope for potential use of binding mediation, if disagreements arose due to inconsistent understanding of the Level 1 requirements.

#### D. Preferred option

Even though the STS criteria for on-balance-sheet securitisations are largely based on the STS criteria for traditional securitisations, due to the inherent differences between the two types of securitisation and considering that some of the addressees of these guidelines may be different from those of the guidelines on STS criteria for ABCP and non-ABCP securitisation, a distinct set of guidelines has been developed. For those STS criteria that are similar to the criteria for ABCP and non-ABCP securitisation, the text from the guidelines for non-ABCP and ABCP securitisation has been incorporated in this new separate set of guidelines. However, necessary adjustments have been made where relevant considering the specificities of on-balance-sheet securitisation.

Furthermore, in line with the approach taken for the guidelines on STS criteria for ABCP and non-ABCP securitisation, the EBA has addressed the legal mandate by providing a detailed interpretation of all the STS criteria specified in Regulation (EU) 2021/557, following the principle of proportionality. For internal purposes, the criteria were assessed in terms of the level of ambiguity, and guidance is provided accordingly. For a small number of STS criteria that are assessed as sufficiently clear no interpretation is provided. It should be taken into account that the STS criteria, as well as the EBA guidelines, are a binary system, i.e. each criterion and each interpretation in the EBA guidelines is equally important given that non-compliance with any criterion could potentially lead to losing the STS classification.

#### E. Cost-benefit analysis

In a similar way to the guidelines for ABCP and non-ABCP securitisation, it is expected that the implementation of the guidelines for on-balance-sheet securitisation will bring about substantial benefits for the originators, original lenders, investors, SSPEs, competent authorities and third parties verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402. These guidelines should provide a single source of interpretation of the STS criteria for on-balance-sheet securitisation and should therefore substantially facilitate their consistent adoption across the EU.

The guidelines should help achieve the objectives of the general EU securitisation framework as set out above in a more efficient and effective way, also ensuring a level playing field between the

various types of securitisation (ABCP, non-ABCP and on-balance-sheet). These guidelines should help introduce an immediately recognisable STS on-balance-sheet product in EU securitisation markets, increase investors' trust in the STS products that will be eligible for a more risk sensitive capital treatment and thereby help investors and originators to reap the benefits of simple, transparent and standardised instruments.

With respect to the costs, while it is expected that the implementation of these guidelines may be accompanied by administrative, compliance and operational costs for both market participants and competent authorities, they should contribute further to the mitigation of such costs, by providing additional clarity on Level 1 requirements. Beyond the costs for market participants and competent authorities to adapt to the new regulatory framework, there should be no relevant social and economic costs.

It is assessed that the guidelines on the STS criteria for on-balance-sheet securitisation will affect a large number of stakeholder groups. Given the inherently cross-sectoral nature of the securitisation, different types of prudentially regulated and non-regulated institutions and other entities will be brought under the scope of Regulation (EU) 2017/2402 as amended by Regulation (EU) 2021/557 and the guidelines, on both the origination and investment sides. The guidelines will also need to be implemented by the competent authorities that will be designated to supervise the compliance of the market participants with the STS criteria. In this respect, coordination among the competent authorities is key, given that in some cases the competent authorities responsible for supervising compliance with the STS requirements may be different from the competent authorities in charge of the prudential supervision of the relevant financial institutions. Finally, third parties that will be authorised to verify compliance with the STS criteria in accordance with Article 28 of Regulation (EU) 2017/2402 will also need to rely on the interpretation provided in the guidelines.

## 5.2 Feedback on the public consultation

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

The consultation period lasted for three months and ended on 7 July 2023. Eleven responses were received, of which eight were published on the EBA website.

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

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

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

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

The respondents generally welcomed and supported the guidelines, the approach to the interpretation of the STS criteria for on-balance-sheet securitisation and the targeted amendments to the guidelines on the STS criteria for non-ABCP and ABCP securitisation. A number of technical comments have been provided by the respondents on a number of specific technical issues in the guidelines.

The following key comments have been raised and corresponding changes have been introduced to the guidelines.

- **Requirements relating to simplicity:** several comments, questions and requests for clarifications were raised for various requirements. Concerns were raised on the guidance provided for the 'at least one payment' requirement and more specifically on the interpretation of the term 'at least one payment'. In response to these concerns the guidance has been amended and the payment is not limited to the economic substance of the exposure but refers to any ordinary payment.
- **Requirements relating to standardisation and transparency:** comments and requests for clarifications were raised mainly on the requirements relating to the 'allocation of losses and amortisation of tranches' and the 'verification of a sample of underlying exposures'. To address these comments amendments were made to the guidelines with the aim of providing further clarity and of ensuring consistency with other RTS (e.g. RTS on performance-related triggers, joint RTS on sustainability-related disclosures) and other guidelines where relevant.

- **Requirements specific to on-balance-sheet securitisations:** similarly, comments were raised on the consistency of the draft guidelines with the RTS on the determination of the exposure value of the SES that were published after the publication of the Consultation Paper. Also, given that these criteria are specific to OBS and no similar guidance was available in the guidelines for non-ABCP and ABCP securitisation, a few comments highlighted some differences in the guidance and in market practice. Based on the feedback received, several amendments have been made to the guidelines where appropriate.
- **Targeted amendments to the guidelines on the STS criteria for non-ABCP and ABCP securitisation:** regarding the proposed amendments to the existing guidelines most of the comments raised were related to the interpretation of the ‘at least one payment’ criterion.
- **Other:** finally, several comments were raised highlighting the need for grandfathering in cases where market participants have taken a different interpretation of the Level 1 requirements.

The following table provides a complete summary of the comments received during the consultation, the EBA analysis of the comments and the corresponding amendments that have been introduced to the guidelines. The comments in the table also include comments received from stakeholders on the corresponding criteria in the Consultation Paper on the Guidelines on the STS criteria for non-ABCP securitisation (EBA/GL/2018/09) and the Guidelines on the STS criteria for ABCP securitisation ((EBA/CP/2018/04). To the extent possible, the corresponding amendments to the guidelines have been aligned with those introduced to the guidelines on those Guidelines. All the references to paragraphs in the ‘EBA analysis’ part refer to paragraphs in the Consultation Paper (not to the paragraphs in the final guidelines) while in the part ‘Amendments to the proposals’ the paragraphs in these guidelines have been included.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>Responses to questions in Consultation Paper EBA/CP/2023/09</b>			
<b>REQUIREMENTS RELATING TO SIMPLICITY (Article 26b) – Article 26b(1), Article 26b(2), Article 26b(3), Article 26b(4), Article 26b(5), Article 26b(6), Article 26b(7), Article 26b(8), Article 26b(9), Article 26b(10), Article 26b(11), Article 26b(12)</b>			
<b>Question 1. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. For example, should additional interpretations of the terms ‘no less stringent’ or ‘comparable exposures’ be provided and, if so, how are these terms understood in securitisation practice?</b>			
Purchased vs. acquired exposures	While most of the respondents broadly agree that it is not necessary to further clarify this criterion, a few respondents requested the provision of guidance relating to the purchase of third-party exposures and more specifically on the comparable assessment of credit policies and servicing procedures. One respondent also requested that a distinction be made between the purchased and acquired exposures due to M&A regarding the application of the 'no less stringent' requirement.	Regarding the request on the distinction between purchased and acquired exposures, it is the EBA’s view that this request is not in line with the spirit of the rule and that there is no legal basis for making such a distinction.	No change
Established in the Union	One of the comments that was raised by the stakeholders was related to the term ‘established in the Union’ and the scope of this requirement.	Given the pending response to this Q&A, the EBA is not in a position to provide any further clarification on this and the other related questions in the guidelines. Any additional questions raised in the consultation on this matter by other respondents which are beyond the scope	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		of these guidelines should follow the formal Q&A process.	
<b>Question 2. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.</b>			
	All of the respondents agree that there is no need to further specify this criterion.		No change
<b>Question 3. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.</b>			
Balance sheet	Most of the respondents broadly agree that it is not necessary to further clarify this criterion. However, a few respondents requested further clarification in the guidelines whether the term 'balance sheet' in Article 26(b)(3) refers to the prudential or the accounting balance sheet.	It is the EBA's understanding that the balance sheet refers to the accounting balance sheet which is also consistent with the interpretation of Article 26b(6) point (b).	
Request for further clarification	In addition, further clarification was requested on whether the following three cases would meet this STS criterion: 1) the assets have been sold to an SSPE as part of a true sale securitisation for which no SRT benefit is sought and where the SSPE is consolidated into the regulatory balance sheet of the originator; 2) the assets are incorporated in the cover pool of a covered bond; and 3) the assets are transferred as part of a repo transaction (for example to a central bank).	It is the EBA's understanding that the true sale securitisation (case 1) would not seem to contravene this criterion where the SSPE is part of the group and consolidated into the regulatory balance sheet of the originator provided that the 'full legal and valid title' requirement under Article 26b(6) is also met and considering also that there is no overlap between the protected tranche under the on-balance-sheet securitisation and the tranches under the traditional securitisation placed with investors. Regarding the use of assets as collateral in the cover pool (case 2), it is understood that, provided the assets remain on	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>the consolidated balance sheet of the originator or the group (in the case of an SPV), it does not seem to contravene the criterion unless there are national law constraints. Finally, in line with the approach followed in the RTS on risk retention, provided the credit risk is not transferred to a third party the use of collateral for secured funding purposes (case 3) would not contravene this requirement.</p>	
<b>Question 4. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
<p>Separate hedges on different parts of the exposure</p>	<p>In general, all the respondents agree with the interpretation provided for this criterion. Some respondents requested further clarification in relation to the existence of separate hedges on different parts of the same exposures as those which are included in the securitised portfolio.</p>	<p>It is the EBA's understanding that separate hedges on different parts of the same exposure would not seem to contravene this criterion subject to compliance with the risk retention requirement.</p>	<p>No change</p>
<p>Use of protected underlying exposures as collateral for secured funding purposes</p>	<p>In addition, respondents requested clarification that protected underlying exposures used as collateral for secured funding purposes would not contravene this criterion, noting that this would be in line with the guidance provided in relation to risk retention hedging.</p>	<p>Regarding the comment on the use of exposures as collateral for other purposes such as secured funding, this has been addressed in the previous question. [Please refer to EBA answer in Q3 of the Consultation Paper relating to Article 26b(3).]</p>	<p>No change</p>
<p>State guarantees</p>	<p>Finally, some respondents requested clarification of the treatment of state guarantee schemes which cover securitised exposures.</p>	<p>There is a specific mandate for the EBA in CRR 3 on the portfolio guarantees which is expected to provide further clarity also on the state guarantee schemes which cover securitised exposures.</p>	<p>No change</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Protection in the form of a CDS on an obligor	A few comments were raised on the case where an originator purchases credit protection in the form of a CDS on an obligor but not on any specific assets and books that CDS as a trading book asset.	It is the EBA’s understanding that a CDS on an obligor booked in the trading book in principle does not seem to contravene the criterion provided that the two functions (trading activities and credit and portfolio management) are separated by Chinese walls.	No change
<b>Question 5. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.</b>			
	All the respondents agree that it is not necessary to further specify this criterion.		No change
<b>Question 6. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
To the best of the originator’s knowledge	Some respondents suggested specifying that the list of sources and circumstances provided for in paragraph 119: i) is to be considered as non-exhaustive and ii) is expanded to include as a minimum information obtained from third parties.  In addition, some respondents suggested including in paragraph 119 the wording provided for in paragraph 26(a), in particular with reference to the part specifying that an originator is not required to take all legally possible steps in order to determine the relevant requirements but should instead take those steps that the relevant entity would usually take in the course of its origination, servicing and risk management procedures and its policies in	In the EBA’s view, no change in the guidelines is deemed necessary. The guidance is consistent with the Guidelines on the STS criteria for non-ABCP securitisation. Furthermore, paragraph 26 in the ‘Background and rationale’ section already clarifies that originators can make use of information that is received from third parties. Additionally, it clarifies that an originator should not be required to take all legally possible steps but only those steps that the originator usually takes within its activities in terms of origination, servicing, risk management and use of information that is received from third parties.	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	respect of the use of information received from third parties.		
Group	Some respondents commented that the relation between point (a) and point (b) of Article 26b(6) is unclear, in particular because they see no substantial differences between the two paragraphs and see that also in point a) the concept of 'group' is aligned to Article 26b(3). These respondents therefore suggest amending paragraph 120, and possibly merging it with paragraph 121. It was also suggested that it be clearly indicated that the 'group' concept is not connected to the 'group' for accounting purposes.	Article 26b(6) point (a) requires that the originator or an entity of the group to which the originator belongs should have the full legal and valid title to the underlying exposures, while Article 26b(6) point (b) requires that the credit risk should be in the regulatory perimeter of the originator.	No change
Occurrence of a credit event	It was suggested by a respondent that it be clarified that the reference in Article 26b(6) to 'other than the occurrence of a credit event' also covers events that, solely through the passage of time, could result in a credit event (e.g. an exposure with a missed payment for which, at the time of its inclusion in the portfolio, the contractual grace period is not yet expired, thus not yet resulting in a formal credit event).	Article 26e(1) specifies the minimum credit events that should be covered under the credit protection agreement. The parties may agree on additional credit events as long as the minimum requirements are met. Therefore, the EBA does not see merit in further clarifying this situation in the guidelines.	No change
Full legal and valid title	Two respondents highlighted that the interpretation of the 'full legal and valid title' criterion could create unintended consequences (for instance, it would impede – in certain central banks' liquidity schemes – the securitisation of exposures that have been used as collateral for funding purposes). According to these respondents,	Provided that the originator retains the full credit risk of the underlying exposures, even when underlying exposures have been posted as collateral with central banks or otherwise used by the originator as collateral the criterion is met. This is also consistent with the approach followed in the RTS on risk retention where retained	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>the concept of ‘valid title’ does not refer to a widely understood form of right. These respondents suggested therefore clarifying in the guidelines that the ‘full legal and valid title’ criterion does not prevent the use in OBS STS securitisations of underlying exposures that have been posted as collateral with central banks, used as part of the cover pool for covered bonds or otherwise used by the originator as collateral, provided that the originator retains the full credit risk of the underlying exposures.</p>	<p>exposures may be used as collateral for secured funding purposes provided that such use as collateral does not transfer the exposure to the credit risk of these retained exposures to a third party.</p>	
<p>Request for clarification of the terms: ‘date of inclusion’ and ‘closing date’</p>	<p>Some respondents suggested that it be clarified that the phrase ‘date it is included in the securitised portfolio’ in points (c) and (f) of Article 26b(6) is in reality referring to the closing of the transaction, which might come weeks or months after the date of inclusion of assets in the pool. Another respondent highlighted that in synthetic transactions – unlike with a true sale for which the inclusion in a pool corresponds to the date of sale to the SPV – the concept of inclusion in the pool corresponds to the moment when the originator checks the eligibility of the exposure, normally known as the cut-off date. This respondent therefore suggested including this clarification in the guidelines. In addition, one of the respondents also suggested, as an alternative, limiting the cut-off date to a maximum of 30 days prior to the closing date (that in its interpretation corresponds to when the protection starts).</p>	<p>The EBA’s view is that the Level 1 text is clear and very precise for certain representations and warranties with reference to the ‘date of inclusion’ – as in points (c) and (f) – or to the ‘closing date’ – as in point (h). The comment raised seems to be related to differences in market practices. While it is acknowledged that there are no definitions in the Level 1 text on these terms, the specific request to introduce a limit to the cut-off date is considered to be beyond the scope of these guidelines and thus there is no need to make any amendments to the present guidelines. For cases where the timing of the requirement is not clearly specified at Level 1 and there is doubt, it is suggested that the formal EBA Q&amp;A process be followed.</p>	<p>No change</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>Question 7. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Amendment that is not credit driven	<p>A number of respondents highlighted their difficulties in correctly interpreting point (c) of Article 26b(7) when it comes to an exposure ‘subject to an amendment that is not credit driven, such as refinancing or restructuring of debt’. There seems to be ambiguity in the Level 1 text which arises from the placement of the subclause ‘such as refinancing or restructuring of debt’ as well as the reference to ‘restructuring of debt’, and whether these examples are intended to be examples of amendments that are credit driven or not credit driven. Therefore, respondents requested that the EBA clarify in the guidelines that cases of refinancing or restructuring which occur at a time when the borrower is not in financial difficulty are not considered credit-driven amendments.</p>	<p>According to the EBA, it is not deemed necessary to further specify the terms refinancing and restructuring in these guidelines. It is the EBA’s understanding that modifications of the contract which are ‘not credit driven’ would occur where there is no change in the risk profile of the obligor.</p>	No change
Permitted removals	<p>Comments were raised by the respondents requesting the EBA to clarify that the list of admissible removals provided for in points (a) to (d) of Article 26b(7) is to be considered as non-exhaustive and also requested enlargement of the list with a number of additional circumstances.</p>	<p>The Level 1 text is clear. The fourth subparagraph of Article 26b(7) provides an exhaustive list of circumstances where the removal of an underlying exposures is permitted. A new paragraph has been added to the guidelines. In addition, regarding any questions raised during the consultation on specific circumstances, it is the EBA’s view that these should follow the formal EBA Q&amp;A process.</p>	Paragraph 22 has been added.
<b>Question 8. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Contractually binding and enforceable obligations	A comment was raised on the necessity of paragraph 127 of the CP given that in the respondent's view it does not add much to the Level 1 text.	The guidance is consistent with the Guidelines on the STS criteria for non-ABCP securitisation. No change is deemed necessary based on this comment.	No change
Exposures with periodic payment streams	Some respondents, while agreeing with paragraph 128 of the CP, suggested that the EBA add to the list also credit facilities or credit lines in respect of which commitment fees are payable while the facility is undrawn but which would provide for interest when drawn.	The Level 1 text is clear and no commitment fees should be allowed.	No change
Specialised lending	One of the comments raised does not consider as correct or appropriate paragraph 27 of the CP, which states that while pertaining to the corporate exposure asset category (as also noted by the EBA in its final report on the draft RTS on homogeneity, when a separate asset class for specialised lending exposures was not deemed necessary) specialised lending exposures mixed with other corporate exposures would make the pool non-compliant with the homogeneity requirement. On the same note some respondents highlighted that in their opinion specialised lending exposures should be booked into the other corporate exposure category and they doubt the correctness of paragraph 27 of the CP.	It is the EBA's view that specialised lending pertains to the corporate exposure asset category and no further change is deemed necessary. The guidance is also consistent with the approach followed in the final report on the draft RTS on homogeneity.	No change

**Question 9. Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.**

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Most of the respondents explicitly agreed that it is not necessary to further specify this criterion, raising no further points.</p>		No change
<p><b>Question 10. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b></p>			
	<p>A number of respondents were explicitly supportive and agreed with the proposed guidance; additionally a few respondents were also supportive although with some requests for amendments.</p>		
Similar exposures	<p>Some respondents considered paragraph 129(b) of the CP unclear and in any case not in line with (i.e. unduly stricter than) Delegated Regulation (EU) 2019/1851 as amended by Delegated Regulation (EU) YYYY/NNNN. They suggested that the EBA align the guidelines to the above Delegated Regulation and therefore that it also consider the ‘jurisdiction’ as a criterion to determine whether exposures to ‘any type of enterprise or corporation’ are considered to be of a similar nature. One respondent suggested aligning the wording of the guidelines with that of the corresponding guidelines for non-ABCP transactions.</p>	<p>The EBA’s intention in paragraph 129(b) is to clarify that when it comes to ‘credit facilities, including loans and leases, provided to any type of enterprise or corporation’, exposures are considered similar if they alternatively belong to the following type of obligors: (i) micro, small and medium-sized enterprises (SMEs); (ii) other types of enterprises and corporates. The homogeneity factor of jurisdiction (of the obligor or of the immovable property) is not considered for the purpose of the expertise of the originator or the original lender; therefore, exposures to SMEs and exposures to other types of enterprise are not considered to have a similar nature for the purpose of paragraph 4 of Article 26b(10). Given this precise intent, the EBA does not deem it necessary to amend this paragraph.</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
No less stringent underwriting standards	Some respondents found that the wording used by the EBA in paragraphs 130 and 131 is not clear and that, in a literal reading, paragraph 131 seems to contradict paragraph 130. A number of these respondents therefore suggested deleting paragraphs 130 and 131, while the others suggested instead some redrafting to solve the interpretative issue.	The EBA acknowledges that this criterion slightly differs from the one for non-ABCP and ABCP securitisation. Given that this requirement is included in Article 26b(6) (representations and warranties), this guidance has been moved to paragraphs 14 and 15 of these guidelines interpreting the ‘no less stringent underwriting standards’ under Article 26b(6) point (e).	Paragraphs 130 and 131 of the CP have been moved to paragraphs 14 and 15 of the guidelines. Accordingly, paragraph 35(b) of the CP has been moved to 26(b) of the ‘Background and rationale’ section.
Disclosure of material changes from prior underwriting standards	Some respondents, while agreeing in general with paragraphs 132 and 133, considered unnecessary the requirement to explain the purpose of all changes to underlying standards as required in paragraph 134, and suggested that the EBA delete this paragraph or at least clarify in the text that only changes to the underwriting standards during the revolving or replenishment period should be disclosed (as the changes that come after these periods have no impact on the transaction).	The guidance is consistent with the Guidelines on the STS criteria for non-ABCP transactions. For consistency reasons the EBA does not consider it necessary to make amendments to the guidelines based on this comment.	No change
Expertise of the originator or original lender	A comment was raised on paragraph 142, describing the requirements therein as too loose, especially because they only require that three people in the whole organisation have expertise in the origination of securitisation. In this respondent’s opinion, the issuance of securitisation transactions requires experience at many levels and across departments of banks.	The guidance in paragraph 142 of the CP is intended to set the minimum requirements for the expertise of the originator or original lender. The EBA considers the guidance sufficiently clear and, for consistency with the guidelines for non-ABCP transactions, the EBA does not see merit in amending the guidelines.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Comment on 'equivalent requirement in third countries'	A comment was raised suggesting that the EBA clarifies: i) that the criterion provided for in paragraph 140 only applies to exposures originated by EU originators to borrowers in non-EU countries and ii) whether it only covers consumer loans and residential mortgage loans – to which the two EU directives mentioned in the third paragraph of Article 26b(10) solely refer – or also other asset classes.	In the EBA's view, it is sufficiently clear that the guidance provided in paragraph 140 of the CP further specifies that the assessment of the creditworthiness of borrowers in third countries should be based on the principles set out in Directives 2008/48/EC and 2014/17/EC. Regarding the scope of application of this requirement, it is the EBA's understanding that the intention was not to limit the application to residential and consumer asset classes.	Paragraph 46(d) of the 'Background and rationale' section has been amended accordingly.
Potential investors	One respondent asked the EBA to clarify in the guidelines that the requirement in the first paragraph of Article 26b(10) also refers to current investors and not only to potential ones.	The first paragraph of Article 26b(10) refers to potential investors because the underwriting standards pursuant to which underlying exposures were originated are intended to be disclosed early on in the process which is a moment in time in which investors may still be potential investors.	No change
SSPEs	One respondent asked for clarification that the intention of co-legislators in the first paragraph is that only loans to SSPEs are allowed to be of a no full recourse nature.	The EBA considers the Level 1 text is sufficiently clear in specifying that the full recourse requirement does not apply to SSPEs. For this reason, the EBA has not added any clarification on this point in the guidelines.	No change
<b>Question 11. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Exposures to a credit-impaired debtor or guarantor	One respondent, while agreeing that circumstances under paragraphs a) and b) of Article 26b(11) be read as a definition of credit-impairedness, considered that this is not the case for paragraph c), the latter being not necessarily linked to the status	The guidance, which is consistent with the Guidelines on the STS criteria for non-ABCP securitisation, is a direct consequence of the wording chosen by co-legislators in Article	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>of impairedness of exposures. This respondent asked therefore that the guidelines be updated coherently.</p>	<p>26b(11). The EBA therefore does not see merit in amending the paragraph.</p>	
<p>To the best of the originator's knowledge</p>	<p>A number of respondents reiterated on this point the same comments raised in the context of Article 26b(6), highlighting the need to reflect the explanation in paragraph 39(c) of the 'Background and rationale' section (originator is not required to take all legally possible steps in order to determine the debtor's credit status) directly in the text of the guidelines. Other respondents suggested that the EBA indicate that the list of circumstances provided for in the guidelines be considered as a non-exhaustive list.</p>	<p>In the EBA's view, no change in the guidelines is deemed necessary. The guidance is consistent with the Guidelines on the STS criteria for non-ABCP securitisation. Furthermore, paragraph 39(c) in the 'Background and rationale' section of the CP already clarifies that the originator is not required to take all legally possible steps but only those steps that the originator usually takes within its activities in terms of origination, servicing, risk management and use of information that is received from third parties to determine the debtor's credit status. Finally, the list provided for in the guidelines indicates the minimum requirement(s) for the 'best knowledge' standard to be considered to be fulfilled. Any of those circumstances or a combination of those circumstances would be considered as fulfilling this requirement.</p>	<p>No change</p>
<p>Risk of contractually agreed payments not being made being significantly higher than for comparable exposures</p>	<p>Some respondents pointed out that applying the test of point (c) of Article 26b(11) at single exposure level would imply in many cases failing the test. These respondents assumed therefore that the intention of the EBA is to apply this test at portfolio level (differently from the tests of points (a) and (b), which are considered applicable at single exposure level). The same respondents, however, highlighted that this interpretation would be functional only if</p>	<p>The guidance which is consistent with the guidelines for non-ABCP securitisation is aligned with the requirement on the prevention of the adverse selection of assets in the Delegated Regulation specifying in greater detail the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402. Therefore, it is the EBA's view that 'comparable exposures' for this purpose should be other exposures which</p>	<p>Paragraphs 45 and 46 have been amended accordingly.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>coupled with a more concrete and narrow definition of ‘comparable exposures’, that in no cases should be referred to the overall book of comparable exposures (circumstance which would imply failing the test). On a similar note a few respondents suggested modifying paragraph 152(b) of the CP by specifying that the credit quality of debtors or guarantors of underlying exposures cannot be ‘worse’ than the credit quality of debtors or guarantors of comparable exposures that the originator originates in the course of its standard lending operations and credit risk strategy. The term ‘differs’ used in the guidelines is considered overly restrictive.</p>	<p>satisfy the eligibility criteria set out in the transaction documentation other than those criteria which specifically relate to the creditworthiness of the securitised exposures. Furthermore, it is the EBA’s understanding that this test should be applied by looking at the credit rating or score of each of the underlying exposures of the securitised portfolio compared to the average credit assessment or score of the portfolio of comparable exposures. For this, a filter/threshold should be set at the average rating or score of the portfolio and the originator or original lender should consider those that are (significantly) above the average for the purposes of this test. Finally, taking into consideration the feedback on the term ‘significantly different’, the term has been replaced by the term ‘significantly worse’.</p>	
Stage 2 loans based on IFRS 9	<p>A few respondents asked the EBA to confirm that the concept of credit-impairedness does not include assets in stage 2 based on IFRS 9 accounting principles.</p>	<p>According to the EBA Guidelines on the application of the definition of default under Article 178 of Regulation (EU) No 575/2013 (EBA/GL/2016/07), it is clear that exposures in stage 2 should not be automatically classified as defaulted. Stage 2 exposures should be classified as defaulted if other indications of default apply but the fact that they are classified as stage 2 should not automatically be treated as a trigger of default.</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
At the time of selection	A comment was raised suggesting that the EBA clarifies that the ‘time of selection’ indicated in Article 26b(11) should be read as time of inclusion of exposures in the pool, in consideration of the fact that the selection can come several weeks (and sometimes months) before the transaction closing date (i.e. the actual inclusion).	The Level 1 text is sufficiently clear and the timing of the requirement is clearly specified, therefore the comment has not been taken on board.	No change
<b>Question 12. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Scope of the criterion	Few respondents were supportive and agreed with the proposed guidance on this requirement. Some respondents commented that the proposed guidance unduly narrows the Level 1 requirement. Some respondents specifically highlighted that paragraph 154 (which envisages the application of the test at the level of each exposure of the same borrower) should be eliminated, since payments by the same borrower on different exposures should be considered as sufficient to mitigate risk of fraud and to meet the ‘at least one payment’ requirement. Connected to the above, four respondents highlighted that from an operational perspective with corporate underlying exposures the test: i) would in many cases be impossible to conduct due to the lack of data at single position level and ii) in the case of data availability, would determine a delay of at least three months between the loans’ origination and their inclusion in the pool.	Considering that the objective of the criterion is to mitigate fraud and operational risk, the EBA’s understanding is that the intent of the legislator was to apply this requirement to each underlying exposure. In this respect it is not deemed necessary to make any changes to paragraph 154 or the text in the ‘Background and rationale’ section accordingly. Consistently the same approach applies also to the guidelines on non-ABCP and ABCP.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Double narrowing of the criterion	Most of these respondents commented on the ‘double narrowing’ of this requirement with the definition of payment provided in the guidelines and the inclusion of the term ‘economic substance’, which is restrictive in requiring that these be extended to fees (such as administration or commitment fees).	Based on the feedback received, the EBA has amended the guidance in paragraph 155 of the CP, removing the term ‘economic substance’.	Paragraph 49 of the guidelines has been amended accordingly.
<b>REQUIREMENTS RELATING TO STANDARDISATION (Article 26c) – Article 26c(1), Article 26c(2), Article 26c(3), Article 26c(4), Article 26c(5), Article 26c(6), Article 26c(7), Article 26c(8), Article 26c(9), Article 26c(10)</b>			
<b>Question 13: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
	Most of the respondents agreed with the interpretation provided while the rest of the submitters did not provide any comments.		No change
<b>Question 14: Do you agree with the interpretation provided? Should additional aspects be clarified? More specifically, is there a need to further clarify the term ‘appropriate mitigation’ of interest rate and currency risks and further specify any mitigation measures? Please elaborate.</b>			
No interest rate or currency risk	Some respondents agreed with the interpretation provided, other respondents did not provide any comments. One respondent suggested that where there is no interest rate risk or currency risk in a securitisation or where all the payments in the securitisation are denominated in the same currency, there is no need for any disclosure of that fact and suggested removing the disclosure requirement in such cases.	In the EBA’s view, in the absence of interest rate or currency risk, a clarification and a short explanation why there is no interest rate or currency risk in a securitisation would be necessary. Without such a clarification, investors and STS verifiers would not be able to assess whether a securitisation meets the requirements in accordance with Article 26c(2) of Regulation (EU) 2017/2402 or not. This is for the reason that	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		they would not know whether the cause of the lack of a description of the interest rate and currency risks arising from a securitisation is the absence of such risks in the securitisation or the non-compliance of the securitisation with the corresponding STS requirement. The EBA agrees, however, that in the case of the absence of interest rate and currency risks in a securitisation there is no need to provide disclosure on any measures to mitigate those risks.	
No risk mitigation measures	Another respondent questioned the necessity of the clarification provided in paragraph 157 of the CP and argued that in many synthetic securitisations any interest rate or currency risks are not hedged or otherwise mitigated but are allocated to either the protection buyer or the protection seller and this is contractually agreed in the legal documentation.	Concerning this comment, it is the EBA's view that due to the lack of an appropriate mitigation of interest rate or currency risks synthetic securitisations referred to in the submitter's comment would be understood not to meet the requirement set out in the second sentence of Article 26c(2) of Regulation (EU) 2017/2402.	No change
<b>Question 15: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Reference interest rates	A few respondents proposed additionally including in paragraph 159 of the CP a non-exhaustive list of the main risk-free rates such as €STR, SONIA, SOFR and TONA.	The comment has been taken on board. Other established reference interest rates, such as €STR, SONIA, SOFR and TONA, have been added to the corresponding non-exhaustive list of risk-free rates.	Paragraph 53 of the guidelines has been amended accordingly.
Make-up mechanism	Some respondents proposed including an additional clarification in the guidelines that a 'make-up mechanism' according to which the interest amount / credit protection premium to be paid to the investors is adjusted/corrected to take into account	In terms of the 'make-up mechanism', the EBA agrees that such a mechanism does not prevent a securitisation from complying with the requirements pursuant to Article 26c(3) of Regulation (EU) 2017/2402. This is for the reasons	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>any deviation between the interim and the final credit protection payment for underlying exposures subject to a credit event is consistent with the requirements in accordance with Article 26c(3) of Regulation (EU) 2017/2402. According to the respondents such a mechanism ensures that, where the coupon/premium to be paid to investors is based on a reference index and/or a margin and the outstanding balance of the tranche of the credit protection provided by such investors, any parts of the outstanding balance of the tranche taking into account interim credit protection payments are adjusted to the corresponding final credit protection payments once those final credit protection payments have been determined.</p>	<p>that in such a case the referenced interest payments are not deemed to reference complex formulae or derivatives and that any such adjustment is required as a result of the differentiation between interim and final credit protection payments in accordance with Article 26e(2) of that Regulation. The EBA, however, regards the wording of Article 26c(3) as sufficiently clear and therefore sees no need for amending paragraph 160 of the CP in this regard.</p>	
<p><b>Question 16: On reference rates: is the interpretation on this term deemed helpful for the interpretation of this requirement? Please provide more information on the referenced interest payments used in relation to the transaction in your entity's practice.</b></p>			
	<p>Most of the respondents either agreed with the interpretation provided or did not provide any comments of substance; one of the respondents also agreed that the interpretation could be helpful but shared the observation that to date it has not been market practice for issuing banks to disclose to investors in the portfolio reporting what the reference rate is for many asset classes (mortgages being the main exception).</p>	<p>As none of the respondents disagreed with the interpretation provided or indicated that changes in market practice in this regard could become a major issue, the EBA does not see the need for any amendments concerning this issue.</p>	<p>No change</p>
<p><b>Question 17: On complex formulae or derivatives: is the guidance provided sufficient to clarify the requirement or should the guidance be extended? In case of the latter, please provide suggestions on how to define complex formulae and derivatives.</b></p>			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	All respondents either agreed with the interpretation provided or did not provide any comments.		No change
<b>Question 18: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Consistency with Article 26e(6)	One respondent sees a need to ensure consistency between the reference to ‘an enforcement event in respect of the originator’ in Article 26c(4) of Regulation (EU) 2017/2402 and the exhaustive list of circumstances set out in Article 26e(6) of that Regulation in which an STS on-balance-sheet securitisation may be terminated by investors prior to its scheduled maturity. According to the respondent, the guidelines should additionally clarify that the list of potential enforcement events under Article 26c(4) of Regulation (EU) 2017/2402 is limited to the termination events explicitly referred to in Article 26e(6) of that Regulation.	The EBA does not see the need for full consistency between the enforcement events referred to under Article 26c(4) of Regulation (EU) 2017/2402 and the exhaustive list of termination events pursuant to Article 26e(6) of that Regulation. This is for the reason that investors may e.g. initiate legal steps in order to enforce the originator’s compliance with a certain contractual obligation such as the execution of a certain premium payment without terminating the entire credit protection agreement.	No change
Request for clarification	One of the respondents proposed additionally clarifying that the reference to ‘defaulted underlying exposures’ in Article 24c(4) of Regulation (EU) 2017/2402 may include exposures which have experienced a potential credit event prior to the termination of the securitisation, which then crystallises into an actual credit event after such termination.	In the EBA’s view this request for clarification is beyond the scope of these guidelines and therefore the comment was not taken on board.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Difference between the guidelines and market practice	<p>Comments were raised on the proposed guidance in paragraph 161 of the CP. According to one respondent, in cases where an enforcement or termination notice of the credit protection agreement is delivered any amount to remain in the SSPE will not be determined by a trustee or a representative of the investors but by the calculation agent or cash manager in accordance with the transaction documentation. Furthermore, any cash or other collateral that remains with the SSPE after the delivery of such a notice will be held in the same way as prior to that delivery. Another respondent commented that according to market practice the mechanics for determining the amount of cash remaining at the SSPE upon the delivery of an enforcement or termination notice of the credit protection agreement are already set out in the transaction documentation and are not negotiated at the time of the delivery of such a notice. This market practice ensures legal certainty in case of an enforcement or termination event. The respondent also considers it unlikely that trustees or other investor representatives will be comfortable determining such cash amounts on behalf of the investors. Against this background the respondent proposed further specifying in paragraph 161 that the mechanism for determining the cash amount remaining with the SSPE may be determined as set out in the transaction documentation and that a clarification be added to paragraph 162 that for the purposes of this paragraph it is not necessary to</p>	<p>Following the feedback received an adjustment to the guidelines is deemed necessary, distinguishing this requirement from the similar requirement for non-ABCP securitisation. There was no intention to establish new parties to do the calculation or require a new account. The proposed amendment aims to provide further clarity and alignment with market practice.</p>	<p>Paragraph 55 of the guidelines has been amended accordingly.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>open a new reserve account as such a condition would appear unnecessarily burdensome. On a similar note another respondent commented that the content of paragraph 161 of the CP is unclear and unnecessary and makes post-enforcement resolution slow and costly. For those reasons, the respondent proposes deleting that paragraph.</p>		
<b>Question 19: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
<p>Reversion to pro rata amortisation</p>	<p>One respondent explicitly agrees and two respondents disagree with the content of paragraph 163 and the latter request that a reversion to pro rata amortisation should be allowed after the conditions activating a performance-related trigger no longer apply.</p>	<p>In the EBA's view, where the conditions for the application of the derogation cease to apply because a performance-related trigger has been activated, the standard rule according to which sequential amortisation shall be applied to all tranches of an on-balance-sheet securitisation should apply until the maturity of such a securitisation. This is also consistent with the approach followed in the final RTS on performance-related triggers.</p>	<p>No change</p>
<p>Triggers</p>	<p>Another respondent requested further specification on the interaction between paragraphs 163 and 167. In particular, the respondent seeks clarification whether, in cases where none of the mandatory triggers but an additional voluntary trigger has been activated and has switched the amortisation back to sequential, a switch back to non-sequential payments would be allowed where the conditions for activating the voluntary trigger no longer apply.</p>	<p>Irrespective of whether the trigger is among the minimum triggers mentioned in Level 1 or an additional performance-related trigger, it is the EBA's understanding that once the trigger has been activated the switch to sequential amortisation should be permanent. Considering also that the general requirement is to use sequential amortisation, in the case of pro rata amortisation when the condition for derogation does not apply then it should always revert to sequential amortisation. Based on the feedback it</p>	<p>Paragraphs 55 and 58 have been amended.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Significant losses and last part of the maturity of the transaction	Several comments were raised by some respondents relating to the interpretation provided on the terms ‘significant losses’ and ‘last part of the maturity of the transaction’. One of the respondents proposed defining the ‘last part of the maturity of the transaction’ as the ‘final third of the expected maturity of the transaction’ in order to provide a meaningful clarification of the term and to ensure consistency between the content of paragraphs 164 and 165 of the CP, while another respondent suggested leaving the further specification of the terms ‘significant losses’ and ‘period close to the maturity of the credit protection’ to the parties involved in a particular securitisation.	is deemed necessary to make changes to the guidelines. Therefore, the paragraph has been amended to clarify that this refers to the minimum but also applies to other voluntary triggers. The revised wording should provide further clarity.	Paragraphs 164, 165 and 166 of the CP have been deleted.
Request for clarification for transactions with tranches junior to the protected tranches	A few respondents also pointed out that the last subparagraph of Article 26c(5) of Regulation (EU) 2017/2402 lacks to account for the loss-bearing capacity of any tranches junior to the protected tranches of a securitisation and that such a requirement should therefore not be applied literally to synthetic securitisations including mezzanine tranches. The respondents propose including such a clarification in the final guidelines.	It is the EBA’s understanding that in cases where part of the losses on underlying exposures is being absorbed by more junior tranches, the loss-bearing capacity of those tranches should be taken into account for the purposes of the last subparagraph of Article 26c(5).	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Earlier reversion to sequential amortisation	<p>A comment was raised by another respondent that the determination of the initial LGD as the higher of provisions or the regulatory LGD in accordance with Article 26e(2) will lead to determined interim losses being on average structurally higher than the realised final losses and will thus cause an early switch back to sequential amortisation. Due to this criterion initial losses will be either equal to or higher than the bank's expectation at the time of default, and therefore on average higher than the bank's provisioning – assuming that the bank's provisioning is on average a fair and even conservative estimate of final realised losses.</p>	<p>The EBA has taken note of the point made that the expectation of interim losses may on average be structurally higher than realised final losses and that this might lead to an earlier reversion to sequential amortisation. As the content of the corresponding Level 1 requirement (Article 26e(2)) seems, however, to be sufficiently clear, the EBA does not consider the guidelines as an appropriate means of further clarifying this issue.</p>	No change
<p><b>Question 20: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.</b></p>			
Replenishment (or revolving period) and substitution of ineligible exposures	<p>According to one respondent further clarification on the distinction between replenishment (or a revolving period) and the substitution of ineligible exposures would be appreciated as different contractual arrangements in terms of eligible activities during the revolving period and in terms of the replacement of ineligible underlying exposures or even fully repaid underlying exposures after the end of the revolving period exist in the market. The respondent pointed out as well that this issue is also relevant for determining the WAL in accordance with paragraph 201 of the CP, according to which any replenishment period has to be considered in the calculation of the WAL in order to determine the</p>	<p>Article 26b(7) of Regulation (EU) 2017/2402 generally prohibits active portfolio management and only allows for the addition of exposures after the closing date with regard to 'the substitution of exposures that are in breach of representations or warranties or, where the securitisation includes a replenishment period, the addition of exposures that meet the defined replenishment conditions'. The final subparagraph of that paragraph also provides an exhaustive list of circumstances under which an underlying exposure may be removed from the pool. In light of these clear requirements, the EBA does not see a need for further specifying the distinction between the terms 'replenishment</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	earliest date when a time call option may be exercised by the originator.	period’ and ‘replacement of ineligible underlying exposures’.	
Rise in losses	Another respondent suggested that point (b) of Article 26c(6) of Regulation (EU) 2017/2402 should be interpreted as either referring to a ‘rise in losses’ as per the wording of the requirement but also to an ‘increase in the cumulative amount of defaulted exposures’ in line with 26c(5)(a) of that Regulation.	In the EBA’s view, this is beyond the scope of these guidelines and therefore this comment has not been considered.	No change
<b>Question 21: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Fixed standards	A comment was raised that the reference to ‘fixed standards’ in terms of servicing applied in paragraph 168 of the CP may be interpreted as implying that during the maturity of an STS on-balance-sheet securitisation no improvements of servicing standards are allowed irrespective of whether those improvements are proposed by the originator on its own initiative or are imposed by an institution’s competent authority. The respondent also points to compliance issues on the part of the originator, where a third party and not the originator itself is responsible for the servicing.	The EBA acknowledges that the reference to ‘fixed standards’ in paragraph 168 of the CP may be misinterpreted as not allowing for any improvements of the underwriting standards referred to in the transaction documentation. Accordingly, the word ‘fixed’ is deleted in paragraph 168 of the guidelines.	Paragraph 59 of the Guidelines has been amended accordingly.
<b>Question 22: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Disclosure of policies, procedures and risk-management controls	One respondent considers that point (a) of paragraph 175 of the CP is helpful but sees practical issues in terms of the application of point (b) of that paragraph and therefore overall recommends deleting the entire paragraph 175 of the CP. As	The conditions laid out in paragraph 175 of the CP are identical to the guidance provided in the EBA Guidelines on the STS criteria for non-ABCP securitisation (EBA/GL/2018/09). The EBA sees no reason to differentiate the guidance unless there	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>practical issues with regard to the application of point (b) the respondent points to (i) the difficulties or the operational burden with regard to getting entities to disclose their policies and practices in this regard, (ii) the practical difficulty of providing evidence of ‘adherence to good market practices and reporting capabilities’ and the unlikelihood that any third party will ‘feel comfortable’ in substantiating such evidence in light of existing practical issues.</p>	<p>are specificities to on-balance-sheet securitisation.</p>	
Key man risk	<p>Another respondent commented on the content of paragraph 172(b), points (i) and (ii), of the CP. In the respondent’s view the conditions set out in paragraph 172(b), points (i) and (ii), of the CP would create significant ‘key man’ risk.</p>	<p>The conditions referred to in paragraph 172(b), points (i) and (ii), of the CP are identical to the established conditions pursuant to paragraph 69(b), points (i) and (ii), of the EBA Guidelines on the STS criteria for non-ABCP securitisation (EBA/GL/2018/09). The EBA sees no reason to differentiate the guidance unless there are specificities to on-balance-sheet securitisation.</p>	No change
<p><b>Question 23: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.</b></p>			
At all times	<p>A few respondents requested further clarification on the wording ‘at all times’ used in the first sentence of Article 26c(9) of Regulation (EU) 2017/2402, stating that this cannot be a permanent 24/7 process.</p>	<p>In the EBA’s view the wording ‘at all times’ used in the first sentence of Article 26c(9) of Regulation (EU) 2017/2402 should be interpreted as an obligation of the originator to maintain an up-to-date reference register on an ongoing basis so that at any time the third-party verifier or any other party has access to the most up-to-date information on the pool of underlying exposures. This means that, when necessary, the relevant</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		parties should be able to identify the most up-to-date information in the reference register.	
Request for additional information	One respondent pointed out that, in addition to the information referred to in Article 26c(9) of Regulation (EU) 2017/2402, in its view key information that might reasonably be expected to be needed to assess the credit performance of each underlying exposure should also be included in the reference register, in particular in cases where the obligor name is disclosed but no information on its creditworthiness is publicly available or where the obligor name is not disclosed.	In the EBA's view the Level 1 text is sufficiently clear and while it requires the identification of the obligor there is no requirement for the creditworthiness of the obligor and therefore this request is considered to be beyond the scope of these guidelines. No change in the guidelines is deemed necessary.	No change
<b>Question 24: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Request for clarification	One respondent requested further clarification that the requirement only refers to external investors but not to the originator as holder of the senior notes or retention. Another respondent shared this view too and pointed out that synthetic securitisations in many cases only comprise one protection seller and the originator as protection buyer and investor in the tranches not benefitting from any credit protection. For this reason, an additional clarification should be added in the guidelines that in such cases paragraph 176 of the CP does not apply.	In the EBA's view, for the purposes of this article, even though the originator can be defined as an investor, as per the definition in Regulation (EU)2017/2402, it should not be treated as an investor for the purposes of this requirement. However, in cases where new investors enter the transaction compliance with this requirement should be ensured.	Paragraph 67 has been amended accordingly.
Meetings in the Union	One respondent claims that no clarification is necessary on this criterion and that the arrangements to ensure compliance with the	Regarding the requirement for investors to attend meetings in the Union, the intent was for all investors to be able to participate in person in the	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>requirements pursuant to Article 26c(10) of Regulation (EU) 2017/2402 should be left to market participants. That respondent recommends at least replacing ‘should’ with ‘may (without limitation)’ where that word is used in paragraph 176 of the CP, as in particular requiring investors to attend meetings in the Union may from the respondent’s perspective decrease the liquidity of the market for STS on-balance-sheet securitisations.</p>	<p>meetings. In the EBA’s view, given that nowadays there are other possibilities of organising hybrid/virtual meetings, it is not deemed necessary to amend the guidelines, which are also consistent with the Guidelines on the STS criteria for non-ABCP securitisation.</p>	
<b>REQUIREMENTS RELATING TO TRANSPARENCY (Article 26d) – Article 26d(1), Article 26d(2), Article 26d(3), Article 26d(4), Article 26d(5)</b>			
<b>Question 25: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Proxy data	<p>One of the respondents suggested the use of proxy data or external performance data by originators.</p>	<p>Paragraph 178 of the CP clearly states that where the data are not available, publicly available data or data from third parties can be used.</p>	No change
Rating migration data	<p>Request to clarify that rating migration data (whether of internal or external ratings) can be included in the definition of ‘historical default and loss performance such as delinquency and default data’ for corporate loans. In addition, one of the respondents suggested different types of data depending on the asset class.</p>	<p>The Level 1 text is clear on the data requirements. In the EBA’s view, rating migration data can be provided in addition to the data requirements specified in this article. Regarding the requirement on dynamic historical default data, the migration tables on PD changes would not seem to contravene the requirement.</p>	No change
Similarity of conditions for SME/corporate loans	<p>A comment was raised requesting further clarity on the similarity of the conditions for SME/corporate loans.</p>	<p>In the EBA’s view paragraph 179 of the CP is sufficiently clear. This guidance is also consistent</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		with the Guidelines on the STS criteria for non-ABCP securitisation.	
<b>Question 26: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
<b>Question 27: In particular, do you agree with the interpretation of the scope of the verification, in particular with the specification on how the size of the representative sample should be determined? Should additional aspects/parameters for determining the sample be clarified? Please substantiate your reasoning.</b>			
Prior to the closing of the transaction	Some respondents requested additional confirmation in the guidelines that the wording ‘prior to the closing of the transaction’ used in Article 26d(2) of Regulation (EU) 2017/2402 is to be understood as follows: (i) where a synthetic securitisation includes the issuance of notes, as the point in time when the notes are issued; (ii) where no notes are issued under a synthetic securitisation, as the point in time when the guarantee becomes effective, i.e. when all conditions for the effectiveness of the guarantee to be met by the originator are fulfilled. Furthermore, one of the respondents considers it important that, if the final guidelines allow the verification to take place after signing but before the date when the credit protection agreement becomes effective, the guidelines should not prohibit verification from taking place prior to signing.	Regarding the requested clarification of the wording ‘prior to the closing of the transaction’ used in Article 26d(2), the EBA agrees that, where no notes are issued under a synthetic securitisation, for the purposes of this criterion the aforementioned wording should be interpreted as referring to the time prior to the guarantee or credit derivative under the credit protection agreement becoming effective. A corresponding clarification is added to the final guidelines. While the EBA sees no need and also no legal basis in Regulation (EU) 2017/2402 for further specifying the earliest point in time when the AUP verification may be executed, such as the point in time when the credit protection agreement is signed by the parties in the transaction, an AUP verification should only be conducted when the pool of exposures, the credit events and the criteria for credit protection payments can be expected to be reasonably stable. Finally, the wording is specific to on-balance-sheet securitisation and therefore no amendment to the guidelines for non-ABCP securitisation is deemed necessary.	Paragraph 79 has been added.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
At least 95% and equal to or less than 5% type II error	<p>One respondent recommends that in paragraph 183 the fixed confidence level of 95% should be replaced by a confidence level of at least 95% in line with the corresponding provision in paragraph 80 of EBA/GL/2018/09 in order to allow transaction parties to apply higher confidence levels. Similarly, the respondent proposed replacing the fixed value of the ‘type II error’ of 5% with a ‘type II error’ of ‘equal to or less than 5%’ to also allow transaction parties to agree on more prudent assumptions regarding the determination of the applicable sample size. Finally, that respondent requests clarification on the exact definition of the ‘type II error’.</p>	<p>The EBA agrees that it should be left to the discretion of the parties of a transaction to agree on a higher confidence level and a lower percentage of the type II error as adding this flexibility poses no problem, since the probability of type II error is reduced and the resulting sample size can only grow in number. Regarding the request of a definition of the term ‘type II error’, the EBA considers the terms ‘type I error’ and ‘type II error’ as standard and basic concepts in statistics/hypothesis testing. A ‘type II error’ is the error of falsely accepting the tested hypothesis. Paragraph 183 of the CP is the only paragraph mentioning the term ‘type II error’. It states: ‘the probability of the type II error of falsely accepting an entire pool without exceptions should be 5%’. Thus ‘type II error’ is already defined in the text as falsely accepting the hypothesis and the EBA therefore concludes that no further definition is needed.</p>	Paragraph 74 has been amended.
Without replacement	<p>A comment was raised by the respondents pointing out that the wording ‘without replacement’ in paragraph 183 is redundant and proposed deleting that wording. According to the respondents the replacement would not create an issue with regard to the provisional portfolio and would not be allowed anyway with regard to the final portfolio.</p>	<p>The wording ‘without replacement’ used in paragraph 183 of the CP is supposed to mean that once an individual underlying exposure has been drawn from the pool and become part of the sample such an underlying exposure is not ‘put back’ in the pool and may be drawn again to become part of the sample. The EBA, however, deems the wording of the respective sentence to be sufficiently clear also without that wording and</p>	Paragraph 74 has been amended.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Transaction documentation and occurrence of a credit event	Some respondents requested clarification that the reference to the term ‘transaction documentation’ in paragraph 185 of the CP refers to the documentation of the securitisation and not to the documentation related to individual underlying exposures, and suggested the deletion of the wording ‘in order to confirm that the occurrence of a credit event would trigger a credit protection payment ...’ in that paragraph. In this regard, the respondents argue that the wording cited in the previous sentence does not hold, for example, where losses are allocated to the first loss tranche and the credit protection agreement only relates to the mezzanine tranche. Accordingly, the respondents deem a sample verification that the eligibility criteria are met to be sufficient.	<p>accordingly that wording is not considered in the final guidelines.</p> <p>Concerning the reference to the term ‘transaction documentation’ in paragraph 185 of the CP the EBA confirms that this wording refers to the documentation of the synthetic securitisation and not the documentation of the underlying exposures and in order to remove any interpretation issues in this regard the wording ‘transaction documentation’ has been deleted in paragraph 185 of the CP. Furthermore, the wording ‘where losses on the underlying exposure subject to a credit event would be assigned to the protected tranche(s)’ is added to the sentence of paragraph 185 of the CP in order to account for the fact that losses on underlying exposures subject to a credit event are not necessarily compensated by credit protection payments where those losses are assigned to a tranche not benefitting from the credit protection under the credit protection agreement.</p>	Paragraph 76 has been amended.
Provisional portfolio	The respondents also pointed to a perceived inconsistency between the wording of paragraphs 181 and 183 of the CP as the former refers to sample verification in terms of the ‘provisional portfolio’, whereas the wording applied in the latter suggests that the sample verification should relate to the actually securitised portfolio. The respondents requested the removal of this inconsistency and consider a reference to the	The EBA agrees that AUP verification will usually be conducted in terms of the provisional portfolio. Therefore, the word ‘all’ in paragraph 183 of the CP has been deleted in order to remove any ambiguity in this regard.	Paragraph 74 has been amended.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>provisional portfolio in both paragraphs as better reflecting the market practice that individual exposures are often replaced only shortly before the closing date of a transaction. The latter assessment is shared also by another respondent.</p>		
<b>Question 28: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Third parties	<p>One of the comments raised concerns the terminology of ‘third parties’. Art 26d(3) of the regulation refers to third parties as one of the actors in the contractual relationship while the guidelines refer to a third party as a possible external provider of the liability cash flow model.</p>	<p>The EBA understands that a clarification that the terms refer to two different third parties would make the interpretation clearer. Therefore, paragraph 189 has been amended to provide further clarity.</p>	<p>Paragraph 81 has been amended.</p>
On an ongoing basis	<p>Some respondents requested further clarity on the circumstances in which the originator has the obligation to update the cash flow model. More specifically, guidance is sought on whether the originator’s obligation to make the cash flow model available to investors ‘on an ongoing basis’ is an obligation to prepare an updated cash flow model on a periodic basis or whether the originator would only need to prepare an updated cash flow model following any amendment of any relevant contractual relationship, provided that the most up-to-date cash flow model is always made available to investors and potential investors.</p>	<p>In the EBA’s view the cash flow model should always be made available to investors and, upon request, to potential investors. The cash flow model should be updated when needed in order to precisely represent the contractual relationship between the underlying exposures and the payments flowing between the originator, investors, other third parties and, where applicable, the SSPE,</p>	<p>No change</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Model for synthetic securitisation	Another respondent pointed out that a model for a synthetic securitisation contains a limited number of cash flows as compared to a model for a cash transaction and as such is hard to qualify as a cash flow model.	The Level 1 text is sufficiently clear and therefore no further amendments to the guidelines are deemed necessary.	No change
<b>Question 29: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Threshold/minimum proportion	One of the respondents pointed out that, to ensure proportionality, disclosure should only be required for newly originated loans and only where data are available for a minimum proportion of the securitised exposures. A similar comment on the introduction of a threshold was raised by another respondent for concerns of misleading information that may lead to greenwashing claims.	The Level 1 text is clear and the guidelines cannot impose additional requirements, the guidelines may only clarify the existing requirements. The interpretation is consistent also with the guidelines on non-ABCP. A sentence has been added to the 'Background and rationale' section further clarifying the rationale for the approach followed in the guidelines.	Paragraph 105 of the 'Background and rationale' section has been added.
<b>Question 30: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Potential investor	In general, all of the respondents agree with the interpretation provided. However, a comment was raised about the disclosure requirements when the investor sells a securitisation position to another investor with the consent of the originator. In such cases, the respondent suggests clarifying that the disclosure requirements under Article 7 only apply if the originator finds the potential investor suitable.	In the EBA's view this is considered to be beyond the scope of these guidelines and relates to the definition of an investor in Regulation (EU) 2017/2402.	No change
Disclosure of private securitisations	One of the respondents requested further clarification on the disclosure of private securitisations.	In the EBA's view this request is considered to be beyond the scope of these guidelines. Regarding this request for clarification, there is a relevant	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Q&A on the ESMA website (see Q5.1.4) with regard to reporting information for private securitisations.			
<b>REQUIREMENTS SPECIFIC TO ON-BALANCE-SHEET SECURITISATION (Article 26e) – Article 26e(1), Article 26e(2), Article 26e(3), Article 26e(4), Article 26e(5), Article 26e(6), Article 26e(7), Article 26e(8), Article 26e(9), Article 26e(10)</b>			
<b>Question 31: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Cured and restructured exposures	Most of the respondents agreed with the interpretation provided. Further clarification was requested on the treatment of cured and restructured exposures.	Given that the request for clarification relates to the criterion in Article 26e(2), the EBA has decided to address this in Article 26e(2).	No change
<b>Question 32: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Cured and restructured exposures	One respondent requested further clarification on what will happen with a credit event that has been ‘cured’: will the exposure be allowed to stay in the pool, should it be removed, or are both situations possible? Another respondent noted that the criteria need to go further to describe how credit protection payments should be determined in respect of restructuring. According to the same respondent restructurings should also follow an interim credit protection payment and final credit protection payment mechanism, although it should be permitted that the interim credit protection payment is determined as the negative valuation adjustment at the time of restructuring, instead of	In the case of restructuring, this would follow the normal regular payments under this article and the workout end date would be the lower of the (extended) maturity of the restructured exposure or the one from the credit protection agreement. Also, it is the EBA’s understanding that these would be included in the performing portfolio again and would be also eligible for credit protection as, according to Article 26b(7), fourth subparagraph, these circumstances do not allow for a removal of the exposure from the transaction. Regarding the cured exposures, it is the EBA’s understanding that these would remain	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	the provisions or regulatory LGD at such time as defined in Article 26e(2).	in the pool and the final (adjusted) payment will be returned to investors.	
Make-up interest amount	One of the respondents requested clarification on whether the make-up interest amount would meet this criterion. According to the respondent, market practice has been to include a provision known as the 'make-up interest amount'. This provision serves to account for the interest that should have been paid during the workout period if the final loss amount had been known at the time of the interim credit protection payment, which is calculated based on an assumed loss amount.	In the EBA's view the 'make-up interest' amount does not seem to contravene this requirement.	No change
<b>Question 33: Do you agree with the interpretation of the determination of interim credit protection payments? Do you agree with the interpretation of the criterion with respect to the 'higher of' condition? Should the interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.</b>			
Removal of 'higher of' condition	Most of the respondents agreed with the interpretation provided in the guidelines. Several comments were raised on the 'higher of' condition in this article. Two of the respondents requested removing the 'higher of' condition and including only the impairment in financial statements. According to one respondent the requirement that the initial loss amount must be calculated as the 'higher of' provisions and regulatory LGD will lead on average to a structural overestimation of losses. As the credit protection payments are contingent on the amount of losses in the transaction, this means that investors will on average structurally get paid too little in the period between initial and final	Regarding the make-up interest amount, the EBA has provided an answer in the previous question. As concerns the comment on the removal of the 'higher of' condition, this cannot be taken on board because this is a Level 1 requirement.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>loss determination. To account for this, the respondent includes what is commonly known as an ‘interest make-up amount’ mechanism in which the underpaid (or overpaid) protection premium will be corrected at the time of final loss determination.</p>		
<b>Question 34: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Request for clarification	<p>Two respondents requested clarification that the requirement under Article 26e(3), third subparagraph, of the Securitisation Regulation is fulfilled if the credit protection premium is calculated as a fixed percentage on the protected tranche outstanding amount (which is reduced by losses that occur in the securitised reference portfolio). Furthermore, one respondent requested the guidance to be revised to clarify that the outstanding balance of the tranches should be reduced to reflect interim and final losses determined in respect of the securitised exposures. According to the same respondent this is the correct way of capturing the point otherwise being made in that paragraph as well as the Level 1 text. For completeness, it would also be useful to clarify that this does not prevent adjustment payments being made upon calculation of the final loss to reflect the difference in the protection fees that were actually calculated and the protection fees that would have been calculated if the final loss had been known at the time of the initial loss calculation (whether positive or negative, and commonly referred to in the market as ‘make-up interest amounts’). The</p>	<p>It is the EBA’s view that Article 26e(3), third subparagraph, should also be read in light of Recital 22 of Regulation (EU) 2021/557. Moreover, in the EBA’s view, adjustments to final payments reflecting the difference in the protection fees that were actually calculated and the protection fees that would have been calculated if the final loss had been known at the time of the initial loss calculation (make-up interest amounts) are not prohibited under this requirement. Finally, it is the EBA’s understanding that the timing of premium payments may vary across transactions, and thus it is not deemed necessary to further clarify or interpret ‘at the time of the payment’.</p>	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>same respondent requested to further clarify that the reference to ‘at the time of the payment’ should be interpreted as referring to the balance of the protected tranche(s) at the beginning of the relevant calculation period for the payment date.</p>		
<b>Question 35: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Inconsistency	<p>A number of respondents pointed out an inconsistency in paragraph 198 of the CP which refers to the sample verification prior to the issuance.</p>	<p>Following the feedback received, it is noted that the guidance refers to the sample verification in Article 26d(3), and it has therefore been deleted.</p>	<p>Paragraph 198 of the CP has been deleted.</p>
Sample verification in the case of mezzanine transactions	<p>Some respondents commented that in the case of mezzanine transactions, to avoid unnecessary cost to the originator, it is common for verification only to be required once the cumulative losses exceed a certain percentage of the retained junior tranche. It would be helpful for the guidelines to clarify that this is a permitted approach to sample verification.</p>	<p>It is the EBA’s understanding that for securitisations with mezzanine positions the parties to the securitisation may agree for the verification to start after the detachment point of the first loss tranche decreases below a certain percentage of that detachment point determined at the closing date of the transaction and thus the verification of past credit events to be performed retrospectively. However, according to Article 26e(4) regarding the sample verification, investors may still request the verification of the eligibility of any underlying exposure where they are not satisfied with the sample-basis verification.</p>	<p>Paragraph 90 has been added to the guidelines.</p>
Evidence for the appointment of the third-party verification agent	<p>One of the respondents noted that the rationale stated in the Consultation Paper is that the appointment of the verification agent ‘aims to ensure legal certainty for all parties involved in a transaction and to further enhance the soundness</p>	<p>The comment has not been taken on board. The Level 1 text is sufficiently clear and therefore no further clarification is deemed necessary.</p>	<p>No change</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>and accuracy of certain aspects of the credit protection agreement'. As such the respondent believes that it is necessary that investors i) have evidence of such an appointment before closing, ii) are provided with the methodology that will be used before closing and iii) are provided with the results of the verification. Also, clarification is needed whether investors must be provided with these.</p>		
Request for clarification on the timing	<p>A few respondents requested clarification that verification of the items in point (a) to (d) in Article 26e(4) should be required before any interim credit protection payment can be made. While this has generally been market practice, some market participants have interpreted the article to only require such verification at the time of the final credit protection payment. Points (e) and (f), referring to final loss determination and payment, would need to be verified prior to a final loss settlement.</p>	<p>It is the EBA's understanding that the provision does not explicitly limit the application to the final payment but refers to both the interim and final payments. Therefore, points (a) to (d) of Article 26e(4) refer to both the interim and final payments while points (e) and (f) refer to the final payment.</p>	No change
Calculation of loss amount	<p>One of the respondents pointed out that if, in relation to point (e) in Article 26e(4), a verification is not possible of the consistency of the loss amount calculated by the calculation agent with the losses recorded by the originator in its profit and loss statement, then the final loss amount should be zero.</p>	<p>The Level 1 text is clear that it shall be possible to calculate those amounts in all circumstances. In the EBA's view the credit protection agreement should specify how these cases should be dealt with.</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Verification of compliance with the risk retention requirement	One of the respondents requested clarification that verifying that ‘losses in relation to the underlying exposures have correctly been allocated to the investors’ should include verifying that risk retention has been complied with both at the interim credit protection payment stage and final credit protection payment stage.	This comment is considered to be beyond the scope of these guidelines and therefore the comment cannot be taken on board.	No change
Further clarification request on the verification timing and relevant credit events	A respondent requested clarification that the verification of the credit event should include verification that the credit event occurred in the relevant credit protection period for the exposure, which should start from the closing date of the transaction for the initial portfolio and the date of the exposure inclusion for any exposures added as a replenishment. In line with the respondent’s comment in Q11, interpretations where credit events occurring before the closing of the transaction have been eligible for credit protection payments due to the ‘inclusion date’ of the initial portfolio being the portfolio cut-off date, which is typically several weeks (sometimes months) before the closing of the transaction. Further, this verification should be extended to ensure that a failure to pay by an obligor before the closing of the transaction which has not yet become a credit event due to a grace period in the loan documentation should not qualify as a credit event that is eligible for credit protection payments.	The Level 1 text is sufficiently clear on the requirements of the verification. In a similar way to the EBA’s response to a similar comment in Q6, Article 26e(1) specifies the minimum credit events that should be covered under the credit protection agreement. The parties may agree on additional credit events as long as the minimum requirements are met. Therefore, the EBA does not see merit in further clarifying this situation in the guidelines.	

**Question 36: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.**

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Calculation of the WAL	A comment was raised on the calculation of the WAL which excludes prepayments assumptions.	For consistency purposes with the CRR requirements on the calculation of the WAL the comment on prepayments cannot be taken on board.	No change
Replenishment or revolving period	Two respondents pointed out that the proposal in paragraph 200 means that the actual call date could not be known in advance, as it would depend on the actual WAL at the end of the replenishment period. Having this uncertainty as to when the time call may be exercised is problematic for both originators and investors because it makes it more difficult for them to model the transaction, and is inconsistent with the goals of simplicity and transparency underpinning the STS framework. It is therefore proposed that paragraph 201 be amended so that it specifies that the earliest scheduled time call should be a fixed date specified in the transaction documentation which is not earlier than the scheduled replenishment period plus the WAL of the securitised portfolio at closing. While we acknowledge that this is not consistent with the EBA's proposals for time calls in its SRT report from November 2020 (see Recommendation 3, para (c)), the reality is that virtually all transactions executed since that date which include a time call have a fixed date for the earliest exercise of the time call specified in the transaction documentation, without that having attracted adverse comment from competent authorities as part of the SRT assessment process.	To address the comments by the stakeholders, for transactions with a replenishment or revolving period, the EBA has aligned the guidance on the calculation of the WAL with the EBA Guidelines on the determination of the weighted average maturity (WAM) of the contractual payments due under the tranche (EBA/GL/2020/04).	Paragraph 93 has been amended accordingly.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Request for clarification	<p>A few respondents pointed out that subparagraph (b) of Article 26e(5) permits the originator to terminate the transaction due to a failure by the investor to pay protection payments or a breach by the investor of its other material obligations. In the case of a securitisation involving a SSPE, this would not technically be correct, as the investor will be holding notes issued by the SSPE, under which it would have no obligations. Instead, the reference to the investor in that context should be read as a reference to the SSPE. It should therefore be clarified in the guidelines that the reference to the investor in this subparagraph should be interpreted as including a reference to any protection provider which has entered into the credit protection agreement with the originator. In addition, another respondent requested clarification that a transaction involving an SSPE may be terminated by either the originator or the investors in circumstances where there is an event outside the control of the SSPE or the originator, such as an illegality, force majeure or tax event in respect of any payment owed to investors by the SSPE (and the originator is not required to pay any additional amount in order to enable the SSPE to make the payment gross of tax). Similarly, Article 26e(5)(b) should be deemed to include a reference to the SSPE where the investor(s) face an SSPE rather than the originator directly.</p>	<p>The EBA has taken note of the comment. To address this, a new paragraph has been added to the guidelines clarifying that, for the purposes of point (b) of this article, in the case of a CLN the investor could be the SSPE which has issued the CLN.</p>	<p>Paragraph 102 has been added to the guidelines.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>Question 37: Do you consider it necessary to provide interpretation of the term ‘breach by the investor of any material obligation’? Please provide information on such material breaches applied in securitisation practice.</b>			
Request for clarification	Most of the respondents agree that it is not necessary to provide further interpretation of the term ‘breach by the investor of any material obligation’. Only one respondent requested clarification that the originator may terminate the securitisation on the grounds of illegality, as it is clearly not viable for it to be obliged to continue in a transaction where to do so would be illegal.	In the EBA’s view the clarification is not deemed necessary, therefore no change has been made to the guidelines.	No change
<b>Question 38: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. For example, do you consider it necessary to provide interpretation of the term ‘material breach’ of contractual obligations by the originator? Please substantiate your reasoning.</b>			
Breach by the originator in any capacity under the securitisation documentation	One of the respondents requested clarification that the reference to a material breach by the originator of its contractual obligations should be understood as encompassing a material breach by the originator of its contractual obligations in any capacity under the securitisation documentation.	In the EBA’s view the material breach refers to any contractual obligation the originator may have in any capacity under the securitisation documentation. For example, if the originator also acts as an account bank.	No change
Breach with respect to the impact on expected losses	A comment was raised by one respondent pointing out that material breach of contractual obligations should include breaches of obligations which would reasonably be expected to be prejudicial to investors in respect of the expected losses they may be exposed to.	It is the EBA’s understanding that the material breach of contractual obligations could include breaches that are not limited to the impact on expected losses but refer to any other contractual obligation the originator may have under the securitisation documentation.	No change
<b>Question 39: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Alignment with final draft RTS on SES	A few comments were raised by some respondents on the consistency of the guidelines with the RTS on SES. Given that the guidelines were published prior to the final draft RTS on SES, amendments to the guidelines are deemed necessary to ensure alignment with the RTS on SES.	At the time these guidelines were published for consultation, the final draft RTS on the determination of the exposure value of SES in synthetic securitisations (final draft RTS on SES) was still under development. Following the feedback received, several amendments to the guidelines have been made to ensure consistency with the version of the final draft RTS that the EBA published on 25 April 2023.	Paragraphs 95, 96 and 97 have been amended.
Amount of SES committed per year	One respondent raised an inconsistency between subparagraph (a) of Article 26e(7) and the specification in subparagraphs (c) and (d) that the amount of SES that can be committed per year cannot be higher than the one-year expected losses. This is inconsistent with both market practice and the draft RTS on SES. This was also supported by another respondent.	Following the feedback received several amendments to the guidelines have been made to ensure consistency with the version of the final draft RTS on SES that the EBA published on 25 April 2023.	Paragraphs 95 and 96 have been amended.
Clarification on calculation of one-year expected loss	Two respondents commented on the fact that, where an originator not using the IRB Approach calculates its one-year expected loss at closing, the result may be too low and may not provide an accurate indication of the lifetime expected losses.	Based on the feedback received, amendments to the guidelines were deemed necessary. In line with the approach followed in the final draft RTS on SES, for cases where the originator is not using the IRB Approach the guidelines have been amended to allow for institutions to use ICAAP and the expected losses treatment under the accounting framework.	Paragraph 97 of the guidelines has been amended to include the ICAAP risk parameters, which is also in line with the RTS on SES.
Payment period	One of the respondents requested clarification in the guidelines that the reference to 'payment period' in subparagraph (a) should be read as	Following the feedback received a new paragraph has been added to the guidelines to provide further clarity on the term 'payment period'.	Paragraph 99 has been added to the guidelines.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	referring to the SES accrual period specified in the transaction documentation, in line with the definition of 'SES period' set out in Article 1(4) of the draft RTS on SES.		
<b>Question 40: Do you agree that it is not necessary to further specify this criterion? If not, please provide reference to the aspects that require such further specification. Please substantiate your reasoning.</b>			
	All respondents agree that it is not necessary to further specify this criterion.		No change
<b>Question 41: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Complies with the law	Some respondents raised comments about the term 'complies with the law' in paragraph 205. According to one of the respondents, this is not in line with market practice and also goes beyond the usual standard of legal opinion required for credit protection arrangements and synthetic securitisations under Articles 194(1) and 245(4)(g) of the CRR, which is also reflected in the Level 1 text of this criterion.	Based on the feedback received, paragraph 205 of the CP has been removed.	Paragraph 205 of the CP has been deleted.
Necessary legal expertise	Another respondent raised a comment on the term 'necessary legal expertise' in paragraph 206. This appears to introduce a subjective aspect beyond being qualified in the jurisdiction which is basically impossible to due diligence or verify and will add substantial uncertainty to whether the criterion is met.	Based on the feedback received, paragraph 206 of the CP has been removed.	Paragraph 206 of the CP has been deleted.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>Question 42: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
Further clarification on CQS ratings	Several respondents requested further clarification on the CQS ratings and how to deal with more than one rating (in the case of split ratings or in the case of short and long ratings). One of the respondents requested including reference in the guidelines to Commission Implementing Regulation (EU) 2022/2365 of 2 December 2022.	As concerns the use of ECAI credit assessments, it is the EBA's understanding that the same requirements apply pursuant to Article 138 of the CRR. In addition, according to Article 270e of the CRR the EBA has developed draft ITS to map the credit quality steps to the relevant credit assessments of all ECAs. Regulation (EU) 2022/2365 has amended the ITS laid down in Implementing Regulation (EU) 2016/1801 as regards the mapping tables correspondence of credit assessments of external credit assessment institutions for securitisation in accordance with Regulation (EU) No 575/2013.	No change
Cash on deposit	One respondent requested clarification that Article 26e(10)(b) of the Securitisation Regulation allows cash collateral to be provided, including in the form of a guarantee or letter of credit given by a qualifying third-party credit institution. According to the respondent's understanding of the term 'cash on deposit', the reference to collateral in the form of 'cash held with' a third-party credit institution in Article 26e(10)(b) of the Securitisation Regulation must be read as collateral in the form of an undertaking to pay cash by a third-party credit institution. It should not make a difference if the undertaking of the third-party credit institution which meets the rating requirements to pay cash is established as a result of a cash deposit or	The Level 1 text is clear. This is considered to be beyond the scope of these guidelines.	No change

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>otherwise (e.g. under a bank guarantee or letter of credit), provided that the terms of the undertaking and its treatment in an insolvency or resolution scenario are equivalent.</p>		
Chargeback structure	<p>On a similar note, another respondent requested clarification on whether a ‘chargeback’ structure would fall within the scope of this requirement. According to the respondent the criterion does not specify how the recourse should be achieved. It could take the form of ‘chargeback’ structure, where the protection provider (whether the investor directly or an SSPE) places a cash deposit with the originator (regardless of its rating), with the originator opening a cash or securities account with a third-party bank or custodian that meets the requirements of subparagraphs (a)(iii) or (b) of Article 26e(10), and granting security through that account in favour of the protection provider to secure repayment of the cash deposit. Such a structure would give the investor recourse to the high-quality collateral posted by the originator in the event that the originator fails to repay the cash deposit, while of course the originator remains the owner of that high-quality collateral and thus also has recourse to it by being entitled to have the collateral released from the security as protection payments are due under the securitisation.</p>	<p>This is considered to be beyond the scope of these guidelines. In the EBA’s view, the question raised in the feedback to the CP should follow the formal EBA Q&amp;A process.</p>	No change



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
CQS waiver	One of the respondents requested clarification of whether the CQS waiver is for the entire market or case by case for each originator.	The Level 1 text is sufficiently clear in this regard. It is the EBA's understanding that this could only be granted to all participants in a certain market that are within the scope of this waiver. The competent authority has to demonstrate or provide proof of market difficulties for institutions meeting CQS2 and concentration problems in a jurisdiction and therefore the waiver is for all institutions. If the waiver is granted it should be for all entities in the jurisdiction; this would ensure a level playing field with the other originators.	No change
Payment frequency of the high-quality collateral	Comments were raised on the payment frequency of the acceptable high-quality collateral. One of the respondents pointed out that the requirement for payment dates to be quarterly is too restrictive given that the Level 1 text only requires the collateral to mature by no later than the next payment date. According to another respondent the interpretation in the guidelines prohibits the use of longer-dated zero-coupon collateral securities for the purpose of Article 26e(10), first subparagraph, point (a)(i).	The guidance has been amended to accurately reflect the intent of the legislator. The objective is that there should be no mismatch between the maturity date of the collateral securing that payment and the next payment date under the credit protection agreement.	Paragraph 101 has been amended.
<b>STS criteria not specified above</b>			
Grandfathering	Most of the respondents commented on the need for grandfathering for the outstanding STS transactions. It is argued that since the introduction of the STS framework for on-balance-sheet securitisations a large number of transactions have	The EBA has noted the comment and the guidelines are not expected to apply retroactively.	This has been considered in the date of application of these and the amending guidelines.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>been executed that may risk losing the STS status due to a different interpretation of the Level 1 requirements.</p>		
<b>Amending guidelines</b>			
<b>Question 44: Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/09? Should additional aspects be clarified? Please substantiate your reasoning.</b>			
<p>Feedback regarding amendments to Guidelines on the STS criteria for non-ABCP securitisation</p>	<p>A few comments were raised by the respondents relating to the targeted amendments to the guidelines on non-ABCP securitisation. Some of the respondents pointed to the responses provided in relation to the ‘at least one payment’ criterion. According to one of the respondents, in the case of equipment leases with more than one existing loan/lease with the originator, these should be excluded from the ‘at least one payment’ criterion in a similar way to paragraph 46. According to the respondent, the fact that the debtor has fulfilled the requirement in one loan or lease contract should be a strong mitigant against fraud and operational risk. In addition, with regard to any other kind of ordinary payment there is a request to specify whether a one-off administration fee (type) or EUR 1 (amount) would satisfy the requirement in paragraph 47. This is particularly relevant for warehousing deals. On a similar note, another respondent requested allowing a minimal amount as an initial payment and therefore suggested deleting the ‘economic substance’ from the guidelines. Regarding the verification of a sample of</p>	<p>All of the points raised have been addressed in the guidelines for OBS and where necessary those amendments will also be reflected in the guidelines for non-ABCP securitisation. Regarding paragraph 80b, the wording will also be amended to reflect the difference in the requirement between the non-ABCP and OBS securitisations.</p>	<p>Various amendments to the guidelines on non-ABCP securitisation as a result of the feedback to the comments on the OBS securitisations.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>underlying exposures criterion (Article 26d(2)) one respondent requested that the verification of those eligibility criteria that relate to certain legal and factual requirements which are extremely burdensome should not fail the requirement. A comment was raised by two respondents pointing out a typo in paragraph 80b, suggesting deleting the term ‘credit protection agreement’. Another comment relates to Article 22(1) requesting other types of performance data to be allowed (such as rating migration etc.).</p>		
<p><b>Question 45: Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/08? Should additional aspects be clarified? Please substantiate your reasoning.</b></p>			
<p>Feedback regarding amendments to the Guidelines on the STS criteria for ABCP securitisation</p>	<p>The same feedback as for non-ABCP was also provided for the targeted amendments to the guidelines on ABCP securitisation, highlighting that the feedback related to the ‘at least one payment’ criterion is more relevant for ABCP securitisations.</p>	<p>All of the points raised have been addressed in the guidelines for OBS and where necessary those amendments will also be reflected in the guidelines for ABCP securitisation.</p>	<p>Various amendments to the guidelines on ABCP securitisation as a result of the feedback to the comments on the OBS securitisations.</p>

