



EBA/CP/2023/09

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Consultation Paper

Guidelines

on the STS criteria for on-balance-sheet securitisation

under Article 26a(2) of Regulation (EU) 2017/2402 of the European
Parliament and the Council



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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

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

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 07/07/2023. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

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

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

The proposed guidelines have been developed in accordance with Article 26(a)(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 specific requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread, applicable to STS on-balance-sheet securitisation, as set out in Articles 26b to 26e of that Regulation.

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 the 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 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 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, and aim to contribute to a revival of a sound and safe securitisation market in the EU and help recovery from the COVID-19 crisis.

Next steps

The proposed guidelines are published for a three months public consultation, from 21/04/2023 to 07/07/2023. Following their finalisation, they will be translated into the official EU languages and published on the EBA website.

3. Background and rationale

1. In accordance with the Article 26a(2) of Regulation (EU) 2017/2402¹ (Securitisation Regulation or SECR) as amended by Regulation (EU) 2021/557² as part of the Capital Markets Recovery Package (CMRP), the EBA has been entitled to develop guidelines and recommendations on the harmonised interpretation of 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 SECR). Compliance with these requirements is a prerequisite for a preferential risk-weight treatment for originator institutions retaining exposures to senior tranches to such 'STS' on-balance-sheet securitisations, in accordance with specific requirements in the amended CRR³.
2. When enacted in 2017, the Securitisation Regulation introduced a similar mandate for EBA to develop guidelines and to harmonise the interpretation of STS requirements for traditional securitisation (the mandate was two-fold, requesting one set of guidelines for non-ABCP securitisation, and another set of guidelines for ABCP securitisation). Based on those mandates, EBA has developed and published two sets of Guidelines, one for non-ABCP securitisation, and one for ABCP securitisation, respectively, in December 2018⁴.
3. In the present draft guidelines, addressing the mandate under Article 26a(2) of SECR, the EBA has developed interpretations of all STS criteria applicable to on-balance-sheet securitisations, and focus on clarifying aspects of those requirements with a potentially high level of ambiguity (with exception of a small number of STS requirements that were assessed as 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 securitisation⁵, has been taken into account for those STS requirements that are similar or identical to requirements applicable to non-ABCP securitisation.

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

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

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

⁴ [Guidelines on the STS criteria for ABCP and non-ABCP securitisation | European Banking Authority \(europa.eu\)](https://www.eba.europa.eu/en/guidelines/2018/01)

⁵ [Guidelines on STS criteria for non-ABCP securitisation.pdf \(europa.eu\)](https://www.eba.europa.eu/en/guidelines/2018/01)



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, investors involved in the STS securitisation, the competent authorities designated to supervise the compliance of the entities with the criteria, and third parties authorised to check the compliance of the securitisation with the STS criteria. The importance of the clear guidance to be provided in the guidelines is underlined by the fact that the implementation of the STS criteria is a prerequisite for application of preferential risk weights under the amended CRR, as well as by 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 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 disclosures on the compliance with the STS criteria, within the STS notifications.
7. The proposed 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), while recommendations are instruments of specific application e.g. applying to a particular set of addressees or for a limited period of time only).
8. A number of the STS requirements specified in the Level 1 (Securitisation Regulation) 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 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:

Article in the Securitisation Regulation			
STS criteria	Non-ABCP securitisation	ABCP securitisation	On-balance-sheet securitisation
At least one payment made	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)
Non-sequential priority of payments	Article 21(5)	Article 24(17)(b)	Article 26c(5)
Verification of a sample of the underlying exposures	Article 22(2)	Article 26(1)	Article 26d(2)
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 the Section 4 “draft guidelines”, 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-ACBP securitisation. Section 5 of the guidelines includes targeted amendments to the guidelines on non-ABCP securitisation and ABCP securitisation. Following the consultation, the EBA would issue three separate guidelines, for on-balance-sheet securitisation, for non-ABCP securitisation (consolidated version) and ABCP securitisation (consolidated version).
11. Unless otherwise stated, in this Section all references to individual Articles refer to Articles of Regulation (EU) 2017/2402.

Criteria related to simplicity (Article 26b)

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

1. This requirement is part of the requirements that aim to exclude arbitrage securitisations, i.e. transactions in which the protection buyer purchases exposures outside their 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 is consistent with that 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 an 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.
2. This requirement is deemed sufficiently clear and no further guidance has been assessed as necessary.

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

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

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

Background and rationale:

4. 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 STS criteria for non-ABCP securitisation:

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

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

Background and rationale:

6. 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 STS criteria for non-ABCP securitisation:



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

No double hedging (Article 26b(4))

Rationale:

8. 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.
9. 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 a 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 case of credit events, or not.

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

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

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

Rationale:

11. 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.
12. This requirement is deemed sufficiently clear and no further guidance has been assessed as necessary.

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

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

Representations and warranties (Article 26b(6))

Rationale:

14.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.

15.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. ‘an entity of the group to which the originator belongs’;
- c. ‘an entity which is included in the scope of supervision on a consolidated basis’.

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

16.The requirement relating to representations and warranties to be provided in 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 STS criteria for non-ABCP securitisation.

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

Rationale:

17.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.

18. Consistent 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.
19. 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.
20. To facilitate consistent interpretation of this criterion, the following aspects should be clarified:
 - a. the purpose of the requirement on the 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 STS criteria for non-ABCP securitisation:

21. Given 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 that one provided in the Guidelines on 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 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:

22. The criterion on the homogeneity as specified in the first subparagraph of Article 26b(8) has been clarified in the Delegated Regulation (EU) 2019/1851 on the homogeneity of the underlying exposures in the securitisation⁶ as amended by Delegated Regulation (EU) YYYY/NNNN⁷.
23. The objective of the criteria specified in the second and the third subparagraph 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.
24. 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.
25. 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 defaulted exposures in accordance with Article 26b(11) of Regulation (EU) 2017/2402;
26. With respect to the specific case of specialised lending exposures, for the purposes of assessing homogeneity in accordance with the Delegated Regulation (EU) 2019/1851 as amended by Delegated Regulation (EU) YYYY/NNNN, 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 the that Delegated Regulation.
27. 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

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

⁷ [Regulatory Technical Standards on the homogeneity of the underlying exposures in STS securitisation | European Banking Authority \(europa.eu\)](#)



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 STS criteria for non-ABCP securitisation:

28. Given 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 that one provided in the Guidelines on STS criteria for non-ABCP securitisation.

No resecuritisation (Article 26b(9))

Rationale:

29. The objective of this criterion is to prohibit resecuritisation to be 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 the 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 re-packaged and credit enhanced, resulting in transactions whereby small changes in the credit performance of the underlying assets had severe impacts on the credit quality of the resecuritisation bonds. The modelling of the credit risk arising in these bonds proved very difficult, also due to high levels of correlations arising in the resulting structures.

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

Underwriting standards, originator's expertise (Article 26b(10))

Rationale:

31. 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.

32. 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.



33. 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 licenced in the Union, and the criterion is therefore understood to cover only exposures originated by such EU originators to borrowers in non-EU countries.

34. 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.

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

- a. the term 'similar exposures', with reference to requirements specified in the 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. the term 'no less stringent underwriting standards': independently of the guidance provided in these guidelines, it is understood that, in the spirit of restricting the 'originate-to-distribute' model of underwriting, where similar exposures exist on the originator's balance sheet, the underwriting standards that have been applied to the securitised exposures should also have been applied to similar exposures that have not been securitised, i.e. the underwriting standards should have been applied not solely to securitised exposures;
- c. clarification of the requirement to disclose material changes from prior underwriting standards to potential investors without undue delay: the guidance clarifies that this requirement should be forward-looking only, referring to material changes to the underwriting standards after the closing of the securitisation. The guidance clarifies the interactions with the requirement for similarity of the underwriting standards set out in the Delegated Regulation (EU) 2019/1851 as amended by Delegated Regulation (EU) YYYY/NNNN, which requires that all the underlying exposures in a securitisation be underwritten according to similar underwriting standards;
- d. the scope of the criterion with respect to the specific types of residential loans as referred to in the second subparagraph of Article 26b(10) and to the nature of the information that should be captured by this criterion;
- e. clarification of the criterion with respect to the assessment of a borrower's creditworthiness based on equivalent requirements in third countries;



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

36. 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 STS criteria for non-ABCP securitisation:

37. Given 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 that one provided in the Guidelines on STS criteria for non-ABCP securitisation.

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

Rationale:

38. 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 high likelihood of default, i.e. the possibility that the debtor or guarantor is not able to meet its obligations becomes a real possibility. Such exposures to credit-impaired debtors or guarantors should therefore also not be eligible for STS purposes.

39.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 the fact that credit registries in some jurisdictions may contain both positive and negative information about the clients;
- e. Interpretation of the term 'significantly higher risk of contractually agreed payments not being made for comparable exposures': the term should be interpreted with a similar meaning to the requirement aiming to prevent adverse selection of assets referred to in Article 6(2) of Regulation (EU) 2017/2402, and further specified in the Article 16(2) of the Delegated Regulation specifying in greater detail the risk retention requirement in accordance with Article 6(7) of Regulation (EU) 2017/2402, 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 STS criteria for non-ABCP securitisation:

40. Given 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 that one provided in the Guidelines on STS criteria for non-ABCP securitisation.

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

Rationale:

41. 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 and that is related to the economic substance of the exposure (i.e. excluding any extraordinary payments outside of the economic substance of the exposure) 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 is unless in the case of revolving securitisations in which the distribution of securitised exposures is subject to constant changes because the securitisation relates to exposures payable in a single instalment or with an initial legal maturity of an exposure of below one year.

42. 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.

43. 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 STS criteria for non-ABCP securitisation:

44. Given 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 that one provided in the Guidelines on STS criteria for non-ABCP securitisation, with some minor differences to provide additional necessary clarifications.

Requirements related to standardisation (Article 26c)

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

Rationale:

45. 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.

46.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 (in case these are different). This would avoid any duplication of work with respect to STS transactions.

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

Rationale:

47.The criterion set out in Article 26c(2) aims to protect both the protection buyer and the protection provider from any interest 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.

48.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.

49.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.

50.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 non-ABCP securitisation:

51.Given 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 that one provide in the Guidelines on STS criteria for non-ABCP securitisation, with some minor differences. In particular, in the context of on-balance-sheet securitisation, feedback is sought on whether it is deemed necessary to further clarify the term 'appropriate mitigation' of interest-rate and currency risks and further specify any mitigation measures.

Referenced interest payments (Article 26c(3))



Rationale:

52. 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.

53. 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 as complex.

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

54. 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.

55. Given 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 that one provided in the Guidelines on STS criteria for non-ABCP securitisation for the terms 'referenced rates' and 'complex formulae or derivatives'.

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

Rationale:

56. 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 STS criteria for non-ABCP securitisation:

57. 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 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:

58.The 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.

59.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 is 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.

60.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 also in these guidelines.

61.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 that already reverted the amortisation 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.

62.The guidelines should also further clarify 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 EBA under Article 26c(5), in particular:

- a. For point (a) of these RTS, the terms 'significant losses' and 'last part of the maturity of the transaction';
- b. For point (b) the term 'back -loaded loss distribution scenario'.

63.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 that those triggers do not allow for a reversion of the securitisation to non-sequential amortisation.

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

64. 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 terms reversion to non-sequential amortisation, significant losses, last part of the maturity of the transaction, and back-loaded loss distribution scenario, 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:

65. 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.

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

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

67. The Guidelines on 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:

68. 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.

69. 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 interest 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.

70. 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.

71. 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 STS criteria for non-ABCP securitisation:

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

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

Rationale:

73. The objective of this requirement is to ensure that all the necessary conditions for a well-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 the 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.

74. 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 similar nature;

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

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

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

76. Given 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 that one provided in the Guidelines on STS criteria for non-ABCP securitisation.

Reference register (Article 26c(9))

Rationale:

77. 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 on 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.

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

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

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

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

Rationale:

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

81. 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 STS criteria for non-ABCP securitisation:

82. Given 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 that one provided in the Guidelines on STS criteria for non-ABCP securitisation.

Requirements relating to transparency (Article 26d)

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

Rationale:

83. 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 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.

84. 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 STS criteria for non-ABCP securitisation:

85. Given 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 that one provided in the Guidelines on STS criteria for non-ABCP securitisation.

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

Rationale:

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

87. 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.

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

88. Given 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 that one provided in the Guidelines on 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 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:

89. 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.

90. 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 STS criteria for non-ABCP securitisation:

91. Given 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 that one provided in the Guidelines on STS criteria for non-ABCP securitisation.

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

Rationale:

92. 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.

93. 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.

94. It is to be noted that the Joint Committee of the ESAs is currently in the process of developing draft RTS with regard to the content, methodologies and presentation of disclosures pursuant to Article 22(4) and 26d(4) of Regulation (EU) 2017/2402, which is dealing with matters related to this requirement where originators decide to publish available information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors instead of publishing the available information related to the environmental performance of those assets. The text of the guidelines may therefore be amended in the future, if necessary, to ensure consistency with the respective RTS, once published at the Official Journal of the EU.

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

95. Given 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 that one provided in the Guidelines on STS criteria for non-ABCP securitisation.

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

Rationale:

96. 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.

97. 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 (in case these are different). This would avoid any duplication of work with respect to STS transactions.

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

98. To ensure consistency, equivalent clarification has been provided in the Guidelines on STS criteria for non-ABCP securitisation (no equivalent clarification has been added in the Guidelines on STS criteria for ABCP securitisation as compliance with disclosure requirements under Article 7 in case of ABCP securitisation is not covered in the EBA mandate for guidelines for ABCP securitisation).

Requirements specific for on-balance-sheet securitisation

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

100. 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 case of the use of guarantees) or in point (a) of Article 216(1) (in 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.

101. 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:

102. 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 and 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.

103. 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 terms '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 second subparagraph, point (b), should be considered (under the 'higher of' condition) only in case the originator has received permission to apply the IRB Approach for 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 be also seen in relation to the provision in the seventh subparagraph of Article 26(e)(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:

104. 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.

105. 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:

106. 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.
107. 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 of the underlying exposures subject to external verification;
 - c. clarification of the term ‘final loss amount’.

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

Rationale:

108. 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.
109. 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 the 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 the Guidelines on STS criteria for ABCP securitisation;
 - b. clarification on the calculation of WAL in 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 is 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:

110. 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:

111. 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.
112. 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 point (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 the 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:

113. 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))

114. 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:

115. 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).

116. 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 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.

4. Guidelines

EBA/GL/2023/XX

DD Month YYYY

Draft Guidelines

On the STS criteria for on-balance-sheet securitisation

1. Compliance and reporting obligations

Status of these guidelines

12. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and the Council⁸ and Article 26a(2) of Regulation (EU) 2017/2402 of the European Parliament and the Council⁹, as amended by Regulation (EU) 2021/557 of the European Parliament and the Council¹⁰. 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.
13. 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

14. 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/2023/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
15. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010.

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

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

¹⁰ 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>

2. Subject matter, scope and definitions

Subject matter

16. These guidelines specify the criteria relating to simplicity, standardisation, transparency and specific requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread, applicable to on-balance-sheet securitisation, as set out in Articles 26b to 26e of Regulation (EU) 2017/2402, as amended by Regulation (EU) 2021/557.

Scope of application

17. These guidelines apply in relation to the criteria of simplicity, standardisation, transparency and specific requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread, applicable to on-balance-sheet securitisation.
18. Competent authorities should apply these guidelines in accordance with the scope of application of Regulation (EU) 2017/2402 as set out in its Article 1.

Addressees

19. These guidelines are addressed to competent authorities referred to in Article 29 of Regulation (EU) 2017/2402 that qualify as competent authorities pursuant to Article 4, point (2), of Regulation No 1093/2010, and to any undertakings, as referred to in Article 4, point (1), of Regulation No 1093/2010, that are under the scope of Regulation (EU) 2017/2402. Competent authorities referred to in Article 29 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.

3. Implementation

Date of application

20. These guidelines apply from dd.mm.yyyy.

4. Guidelines

Requirements on the originator (Article 26b(1) of Regulation (EU) 2017/2402)

Explanatory text for consultation purposes

Article 26b(1)

1. An originator shall be an entity that is authorised or licenced in the Union.
An originator that purchases a third party's exposures on its own account and then securitises them shall apply policies with regard to credit, collection, debt workout and servicing applied to those exposures that are no less stringent than those that the originator applies to comparable exposures that have not been purchased.

Q1. 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 term 'no less stringent policies' or 'comparable exposures' be provided and if yes, how are these terms understood in securitisation practice?

Origination as part of the core business activity of the originator (Article 26b(2) of Regulation (EU) 2017/2402)

Explanatory text for consultation purposes

Article 26b(2)

2. Underlying exposures shall be originated as part of the core business activity of the originator.

Q2. 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.

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

Explanatory text for consultation purposes

Recital 14

The object of a credit risk transfer should be exposures originated or purchased by a Union regulated institution within its core lending business activity and held on its balance sheet or, in the case of a group structure, on its consolidated balance sheet at the closing date of the transaction. The requirement for an originator to hold the securitised exposures on the balance sheet should exclude arbitrage securitisations from the scope of the STS label.

Article 26(b)(3)

3. At the closing of a transaction, the underlying exposures shall be held on the balance sheet of the originator or of an entity that belongs to the same group as the originator.

For the purposes of this paragraph, a group shall be either of the following:

- (a) a group of legal entities that is subject to prudential consolidation in accordance with Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013;
- (b) a group as defined in point (c) of Article 212(1) of Directive 2009/138/EC.

Q3. 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.

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

Hedge beyond the protection obtained through the credit protection agreement

117. 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.

118. 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.

Explanatory text for consultation purposes

Recital 16

The originator 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 STS on-balance-sheet securitisation. In order to ensure the robustness of the credit protection agreement, it should meet the credit risk mitigation requirements laid down in Article 249 of Regulation (EU) No 575/2013 of the European Parliament and of the Council (⁸) that have to be met by institutions seeking significant risk transfer through a synthetic securitisation

Article 26b(4)

4. The originator shall not hedge its exposure to the credit risk of the underlying exposures of the securitisation beyond the protection obtained through the credit protection agreement.

Q4. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Credit risk mitigation rules (Article 26b(5) of Regulation (EU) 2017/2402)

Explanatory text for consultation purposes

Article 26b(5)

5. The credit protection agreement shall comply with the credit risk mitigation rules laid down in Article 249 of Regulation (EU) No 575/2013, or where that Article is not applicable, with requirements that are no less stringent than the requirements set out in that Article.

Q5. 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.

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

To the best of the originator's knowledge

119. For the purposes of Article 26b(6) 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.

An entity of the group to which the originator belongs

120. 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

121. 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 in the meaning of Article 26b(3) of that Regulation.

Explanatory text for consultation purposes

Article 26b(6)

6. The originator shall provide representations and warranties that the following requirements have been met:

- (a) the originator or an entity of the group to which the originator belongs has full legal and valid title to the underlying exposures and their associated ancillary rights;
- (b) where the originator is a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, or an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC, the originator or an entity which is included in the scope of supervision on a consolidated basis keeps the credit risk of the underlying exposures on its balance sheet;
- (c) each underlying exposure complies, at the date it is included in the securitised portfolio, with the eligibility criteria and with all conditions, other than the occurrence of a credit event as referred to in Article 26e(1), for a credit protection payment in accordance with the credit protection agreement contained within the securitisation documentation;
- (d) to the best of the originator's knowledge, the contract for each underlying exposure contains a legal, valid, binding and enforceable obligation on the obligor to pay the sums of money specified in that contract;
- (e) the underlying exposures comply with underwriting criteria that are no less stringent than the standard underwriting criteria that the originator applies to similar exposures that are not securitised;
- (f) to the best of the originator's knowledge, none of the obligors are in material breach or default of any of their obligations in respect of an underlying exposure on the date on which that underlying exposure is included in the securitised portfolio;
- (g) to the best of the originator's knowledge, the transaction documentation does not contain any false information on the details of the underlying exposures;
- (h) at the closing of the transaction or when an underlying exposure is included in the securitised portfolio, the contract between the obligor and the original lender in relation to that underlying exposure has not been amended in such a way that the enforceability or collectability of that underlying exposure has been affected.

Q6. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Active portfolio management

122. 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.

123. 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

124. 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

125. For the purposes of Article 26b(7) of Regulation (EU) 2017/2402, 'meeting the 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.

126. 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.

Explanatory text for consultation purposes

Article 26b(7)

7. Underlying exposures shall meet predetermined, clear and documented eligibility criteria that do not allow for active portfolio management of those exposures on a discretionary basis. For the purposes of this paragraph, 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, shall not be considered active portfolio management.

Any exposure added after the closing date of the transaction shall meet eligibility criteria that are no less stringent than those applied in the initial selection of the underlying exposures.

An underlying exposure may be removed from the transaction where that underlying exposure:

- (a) has been fully repaid or matured otherwise;
- (b) has been disposed of during the ordinary course of the business of the originator, provided that such disposal does not constitute implicit support as referred to in Article 250 of Regulation (EU) No 575/2013;
- (c) is subject to an amendment that is not credit driven, such as refinancing or restructuring of debt, and which occurs during the ordinary course of servicing of that underlying exposure; or
- (d) did not meet the eligibility criteria at the time it was included in the transaction.

Q7. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

127. 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

128. 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 the maturity, including interest-only mortgages;
- d. exposures with instalments consisting of interest and repayment of a portion of the principal, where either of the following conditions is met:
 - (i) the remaining principal is repaid at 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.

Explanatory text for consultation purposes

Article 26b(8)

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

The underlying exposures referred to in the first subparagraph shall contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors.

The underlying exposures referred to in the first subparagraph shall have defined periodic payment streams, the instalments of which may differ in their amounts, relating to rental, principal or interest payments, or to any other right to receive income from assets supporting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets.

The underlying exposures referred to in the first subparagraph of this paragraph shall not include transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU, other than corporate bonds that are not listed on a trading venue.

Q8. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

No resecuritisation (Article 26b(9) of Regulation (EU) 2017/2402)

Explanatory text for consultation purposes

Article 26(b)(9)

9. Underlying exposures shall not include any securitisation positions.

Q9. 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.

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

Similar exposures

129. For the purposes of Article 26b(10), fourth subparagraph of Regulation (EU) 2017/2402, exposures should be considered to be similar 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) 2019/1851¹¹ as amended by Delegated Regulation (EU) YYYY/NNNN¹²;
- b. the exposures belong to the asset category referred to in Article 1, first paragraph, point (a)(iv), of Delegated Regulation (EU) 2019/1851 as amended by Delegated Regulation (EU) YYYY/NNNN, 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, as amended by Delegated Regulation (EU) YYYY/NNNN, and they share similar characteristics with respect to any of the homogeneity factors referred to in Article 2(6) of that Regulation.

No less stringent underwriting standards

130. For the purposes of Article 26b(10) of Regulation (EU) 2017/2402, the underwriting standards applied to securitised exposures should be compared to the underwriting standards applied to similar exposures at the time of origination of the securitised exposures.

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

Disclosure of material changes from prior underwriting standards

132. 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

¹¹ 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).

¹² [Regulatory Technical Standards on the homogeneity of the underlying exposures in STS securitisation | European Banking Authority \(europa.eu\)](https://www.eba.europa.eu/regulatory-technical-standards/underlying-exposures-sts)

securitisation in the context of replenishment or portfolio management as referred to in paragraphs 125 and 126.

133. 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 as amended by Delegated Regulation (EU) YYYY/NNNN;
 - 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.
134. The disclosure of all changes to underwriting standards should include an explanation of the purpose of such changes.
135. 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

136. 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.
137. 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 captured by this requirement.
138. 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.
139. 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

140. 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 re-assessed on the basis of updated information before any significant increase in the total amount of credit is granted

after the conclusion of the credit agreement unless such additional credit was envisaged and included in the original creditworthiness assessment.

Criteria for determining the expertise of the originator or original lender

141. 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.

142. 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.

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

Explanatory text for consultation purposes

Article 26b(10)

10. The underwriting standards pursuant to which underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to potential investors without undue delay. The underlying exposures shall be underwritten with full recourse to an obligor that is not an SSPE. No third parties shall be involved in the credit or underwriting decisions concerning the underlying exposures.

In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable, intermediaries were made aware that the information provided might not be verified by the lender.

The assessment of the borrower's creditworthiness shall meet the requirements set out in Article 8 of Directive 2008/48/EC or Article 18(1) to (4), point (a) of Article 18(5) and Article 18(6), of Directive 2014/17/EU, or where applicable, equivalent requirements in third countries.

The originator or original lender shall have expertise in originating exposures of a similar nature to those securitised.

Q10. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Exposures in default

144. For the purposes of Article 26b(11) of Regulation (EU) 2017/2402, the exposures in default should be interpreted in 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.

145. 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 procedure or information notified to the originator by a third party.

Exposures to a credit-impaired debtor or guarantor

146. 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 excluded from this requirement.

147. 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 a recourse for the full securitised exposure amount to at least one non-credit-impaired party, irrespective of whether that party is a debtor or a guarantor. Therefore, the underlying exposures should not include either of the following:

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

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

148. 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

149. 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 who have undergone a debt-restructuring process with regard to their non-performing exposures should be understood to refer to both the restructured exposures of the respective debtor or guarantor and those of its exposures that were not themselves subject to restructuring. For the purposes of this 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

150. 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 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

151. 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 the 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 and the comparable exposures would not be significantly different.

152. 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, 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, significantly differs from 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.

Explanatory text for consultation purposes

Article 26b(11)

11. Underlying exposures shall not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013, or exposures to a credit-impaired debtor or guarantor who to the best of the originator's or original lender's knowledge:

- (a) has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of the origination or has undergone a debt-restructuring process with regard to his non-performing exposures within three years prior to the date of the selection of the underlying exposures, except where:
 - (i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of the selection of the underlying exposures; and
 - (ii) the information provided by the originator in accordance with point (a) and point (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring and their performance since the date of the restructuring;
- (b) was at the time of origination of the underlying exposure, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or the original lender; or
- (c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised.

Q11. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Scope of the criterion

153. 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.
154. For the purposes of Article 26(b)(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

155. 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 economic substance of the exposure.

Explanatory text for consultation purposes

Article 26(b)(12)

12. Debtors shall, at the time of the inclusion of the underlying exposures, have made at least one payment, except where:
- (a) the securitisation is a revolving securitisation, backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits; or
 - (b) the exposure represents the refinancing of an exposure that is already included in the transaction.

Q12. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Requirements related to standardisation (Article 26c of Regulation (EU) 2017/2402)

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

156. For the purposes of Article 26c(1) of Regulation (EU) 2017/2402, the supervision of compliance with the risk retention requirements set out in Article 6 of that Regulation the authorities responsible for the supervision of compliance with the STS requirements referred to

in Article 29(5) of that Regulation and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation should coordinate their supervision, where they are different.

Explanatory text for consultation purposes

Recital 15

It is important that the interests of originators, sponsors, and original lenders that are involved in a securitisation are aligned. The risk-retention requirement set out in Regulation (EU) 2017/2402, which applies to all types of securitisations, works to align those interests. Such a requirement should also apply to STS on-balance-sheet securitisations. As a minimum, the originator, sponsor or original lender should retain, on an ongoing basis, a material net economic interest in the securitisation of not less than 5 %. Higher risk retention ratios might be justifiable and have already been observed in the market.

Article 26(c)(1)

1. The originator or original lender shall satisfy the risk-retention requirement in accordance with Article 6.

Q13: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Derivatives

157. 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 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

158. 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.

Explanatory text for consultation purposes

Article 26c(2)

2. The interest rate and currency risks arising from a securitisation and their possible effects on the payments to the originator and the investors shall be described in the transaction documentation. Those risks shall be appropriately mitigated and any measures taken to that effect shall be

disclosed. Any collateral securing the obligations of the investor under the credit protection agreement shall be denominated in the same currency in which the credit protection payment is denominated.

In the case of a securitisation using a SSPE, the amount of liabilities of the SSPE concerning the interest payments to the investors shall, at each payment date, be equal to or be less than the amount of the SSPE's income from the originator and any collateral arrangements.

Except for the purpose of hedging interest rate or currency risks of the underlying exposures, the pool of underlying exposures shall not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

Q14: 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.

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

Referenced interest rates

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

Complex formulae or derivatives

160. 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.

Explanatory text for consultation purposes

Article 26(c)(3)

3. Any referenced interest rate payments in relation to the transaction shall be based on either of the following:

- (a) generally used market interest rates, or generally used sectoral rates that are reflective of the costs of funds, and do not reference complex formulae or derivatives;

(b) income generated by the collateral securing the obligations of the investor under the protection agreement.

Any referenced interest payments due under the underlying exposures shall be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, and shall not reference complex formulae or derivatives.

Q15: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Q16: 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.

Q17: 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.

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

Amount trapped in the SSPE

161. 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 that agreed by the trustee or other representative of the investors who is legally required to act in the best interests of the investors, or by the investors in accordance with the voting provisions set out in the transaction documentation.

162. 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 the orderly repayment to the investors.

Explanatory text for consultation purposes

Article 26(c)(4)

Following the occurrence of an enforcement event in respect of the originator, the investor shall be permitted to take enforcement action.

In the case of a securitisation using a SSPE, where an enforcement or a termination notice of the credit protection agreement is delivered, no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE, the payment of the protection payments for defaulted underlying exposures that are still being worked out at the time of the termination, or the orderly repayment of investors in accordance with the contractual terms of the securitisation.

Q18: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Reversion to non-sequential amortisation

163. 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 and the derogation provided under that subparagraph ends, a further reversion back to non-sequential amortisation should not be allowed in accordance with the transaction documentation.

Significant losses

164. For the purposes of Article 5, point (a), of 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, the term ‘significant losses’ should be understood to refer to two thirds of the absolute amount of losses expected to occur during the expected maturity of the transaction.

Last part of the maturity of the transaction

165. For the purposes of Article 5, first paragraph, point (a), of 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, the term ‘last part of the maturity of the transaction’ should be understood as the period close to the maturity of the credit protection, which is the earliest date at which the protection may terminate or be terminated in accordance with Article 238 of the Regulation (EU) No 575/2013.

Back-loaded loss distribution scenario

166. For the purposes of Article 26c(5) of Regulation (EU) 2017/2402, the term back-loaded loss distribution scenario referred to in Article 5 points (b) and (c) of 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 should be understood as a scenario in which two thirds of the absolute amount of losses expected to occur during the expected maturity of the transaction take place equally distributed in the last third of such expected maturity of the transaction.

Triggers

167. For the purposes of Article 26c(5) of Regulation (EU) 2017/2402, transactions may include additional performance-related triggers provided that the requirements set out in Article 26c (5) of that Regulation are met. The occurrence of a trigger event for any of the minimum performance-related triggers referred to in Article 26c (5), third subparagraph of Regulation (EU) 2017/2402 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.

Explanatory text for consultation purposes

Recital 17

STS on-balance-sheet securitisation might feature non-sequential amortisation in order to avoid disproportionate costs for protecting the underlying exposures and the evolution of the portfolio. Certain performance-related triggers should determine the application of sequential amortisation in order to ensure that tranches providing credit protection have not already been amortised when significant losses occur at the end of the transaction, thereby ensuring that significant risk transfer is not undermined.

Article 26(c)(5)

5. Losses shall be allocated to the holders of a securitisation position in the order of seniority of the tranches, starting with the most junior tranche.

Sequential amortisation shall be applied to all tranches to determine the outstanding amount of the tranches at each payment date, starting from the most senior tranche.

By way of derogation from the second subparagraph, transactions which feature non-sequential priority of payments shall include triggers related to the performance of the underlying exposures resulting in the priority of payments reverting the amortisation to sequential payments in order of seniority. Such performance-related triggers shall include as a minimum:

- (a) either the increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses greater than a given percentage of the outstanding amount of the underlying portfolio;
- (b) one additional backward-looking trigger; and
- (c) one forward-looking trigger.

EBA shall develop draft regulatory technical standards on the specification, and where relevant, on the calibration of the performance-related triggers.

EBA shall submit those draft regulatory technical standards to the Commission by 30 June 2021.

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in the fourth subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

As tranches amortise, the amount of the collateral equal to the amount of the amortisation of those tranches shall be returned to the investors, provided the investors have collateralised those tranches.

Where a credit event, as referred to in Article 26e, has occurred in relation to underlying exposures and the debt workout for those exposures has not been completed, the amount of credit protection remaining at any payment date shall be at least equivalent to the outstanding nominal amount of those underlying exposures, minus the amount of any interim payment made in relation to those underlying exposures.

Q19: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Early amortisation provisions/triggers for termination of the revolving period (Article 26c(6) of Regulation (EU) 2017/2402)

Explanatory text for consultation purposes

Article 26c(6)

6. The transaction documentation shall include appropriate early amortisation provisions or triggers for termination of the revolving period, where a securitisation is a revolving securitisation, including at least the following:

- (a) a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold;
- (b) a rise in losses above a predetermined threshold;
- (c) a failure to generate sufficient new underlying exposures that meet the predetermined credit quality during a specified period.

Q20: 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.

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

Servicing standards

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

Servicing procedures

169. 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

170. 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 182.

Explanatory text for consultation purposes

Article 26(c)(7)

7. The transaction documentation shall clearly specify:

- (a) the contractual obligations, duties and responsibilities of the servicer, the trustee and other ancillary service providers, as applicable, and the third-party verification agent referred to in Article 26e(4);
- (b) the provisions that ensure the replacement of the servicer, trustee, other ancillary service providers or the third-party verification agent referred to in Article 26e(4) in the event of default or insolvency of either of those service providers, where those service providers differ from the originator, in a manner that does not result in the termination of the provision of those services;
- (c) the servicing procedures that apply to the underlying exposures at the closing date of the transaction and thereafter and the circumstances under which those procedures may be modified;
- (d) the servicing standards that the servicer is obliged to adhere to in servicing the underlying exposures during the entire life of the securitisation.

Q21: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Criteria for determining the expertise of the servicer

171. 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.

172. 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, they comply 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 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).

173. 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(3), point (c), of Regulation (EU) 2017/2402.

Exposures of similar nature

174. For the purposes of Article 26c(8) of Regulation (EU) 2017/2402, the interpretation of the term 'exposures of similar nature' should follow the interpretation provided in paragraph 129.

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

175. 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 a credit rating agency or external auditor.

Explanatory text for consultation purposes

Article 26c(8)

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

The servicer shall apply servicing procedures to the underlying exposures that are at least as stringent as the ones applied by the originator to similar exposures that are not securitised.

Q22: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Reference register (Article 26c(9) of Regulation (EU) 2017/2402)

Explanatory text for consultation purposes

Recital 18

To avoid conflicts between the originator and the investor, 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 on which protection is purchased should be clearly identified at all times, via a reference register, and kept up to date. That requirement should also be indirectly part of the criteria defining the STS on-balance-sheet securitisation and excluding arbitrage securitisation from STS framework.

Article 26c(9)

The originator shall maintain an up-to-date reference register to identify the underlying exposures at all times. That register shall identify the reference obligors, the reference obligations from which the underlying exposures arise, and, for each underlying exposure, the minimal amount that is protected and that is outstanding.

Q23: 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.

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

176. 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’, 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.

177. 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.

Explanatory text for consultation purposes

Article 26c(10)

10. The transaction documentation shall include clear provisions that facilitate the timely resolution of conflicts between different classes of investors. In the case of a securitisation using a SSPE, voting rights shall be clearly defined and allocated to bondholders and the responsibilities of the trustee and other entities with fiduciary duties to investors shall be clearly identified.

Q24: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Requirements relating to transparency (Article 26d of Regulation (EU) 2017/2402)

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

Data

178. 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

179. 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 different.

180. 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.

Explanatory text for consultation purposes

Article 26d(1)

1.The originator shall make available data on static and dynamic historical default and loss performance such as delinquency and default data, for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Those data shall cover a period of at least five years.

Q25: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

181. 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

182. 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

183. 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 all the underlying exposures in the securitisation without replacement, while the size of the sample should be determined so as to ensure that the probability (confidence level) to correctly reject that no exceptions to the requirement could be found over the entire pool of the underlying exposures in the securitisation is 95% (i.e. the probability of the type II error of falsely accepting an entire pool without exceptions should be 5%).

184. 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.

185. The verification should include the verification of the compliance of the underlying exposures in the provisional portfolio with the eligibility criteria under the credit protection agreement that are able to be tested prior to the closing of the transaction. The verification should include a check of the originator's database or IT systems against the transaction documentation and the credit protection agreement in order to confirm that the occurrence of a credit event would trigger a credit protection payment by the investor with respect to the exposures which are subject to the verification.

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

Confirmation of the verification

187. 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.

Explanatory text for consultation purposes

Article 26d(2)

A sample of the underlying exposures shall be subject to external verification prior to the closing of the transaction by an appropriate and independent party, including verification that the underlying exposures are eligible for credit protection under the credit protection agreement.

Q26: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Q27: 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.

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

Precise representation of the contractual relationship

188. 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

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

Explanatory text for consultation purposes

Article 26d(3)

The originator shall, before pricing of the securitisation, make available to potential investors a liability cash flow model which precisely represents the contractual relationship between the underlying exposures and the payments flowing between the originator, investors, other third parties and, where applicable, the SSPE, and shall, after pricing, make that model available to investors on an ongoing basis and to potential investors upon request.

Q28: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

190. 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.

Explanatory text for consultation purposes

Article 26d(4)

4. In the case of a securitisation where the underlying exposures are residential loans or auto loans or leases, the originator shall publish the available information related to the environmental performance of the assets financed by such residential loans, auto loans or leases, as part of the information disclosed pursuant to point (a) of the first subparagraph of Article 7(1).

By way of derogation from the first subparagraph, originators may, from 1 June 2021, decide to publish the available information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors.

Q29: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

191. For the purposes of Article 26d(5) of Regulation (EU) 2017/2402, the supervision of compliance with the disclosure requirements set out in Article 7 of that Regulation the

authorities responsible for the supervision of compliance with the STS requirements referred to in Article 29(5) of that Regulation and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation, should coordinate their supervision, where they are different.

Explanatory text for consultation purposes

Article 26d(5)

The originator shall be responsible for compliance with Article 7. The information required by point (a) of the first subparagraph of article 7(1) shall be made available to potential investors before pricing upon request. The information required by points (b) to (d) of the first subparagraph of Article 7(1) shall be made available before pricing, at least in draft or initial form. The final documentation shall be made available to investors at the latest 15 days after the closing of the transaction.

Q30: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Requirements specific for on-balance-sheet securitisation

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

Additional credit events

192. 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.

Explanatory text for consultation purposes

Recital 19

Credit events that trigger payments under the credit protection agreement should include at least those referred to in Chapter 4 of Title II of Part Three of Regulation (EU) No 575/2013. Such events are well-known and recognisable from a market perspective and should serve to ensure consistency with the prudential framework. Forbearance measures, which consist of concessions towards a debtor that is experiencing or about to experience difficulties in meeting its financial commitments, should not preclude the triggering of the credit event.

Article 26c(1)

The credit protection agreement shall at least cover the following credit events:

(a) where the transfer of risk is achieved by the use of guarantees, the credit events referred to in point (a) of Article 215(1) of Regulation (EU) No 575/2013;

(b) where the transfer of risk is achieved by the use of credit derivatives, the credit events referred to in point (a) of Article 216(1) of Regulation (EU) 575/2013.

All credit events shall be documented.

Forbearance measures within the meaning of Article 47b of Regulation (EU) No 575/2013 that are applied to the underlying exposures shall not preclude the triggering of eligible credit events.

Q31: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

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

193. For the purposes of Article 26e(2) of Regulation (EU) 2017/2402, in case 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

194. For the purposes of Article 26e(2), second subparagraph, point (b) of Regulation (EU) 2017/2402, 'where applicable' should be understood as applicable only in case the originator has received permission by 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 the use under the IRB Approach.

Expected loss amount

195. 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, as amended by Regulation (EU) 2401/2017.

Explanatory text for consultation purposes

Recital 20

The right of the originator, as protection buyer, to receive timely payments on actual losses, should be adequately protected. Accordingly, the transaction documentation should provide for a sound and transparent settlement process for the determination of actual losses in the reference portfolio, to prevent the originator from being underpaid. As working out the losses might be a lengthy process and to ensure timely payments to the originator, interim payments should be made at the latest six months after a credit event has occurred. Furthermore, there should be a final adjustment mechanism to ensure that interim payments cover actual losses and to prevent those interim losses from overpaying, which would be to the detriment of investors. The loss settlement mechanism should also clearly specify the maximum extension period that should apply to the workout process for those exposures and such extension period should be no longer than two years. That loss settlement mechanism should ensure the effectiveness of the credit protection agreement from the originator's perspective, and give investors legal certainty on the termination date of their obligation to make payments, and therefore contribute to a well-functioning market.

Article 26e(2)

2. The credit protection payment following the occurrence of a credit event shall be calculated based on the actual realised loss suffered by the originator or the original lender, as worked out in accordance with their standard recovery policies and procedures for the relevant exposure types and recorded in their financial statements at the time the payment is made. The final credit protection payment shall be payable within a specified period of time after the debt workout for the relevant underlying exposure where the debt workout has been completed before the scheduled legal maturity or early termination of the credit protection agreement.

An interim credit protection payment shall be made at the latest six months after the occurrence of a credit event as referred to in paragraph 1 in cases where the debt workout of the losses for the relevant underlying exposure has not been completed by the end of that six-month period. The interim credit protection payment shall be at least the higher of the following:

- (a) the expected loss amount that is equivalent to the impairment recorded by the originator in its financial statements in accordance with the applicable accounting framework at the time the interim payment is made on the assumption that the credit protection agreement does not exist and does not cover any losses;
- (b) where applicable, the expected loss amount as determined in accordance with Chapter 3 of Title II of Part Three of Regulation (EU) No 575/2013.

Where an interim credit protection payment is made, the final credit protection payment referred to in the first subparagraph shall be made in order to adjust the interim settlement of losses to the actual realised loss.

The method for the calculation of interim and final credit protection payments shall be specified in the credit protection agreement.

The credit protection payment shall be proportional to the share of the outstanding nominal amount of the corresponding underlying exposure that is covered by the credit protection agreement.

The right of the originator to receive the credit protection payment shall be enforceable. The amounts payable by investors under the credit protection agreement shall be clearly set out in the credit protection agreement and limited. It shall be possible to calculate those amounts in all circumstances. The credit protection agreement shall clearly set out the circumstances under which investors shall be required to make payments. The third-party verification agent referred to in paragraph 4 shall assess whether such circumstances have occurred.

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.

Q32: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Q33: 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.

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

196. 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.

Explanatory text for consultation purposes

Recital 22

Credit protection premiums should depend only on the outstanding size and credit risk of the protected tranche. Non-contingent premiums should not be permitted in STS on-balance-sheet securitisations as they could be used to undermine the effective risk transfer from the originator as protection buyer to the protection sellers. Other arrangements, such as upfront premium payments, rebate mechanisms or overly complex premium structures, should also be prohibited for STS on-balance-sheet securitisations.

Article 26e(3)

3. The credit protection agreement shall specify the maximum extension period that shall apply for the debt workout for the underlying exposures in relation to which a credit event as referred to in paragraph 1 has occurred, but where the debt workout has not been completed upon the scheduled legal maturity or early termination of the credit protection agreement. Such an extension period shall not be longer than two years. The credit protection agreement shall provide that, by the end of that extension period, a final credit protection payment shall be made on the basis of the originator's final loss estimate that would have to be recorded by the originator in its financial statements at that time on the assumption that the credit protection agreement does not exist and does not cover any losses.

In the event that the credit protection agreement is terminated, the debt workout shall continue in respect of any outstanding credit events that occurred prior to that termination in the same way as that described in the first subparagraph.

The credit protection premiums to be paid under the credit protection agreement shall be structured as contingent on the outstanding nominal amount of the performing securitised

exposures at the time of the payment and reflect the risk of the protected tranche. For those purposes, the credit protection agreement shall not stipulate guaranteed premiums, upfront premium payments, rebate mechanisms or other mechanisms that may avoid or reduce the actual allocation of losses to the investors or return part of the paid premiums to the originator after the maturity of the transaction.

By way of derogation from the third subparagraph of this paragraph, upfront premium payments shall be allowed, provided State aid rules are complied with, where the guarantee scheme is specifically provided for in the national law of a Member State and benefits from a counter-guarantee of any of the entities listed in points (a) to (d) of Article 214(2) of Regulation (EU) No 575/2013.

The transaction documentation shall describe how the credit protection premium and any note coupons, if any, are calculated in respect of each payment date over the entire life of the securitisation.

The rights of the investors to receive credit protection premiums shall be enforceable.

Q34: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Party executing the verification

197. 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 of the underlying exposures subject to external verification

198. For the purposes of Article 26e(4), third subparagraph, of Regulation (EU) 2017/2402, the underlying exposures that should be subject to verification prior to the issuance should be a representative sample of the provisional portfolio from which the securitised pool is extracted and that is in a reasonably final form before issuance.

Final loss amount

199. 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 extension period specified in the credit protection agreement.

Explanatory text for consultation purposes

Recital 21

Having a third-party verification agent is a widespread market practice that enhances legal certainty for all parties involved in a transaction, thereby decreasing the likelihood of disputes and litigation that could arise as a result of the loss allocation process. To enhance the soundness of the transaction's loss settlement mechanism, a third-party verification agent should be appointed to carry out a review of the correctness and accuracy of certain aspects of the credit protection when a credit event has been triggered.

Article 26(e)(4)

The originator shall appoint a third-party verification agent before the closing date of the transaction. For each of the underlying exposures for which a credit event notice is given, the third party verification agent shall verify, as a minimum, all of the following:

- (a) that the credit event referred to in the credit event notice is a credit event as specified in the terms of the credit protection agreement;
- (b) that the underlying exposure was included in the reference portfolio at the time of the occurrence of the credit event concerned;
- (c) that the underlying exposure met the eligibility criteria at the time of its inclusion in the reference portfolio;
- (d) where an underlying exposure has been added to the securitisation as a result of a replenishment, that such a replenishment complied with the replenishment conditions;
- (e) that the final loss amount is consistent with the losses recorded by the originator in its profit and loss statement;
- (f) that, at the time the final credit protection payment is made, the losses in relation to the underlying exposures have correctly been allocated to the investors.

The third-party verification agent shall be independent from the originator and investors, and, where applicable, from the SSPE and shall have accepted the appointment as third-party verification agent by the closing date of the transaction.

The third-party verification agent may perform the verification on a sample basis instead of on the basis of each individual underlying exposure for which credit protection payment is sought. Investors may, however, request the verification of the eligibility of any particular underlying exposure where they are not satisfied with the sample-basis verification.

The originator shall include a commitment in the transaction documentation to provide the third-party verification agent with all the information necessary to verify the requirements set out in the first subparagraph.

Q35: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Calculation of the weighted average life of the initial reference portfolio

200. 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

201. For the purposes of Article 26e(5), first subparagraph, point (d), of Regulation (EU) 2017/2402, in case of the existence of a replenishment period, the WAL should be the sum of the replenishment period at the closing date of the transaction and the remaining WAL of the reference portfolio measured at the end of the replenishment period.

Explanatory text for consultation purposes

Recital 23

To ensure the stability and continuity of credit protection, the early termination of an STS on-balance-sheet securitisation by the originator should only be possible in certain limited, well-defined circumstances. Although the originator should be entitled to close out the credit protection early upon the occurrence of certain specified regulatory events, those events should involve actual changes in legislation or taxation that could not have been reasonably anticipated at the time of entering into the transaction and that have a material adverse effect on the originator's capital requirements or the economics of the transaction relative to the parties' expectations at that time. STS on-balance-sheet securitisations should not feature complex call clauses for the originator, in particular very short-dated time calls with the aim of temporarily changing the representation of their capital position on a case-by-case basis.

Article 26e(5)

5. The originator may not terminate a transaction prior to its scheduled maturity for any other reason than any of the following events:

- (a) the insolvency of the investor;
- (b) the investor's failures to pay any amounts due under the credit protection agreement or a breach by the investor of any material obligation laid down in the transaction documents;
- (c) relevant regulatory events, including:
 - (i) relevant changes in Union or national law, relevant changes by competent authorities to officially published interpretations of such laws, where applicable, or relevant changes in the taxation or accounting treatment of the transaction that have a material adverse effect on the economic efficiency of a transaction, in each case compared with that anticipated at the time of entering into the transaction and which could not reasonably be expected at that time;

- (ii) a determination by a competent authority that the originator or any affiliate of the originator is not or is no longer permitted to recognise significant credit risk transfer in accordance with Article 245(2) or (3) of Regulation (EU) No 575/2013 in respect of the securitisation;
- (d) the exercise of an option to call the transaction at a given point in time (time call), when the time period measured from the closing date of the transaction is equal to or greater than the weighted average life of the initial reference portfolio at the closing date of the transaction;
- (e) the exercise of a clean-up call option as defined in point (1) of Article 242 of Regulation (EU) No 575/2013;
- (f) in the case of unfunded credit protection, the investor no longer qualifies as an eligible protection provider in accordance with the requirements set out in paragraph 8.

The transaction documentation shall specify whether any of the call rights referred to in points (d) and (e) are included in the transaction concerned and how such call rights are structured.

For the purposes of point (d), the time call shall not be structured to avoid allocating losses to credit enhancement positions or other positions held by investors and shall not be otherwise structured to provide credit enhancement.

Where the time call is exercised, originators shall notify competent authorities how the requirements referred to in the second and third subparagraphs are fulfilled, including with a justification of the use of the time call and a plausible account showing that the reason to exercise the call is not a deterioration in the quality of the underlying assets.

In the case of funded credit protection, upon termination of the credit protection agreement, collateral shall be returned to investors in order of the seniority of the tranches subject to the provisions of the relevant insolvency law, as applicable to the originator.

Q36: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Q37: Do you consider 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.

Early termination events exercisable by the investor (Article 26e(6) of Regulation (EU) 2017/2402)

Explanatory text for consultation purposes

Article 26(e)(6)

6. Investors may not terminate a transaction prior to its scheduled maturity for any other reason than a failure to pay the credit protection premium or any other material breach of contractual obligations by the originator.

Q38: 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.

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

Calculation of one-year expected loss

202. For the purposes of Article 26e(7) of Regulation (EU) 2017/2402, the total committed amount per year that an originator designates as synthetic excess spread should not exceed the one-year regulatory expected loss amounts on all underlying exposures for that year.

203. 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 applicable accounting framework and should be clearly set out in the transaction documentation.

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

204. 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.

Explanatory text for consultation purposes

Recital 24

Synthetic excess spread is widely present in certain types of transactions and is a helpful mechanism for both investors and originators, in order to reduce the cost of the credit protection and the exposure at risk respectively. In that regard, synthetic excess spread is essential for some specific retail asset classes, such as SMEs and consumer lending, that show both higher yield and credit losses than other asset classes, and for which the securitised exposures generate excess spread to cover those losses. However, where the amount of synthetic excess spread subordinated to the investor position is too high, it is possible that there is no realistic scenario in which the investor in the securitisation positions will experience any losses, resulting in no effective risk transfer. To mitigate supervisory concerns and further standardise that structural feature, it is important to specify strict criteria for STS on-balance-sheet securitisations and to ensure full disclosure on the use of synthetic excess spread.

Article 26e(7)

7. The originator may commit synthetic excess spread, which shall be available as credit enhancement for the investors, where all of the following conditions are met:

- (a) the amount of the synthetic excess spread that the originator commits to using as credit enhancement at each payment period is specified in the transaction documentation and expressed as a fixed percentage of the total outstanding portfolio balance at the start of the relevant payment period (fixed synthetic excess spread);
- (b) the synthetic excess spread which is not used to cover credit losses that materialise during each payment period shall be returned to the originator;
- (c) for originators using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013, the total committed amount per year shall not be higher than the one-year regulatory expected loss amounts on all underlying exposures for that year, calculated in accordance with Article 158 of that Regulation;

- (d) for 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 of the underlying portfolio shall be clearly determined in the transaction documentation;
- (e) the transaction documentation specifies the conditions laid down in this paragraph.

Q39: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Types of credit protection agreements (Article 26e(8) of Regulation (EU) 2017/2402)

Explanatory text for consultation purposes

Recital 25:

Only high quality credit protection agreements should be eligible for STS on-balance-sheet securitisations. Unfunded credit protection should be ensured by restricting the scope of eligible protection providers to those entities that are eligible providers in accordance with Regulation (EU) No 575/2013 and are recognised as counterparties with a 0 % risk-weight in accordance with Chapter 2 of Title II of Part Three of that Regulation. In the case of funded credit protection, the originator as protection buyer and the investors as protection sellers should have recourse to high quality collateral, which should refer to collateral of any form which may be assigned a 0 % risk weight under that Chapter, subject to appropriate deposit or custody arrangements. When the collateral provided is in the form of cash, it should be held either with a third-party credit institution or on deposit with the protection buyer, subject in both cases to a minimum credit quality standing.

Article 26e(8)

8. A credit protection agreement shall take the form of:

- (a) a guarantee meeting the requirements set out in Chapter 4 of Title II of Part Three of Regulation (EU) No 575/2013, by which the credit risk is transferred to any of the entities listed in points (a) to (d) of Article 214(2) of Regulation (EU) No 575/2013, provided that the exposures to the investor qualify for a 0 % risk weight under Chapter 2 of Title II of Part Three of that Regulation;
- (b) a guarantee meeting the requirements set out in Chapter 4 of Title II of Part Three of Regulation (EU) No 575/2013, which benefits from a counter-guarantee of any of the entities referred to in point (a) of this paragraph; or
- (c) another credit protection not referred to in points (a) and (b) of this paragraph in the form of a guarantee, a credit derivative or a credit linked note that meets the requirements set out in Article 249 of Regulation (EU) No 575/2013, provided that the obligations of the investor are secured by collateral meeting the requirements laid down in paragraphs 9 and 10 of this Article.

Q40: 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.

Specific type of the credit protection agreement (Article 26e(9) of Regulation (EU) 2017/2402)

Legal opinion on the enforceability of the credit protection in all relevant jurisdictions

205. For the purposes of Article 26e(9), third subparagraph, of Regulation (EU) 2017/2402, the ‘opinion’ from a qualified legal counsel should opine on whether the credit protection agreement is valid and enforceable in all the relevant jurisdictions and complies with the law in those jurisdictions.

Qualified legal counsel

206. For the purposes of Article 26e(9), third subparagraph, of Regulation (EU) 2017/2402, the legal counsel should be considered ‘qualified’ when it has the necessary legal expertise and qualifications on the applicable law in all relevant jurisdictions that is relevant for the enforceability of the credit protection agreement.

Explanatory text for consultation purposes

Article 26e(9)

9. Another credit protection referred to in point (c) of paragraph 8 shall meet the following requirements:

- (a) the right of the originator to use the collateral to meet protection payment obligations of the investors is enforceable and the enforceability of that right is ensured through appropriate collateral arrangements;
- (b) the right of the investors, when the securitisation is unwound or as the tranches amortise, to return any collateral that has not been used to meet protection payments is enforceable;
- (c) where the collateral is invested in securities, the transaction documentation sets out the eligibility criteria and custody arrangement for such securities.

The transaction documentation shall specify whether investors remain exposed to the credit risk of the originator.

The originator shall obtain an opinion from a qualified legal counsel confirming the enforceability of the credit protection in all relevant jurisdictions.

Q41: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Acceptable collateral

207. 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.

Payment frequency of the acceptable high-quality collateral

208. Article 26e(10), first subparagraph, point (a)(i), of Regulation (EU) 2017/2402, should be understood to refer to debt securities with quarterly or more frequent payments, which should be repaid no later than the next payment date under the credit protection agreement.

Investments in credit linked notes

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

Explanatory text for consultation purposes

Recital 26

In the case of funded credit protection, the originator as protection buyer and the investors as protection sellers should have recourse to high quality collateral subject to appropriate deposit or custody arrangements. When the collateral provided is in the form of cash, it should be held either with a third-party credit institution or on deposit with the protection buyer, subject in both cases to a minimum credit quality standing.

Article 26e(10)

10. Where another credit protection is provided in accordance with point (c) of paragraph 8 of this Article, the originator and the investor shall have recourse to high-quality collateral, which shall be either of the following:

- (a) collateral in the form of 0 % risk-weighted debt securities referred to in Chapter 2 of Title II of Part Three of Regulation (EU) No 575/2013 that meet all of the following conditions:
 - (i) those debt securities have a remaining maximum maturity of three months which shall be no longer than the remaining period up to the next payment date;
 - (ii) those debt securities can be redeemed into cash in an amount equal to the outstanding balance of the protected tranche;
 - (iii) those debt securities are held by a custodian independent of the originator and the investors;
- (b) collateral in the form of cash held with a third-party credit institution with credit quality step 3 or above in line with the mapping set out in Article 136 of Regulation (EU) No 575/2013.

By way of derogation from the first subparagraph of this paragraph, subject to the explicit consent in the final transaction documentation by the investor after having conducted its due diligence according to Article 5 of this Regulation, including an assessment of any relevant counterparty credit risk exposure, only the originator may have recourse to high quality collateral in the form of cash on deposit with the originator, or one of its affiliates, if the originator or one of its affiliates qualifies as a minimum for credit quality step 2 in line with the mapping set out in Article 136 of Regulation (EU) No 575/2013.

The competent authorities designated pursuant to Article 29(5) may, after consulting EBA, allow collateral in the form of cash on deposit with the originator, or one of its affiliates, if the originator

or one of its affiliates qualifies for credit quality step 3 provided that market difficulties, objective impediments related to the credit quality step assigned to the Member State of the institution or significant potential concentration problems in the Member State concerned due to the application of the minimum credit quality step 2 requirement referred to in the second subparagraph can be documented.

Where the third-party credit institution or the originator or one of its affiliates no longer qualifies for the minimum credit quality step, the collateral shall be transferred within nine months to a third-party credit institution with credit quality step 3 or above or the collateral shall be invested in securities meeting the criteria laid down in point (a) of the first subparagraph.

The requirements set out in this paragraph shall be deemed satisfied in the case of investments in credit linked notes issued by the originator, in accordance with Article 218 of Regulation (EU) No 575/2013.

EBA shall monitor the application of the collateralisation practices under this Article, paying particular attention to the counterparty credit risk and other economic and financial risks borne by investors resulting from such collateralisation practices.

EBA shall submit a report on its findings to the Commission by 10 April 2023.

By 10 October 2023, the Commission shall, on the basis of that EBA report submit a report to the European Parliament and to the Council on the application of this Article with particular regard to the risk of excessive build-up of counterparty credit risk in the financial system, together with a legislative proposal for amending this Article, if appropriate.’;

Q42: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

STS criteria not specified above

Q43: Do you agree that no other requirements are necessary to be specified further? If not, please provide reference to the relevant provisions of the STS requirements and their aspects that require such further specification. Please substantiate your reasoning.

5. Amending guidelines

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

a. 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.”

b. An additional paragraph 46a is added following the 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.”

c. 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 related to the economic substance of the exposure.”

d. An additional paragraph 50a is added following the paragraph 50:

“Risk retention requirements

For the purposes of Article 21(1) of Regulation (EU) 2017/2402, the authorities responsible for the supervision of compliance with the STS requirements referred to in Article 29(5) of that Regulation, should coordinate their supervision of compliance with the risk retention requirements set out in Article 6 of that Regulation, and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation, where they are different.”

e. An additional paragraph 66a is added following the 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.”

- f. An additional paragraph 78a is added¹³ following the paragraph 78:

“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.”

- g. 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.”

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

“80. 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 all the underlying exposures in the securitisation without replacement, while the size of the sample should be determined so as to ensure that the probability (confidence level) to accept that no exceptions to the requirement could be found over the entire pool of the underlying exposures in the securitisation is 95%.

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 the verification of the compliance of the underlying exposures in the provisional portfolio with the eligibility criteria under the credit protection agreement that are able to be tested prior to the closing of the transaction.”

- i. 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

¹³ 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 have been omitted in the final text of the guidelines.

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.”

j. 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 authorities responsible for the supervision of compliance with the STS requirements referred to in Article 29(5) of that Regulation and the competent authorities referred to in Article 29, paragraphs 2 to 4, of that Regulation should coordinate their supervision of compliance with the disclosure requirements set out in Article 7 of that Regulation, where they are different.”

Q44: Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/09? Should additional aspects be clarified? Please substantiate your reasoning.

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

a. 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.”

b. An additional paragraph 36a is added following the 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.”

c. 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 related to the economic substance of the exposure.”

d. 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.”

Q45: Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/08? Should additional aspects be clarified? Please substantiate your reasoning.

6. Accompanying documents

6.1 Draft cost-benefit analysis / impact assessment

According to the 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 impact assessment, and the potential costs and benefits associated with the implementation of the guidelines.

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 the Capital Markets Recovery Package Regulation (EU) 2021/557, which regulates that the EBA may adopt guidelines on the harmonised interpretation and application of the criteria for STS on-balance-sheet securitisation.

When enacted in 2017, the 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, EBA developed and published two sets of guidelines, the EBA/GL/2018/09 for non-ABCP securitisation and the EBA/GL/2018/08 for ABCP securitisation, in December 2018.

Similar 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 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 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 the investors' confidence in the STS products. The lack of clear interpretation of the rules could also increase the scope for potential use of the binding mediation, if disagreements arose due to inconsistent understanding of the Level 1 requirements.

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 securitisations 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, a distinct set of Guidelines has been developed. For those STS criteria that are similar to the ABCP and non-ABCP securitisation, the text from the guidelines for non-ABCP and ABCP has been incorporated in this new separate set of guidelines. However, necessary adjustments have been made where relevant considering the specificities of the on-balance-sheet securitisations.

Furthermore, consistent with the approach taken for the guidelines on STS criteria for ABCP and non-ABCP, 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 are equally important given that non-compliance with any criterion could potentially lead to losing the STS classification.

E. Cost-Benefit Analysis

Similar 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 ensuring also a level playing field between the various types of securitisations (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, the 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.

6.2 Overview of questions for consultation

Requirements related to simplicity (Article 26b)

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

Q1. 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 term ‘no less stringent policies’ or ‘comparable exposures’ be provided and if yes, how are these terms understood in securitisation practice?

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

Q2. 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.

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

Q3. 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.

No double hedging (Article 26b(4))

Q4. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Q5. 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.

Representations and warranties (Article 26b (6))

Q6. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Q7. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Q8. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

No resecuritisation (Article 26b(9))

Q9. 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.

Underwriting standards, originator's expertise (Article 26b (10))

Q10. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Q11. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Q12. Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Requirements related to standardisation (Article 26c)

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

Q13: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Q14: 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.

Referenced interest payments (Article 26c(3))

Q15: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

Q16: 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.

Q17: 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.

Referenced interest payments (Article 26c(3))

Q18: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Q19: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

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

Q20: 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.

Transaction documentation (Article 26c(7))

Q21: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

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

Q22: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

Reference register (Article 26c(9))

Q23: 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.

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

Q24: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

Requirements relating to transparency (Article 26d)

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

Q25: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

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

Q26: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

Q27: 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.

Liability cashflow model (Article 26d(3))

Q28: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

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

Q29: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

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

Q30: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

Criteria specific for on-balance-sheet securitisation

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

Q31: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

Credit protection payments (Article 26e(2))

Q32: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

Q33: 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.

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

Q34: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

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

Q35: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

Early termination events by originator (Article 26e(5))

Q36: Do you agree with the interpretation provided? Should additional aspects be clarified?
Please substantiate your reasoning.

Q37: Do you consider 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.

Early termination events by investor (Article 26e(6))

Q38: 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.

Synthetic excess spread (Article 26e(7))

Q39: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Q40: 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.

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

Q41: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

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

Q42: Do you agree with the interpretation provided? Should additional aspects be clarified? Please substantiate your reasoning.

STS criteria not specified above (i.e. early termination event by investor (Article 26e(6)) etc.)

Q43: Do you agree that no other requirements are necessary to be specified further? If not, please provide reference to the relevant provisions of the STS requirements and their aspects that require such further specification. Please substantiate your reasoning.

Amending guidelines

Q44: Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/09? Should additional aspects be clarified? Please substantiate your reasoning.

Q45: Do you agree with the proposed amendments to the Guidelines EBA/GL/2018/08? Should additional aspects be clarified? Please substantiate your reasoning.