EBA EUROPEAN BANKING AUTHORITY

Consultation Paper on Guidelines on STS criteria for on-balance-sheet securitisation

Public hearing, 30 May 2023

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Timeline

Public consultation launched 21 April

- Public hearing on 30 May (Registration link)
- End of consultation 7 July

Final guidelines by Q1 2024

- End result: three separate guidelines
  - New guidelines for synthetic sec.
  - Amended guidelines for non-ABCP sec.
  - Amended guidelines for ABCP securitisation

Mandate

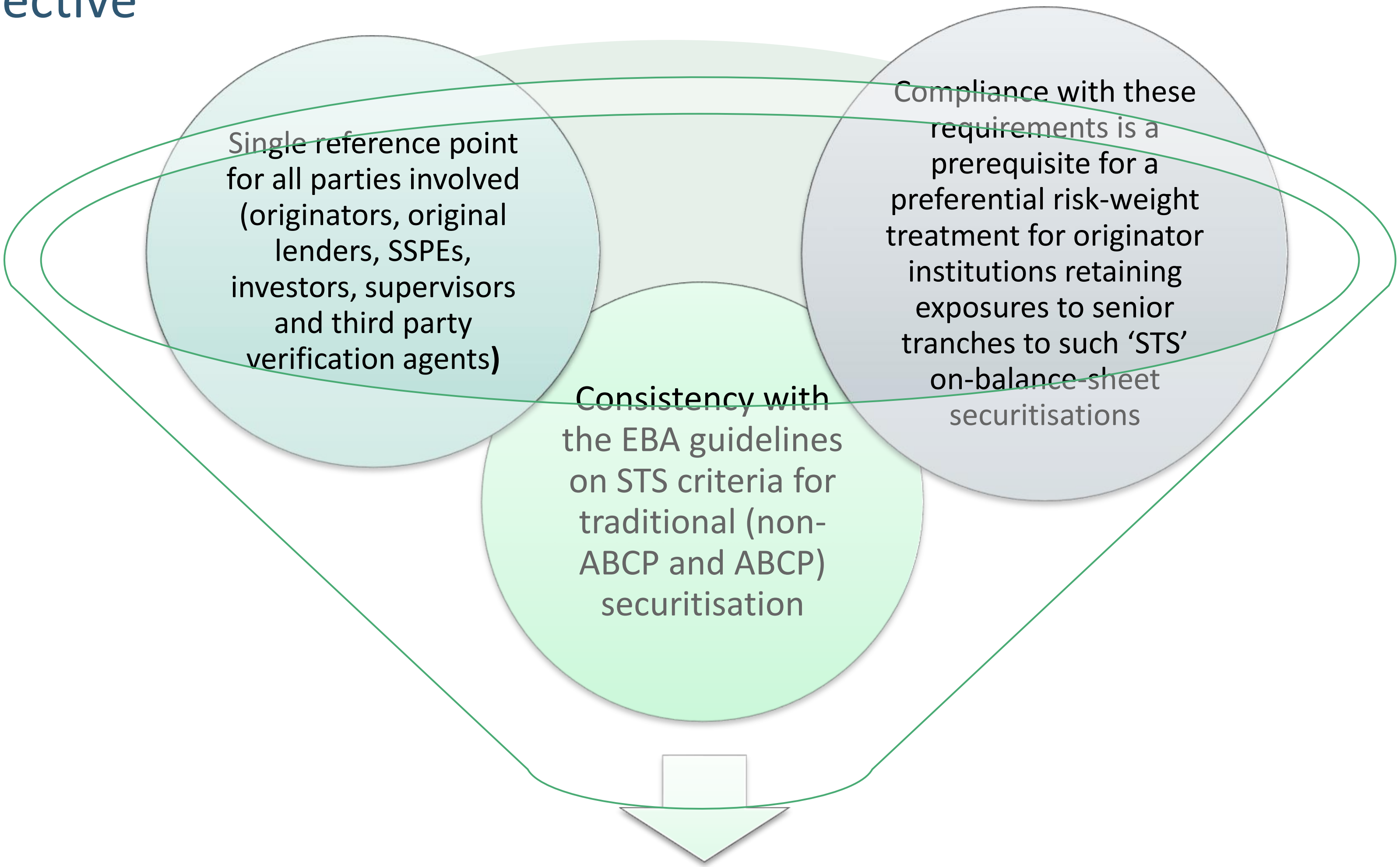
Article 26a(2) of Securitisation Regulation (Regulation (EU) 2017/2402) as amended by Regulation (EU) 2021/557 as part of the Capital Markets Recovery Package (CMRP)

"EBA may develop guidelines and recommendations on the harmonised interpretation of specific requirements for on-balance-sheet securitisation set out in Articles 26b to 26e of the Securitisation Regulation"

- **Requirements on simplicity (Art. 26b)**
- **Requirements on standardisation (Art. 26c)**
- **Requirements on transparency (Art. 26d)**
- **Specific requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread (Art. 26e)**

'STS' criteria

Objective



Harmonised understanding of the criteria, and harmonised implementation in terms of capital requirements

Other technical aspects

Amendments/updates in the final Guidelines

For **finalised EBA products**, but not yet adopted by COM

(RTS on homogeneity, RTS on performance-related triggers)

For **products not yet finalised**

(RTS on SES published after the GL, and Joint Committee RTS on sustainability-related disclosures not yet published)

Interactions with the EBA Guidelines for traditional securitisation (for non-ABCP and ABCP securitisation, published in 2018):

Aim to ensure consistency across the securitisation market

Same guidance where STS criteria for traditional and synthetics are the same

- Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 26b(8))
- Underwriting standards, originator's expertise (Article 26b(10))
- No exposures in default and to credit-impaired debtors/guarantors (Article 26b(11))
- Referenced interest payments (Article 26c(3))
- Servicer's expertise and servicing requirements (Article 26c(8))
- Timely resolution of conflicts between investors (Article 26c(10))
- Data on historical default and loss performance (Article 26d(1))
- Liability cash flow model (Article 26d(3))

For a **limited number of STS criteria** that are the same:

UPDATE of the guidance through **TARGETED AMENDMENTS** to GL for non-ACBP and ABCP securitisation

- At least one payment made (Article 26b(12))
- Risk retention requirements (Article 26c(1))
- Non-sequential priority of payments (Article 26c(5))
- Verification of a sample of the underlying exposures (Article 26d(2))
- Environmental performance and sustainability disclosures of the assets Article (26d(4))
- Compliance with disclosure requirements under Article 7 (Article 26d(5))

Overview of the interpreted 'STS' criteria

New criteria for synthetics	Same criteria as for traditional sec., guidance adapted to synthetics	Criteria not the same (similar or different), guidance adapted to synthetics	Same criteria, targeted amendments to the Guidelines for traditional securitisation	Criteria the same Guidance the same	No guidance necessary
• No double hedging (Article 26b(4)) • Credit events covered under the credit protection agreement (Article 26e(1)) • Credit protection payments (Article 26e(2)) • Debt workout and credit protection premiums (Article 26e(3)) • Third-party verification agent (Article 26e(4)) • Early termination events exercisable by the originator (Article 26e(5)) • Early termination events exercisable by the investor (Article 26e(6)) • Synthetic excess spread (Article 26e(7)) • Types of credit protection agreements (Article 26e(8)) • Specific type of the credit protection agreement (Article 26e(9)) • Requirements for recourse to high-quality collateral (Article 26e(10))	• Eligibility criteria, active portfolio management (Article 26b(7)) • Appropriate mitigation of interest and currency risks (Article 26c(2)) • Requirements after enforcement notice (Article 26c(4))	• Representations and warranties (Article 26b(6)) • Allocation of losses and amortisation of tranches (Article 26c(5)) • Early amortisation provisions/triggers for termination of revolving period (Article 26c(6)) • Transaction documentation (Article 26c(7))	• At least one payment made (Article 26b(12)) • Risk retention requirements (Article 26c(1)) • Non-sequential priority of payments (Article 26c(5)) • Verification of a sample of the underlying exposures (Article 26d(2)) • Environmental performance and sustainability disclosures of the assets Article (26d(4)) • Compliance with disclosure requirements under Article 7 (Article 26d(5))	• Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 26b(8)) • Underwriting standards, originator's expertise (Article 26b(10)) • No exposures in default and to credit-impaired debtors/guarantors (Article 26b(11)) • Referenced interest payments (Article 26c(3)) • Servicer's expertise and servicing requirements (Article 26c(8)) • Timely resolution of conflicts between investors (Article 26c(10)) • Data on historical default and loss performance (Article 26d(1)) • Liability cash flow model (Article 26d(3))	Requirements to exclude arbitrage securitisations: • Requirements on the originator (Article 26b(1)) • Origination as part of the core business activity of the originator (Article 26b(2)) • Exposures held on the balance sheet (Article 26b(3)) • Credit risk mitigation rules (Article 26b(5)) • No resecuritsation (Article 26b(9)) • Early amortisation provisions/triggers for termination of revolving period (Article 26c(6)) • Reference register (Article 26c(9)) • Types of credit protection agreements (Article 26e(8)) • Early termination events exercisable by the investor (Article 26e(6))

NEW GUIDANCE **SAME GUIDANCE** **NO GUIDANCE**

NEW CRITERIA FOR SYNTHETIC SECURITISATION

No double hedging (Article 26b(4))

Guidelines

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.

Background

- Follow up to the question raised: Does this refer to double protection on the same tranche or two different tranches?
- Clarification 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.
- Allowed to have two protection providers and providing protection pro rata, but not to have the protection twice on the same credit risk (whether at tranche or individual exposure level).

ADAPTED GUIDANCE FOR SYNTHETICS
(FOR CRITERIA THAT ARE IDENTICAL AS FOR TRADITIONAL)

Homogeneity (Article 26b(8))

Guidelines

- No guidance
- Reference to latest EBA RTS on homogeneity, amending previous RTS on homogeneity
- In the background and rationale, clarification is provided with respect to the specialised lending exposures

Clarification on the specialised lending exposures

- While it is understood that the specialised lending exposures would fall under the asset category for corporate exposures, they are distinct in various aspects from other corporate exposures, including due to the strong correlation of the asset value and the creditworthiness of the obligor and typically they are subject to different credit granting and servicing standards from the rest of the corporate exposures. For this reason, it is expected that where these exposures are combined with other corporate exposures, the corresponding pool of exposures would not meet the homogeneity requirements applicable to on-balance-sheet securitisation

TARGETED AMENDMENTS TO GUIDELINES ON TRADITIONAL SECURITISATION (NON-ABCP AND ABCP)

Targeted amendments to Guidelines on traditional securitisation

	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)

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

Guidelines

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.

Background

- Update of guidance based on implementation of the guidance
- Scope of the criterion:
  - This requirement should apply 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
- At least one payment:
  - Payment means any ordinary payment specified in the contractual agreement related to the economic substance of the exposure (i.e. excluding any extraordinary payments outside of the economic substance of the exposure)

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

Guidelines

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.

Background

Extended clarification on how to determine the size of the representative sample of exposures, that should be subject to external verification by a third party

EBA considered whether to go in a higher level of detail (e.g. specify a statistical method that should be used for determining the size of the representative sample, or concrete parameters to be used). In the GL, we opted for a better clarification of what is meant by the confidence level when determining the size of these representative samples

Importantly, a new minimum requirement is included, as a safeguard, that the sample should contain at least 50 exposures

Next steps

Date	Milestone
21 April 2023	Publication Consultation Paper
7 July 2023	End of Consultation Period
Q3 2023 / Q1 2024	Review Comments in response to the Consultation Paper and preparation of final Guidelines and targeted amendments to Guidelines for non-ABCP and ABCP Approval process of final Guidelines and targeted amendments to Guidelines for non-ABCP and ABCP Publication of final Guidelines and targeted amendments to Guidelines for non-ABCP and ABCP

ANNEX

NEW CRITERIA FOR SYNTHETIC SECURITISATION
Early termination events exercisable by the originator (Article 26e(5))

Guidelines

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.

Background

- Clarifications in relation to requirements for the time calls :
  - clarification on the calculation of the weighted average life (WAL) of the initial reference portfolio, consistent with the determination of WAL under the Guidelines on STS criteria for ABCP securitisation
  - 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.

ADAPTED GUIDANCE FOR SYNTHETICS

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

Guidelines

Reversion to non-sequential amortisation 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 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 transactio 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 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 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.

Background

To ensure consistency with the EBA RTS on performance-related triggers:

- As mentioned in the RTS, clarification is provided on the reversion back to non-sequential amortisation: as this is a derogation, once a trigger is activated the derogation ends: the reversion is not allowed
- Clarification of the criteria for setting the level of the triggers under Article 26c(5) laid out in Article 5 of the RTS, in particular the terms 'significant losses', 'last part of the maturity of the transaction' and the term 'back - loaded loss distribution scenario'

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

Guidelines

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.

Background

- This continues to be a requirement of disclosure about the energy efficiency of the assets when this information is available to the originator, sponsor or SSPE
- Following the changes introduced in CMRP, we have extended the interpretation of the term 'available information' related to the environmental performance also to the principal adverse impact sustainability indicators
- As the JC of the ESA has just published the draft RTS with regard to the content, methodologies and presentation of disclosures related to the PAI indicators of the assets, the Guidelines may be further amended in the future to ensure consistency with the respective RTS of where further clarification is deemed necessary

TARGETED AMENDMENTS TO GUIDELINES ON TRADITIONAL SECURITISATION

Compliance with risk retention requirements (Article 26c(1)), and compliance with disclosure requirements under Article 7 (26d(5))

Guidelines

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.

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.

Background

- Additional clarification is provided, mostly relevant for supervisors
- (i.e. that the supervision of compliance with these requirements requires the 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

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