



EBA Consultation Paper on the Guidelines on Interpretation of STS Criteria

Public hearing, 11 June 2018

EBA mandate

Non-ABCP securitisation (Article 19(2) of the Securitisation Regulation):

- *By 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised interpretation and application of the requirements set out in Articles 20 [Requirements related to simplicity], 21 [Requirements related to standardisation] and 22 [Requirements related to transparency].*

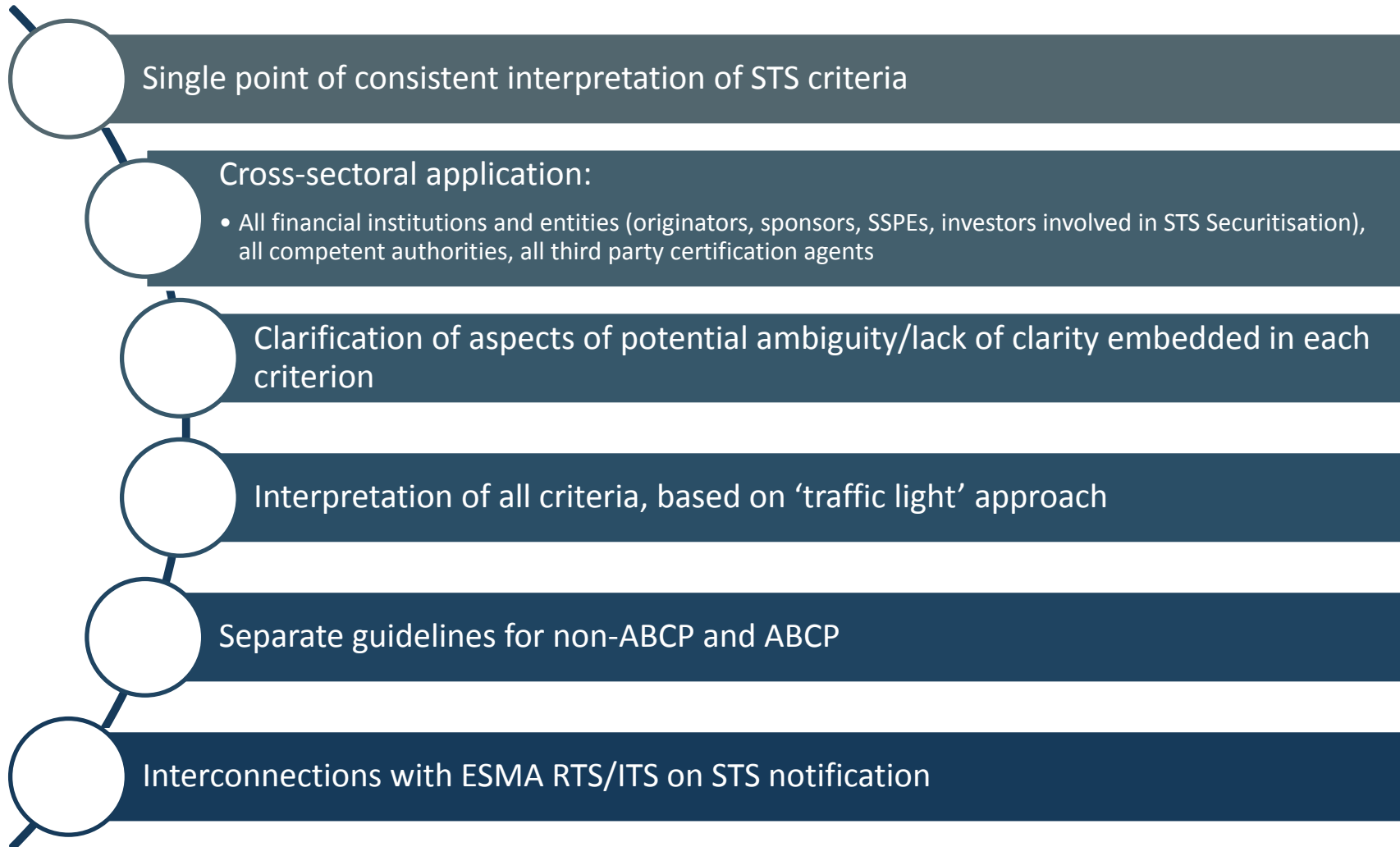
ABCP securitisation (Article 23(3) of the Securitisation Regulation):

- *By 18 October 2018, the EBA, in close cooperation with ESMA and EIOPA, shall adopt, in accordance with Article 16 of Regulation (EU) No 1093/2010, guidelines and recommendations on the harmonised interpretation and application of the requirements set out in Articles in Articles 24 [Transaction-level requirements] and 26 [Programme-level requirements].*

Additional guidance for both non-ABCP and ABCP securitisation (Recital 20):

- *Implementation of the STS criteria throughout the EU should not lead to divergent approaches. Divergent approaches would create potential barriers for cross-border investors by obliging them to familiarise themselves with the details of the Member State frameworks, thereby undermining investor confidence in the STS criteria. The EBA should therefore develop guidelines to ensure a common and consistent understanding of the STS requirements throughout the Union, in order to address potential interpretation issues. Such a single source of interpretation would facilitate the adoption of the STS criteria by originators, sponsors and investors. ESMA should also play an active role in addressing potential interpretation issues.*

Approach to development of the guidelines



‘Traffic light’ approach to interpretation of the STS criteria

- Interpretation of all criteria
- Granularity/detailness of the interpretation based on the ‘traffic light approach’:
 - **Green criteria:**
 - ▶ Self explanatory/straightforward
 - ▶ Interpretation beneficial to enhance correct implementation of STS regime
 - **Yellow criteria:**
 - ▶ Substantial element of uncertainty
 - ▶ Interpretation essential
 - **Red criteria:**
 - ▶ Not possible to interpret consistently
 - ▶ Interpretation crucial

Non-ABCP securitisation: traffic light approach

Red criteria

cannot be interpreted without additional guidance

- **Originator's expertise in originating exposures of a similar nature** (Art. 20.10)
- **No exposures in default and to credit impaired debtor/guarantor** (Art. 20.11)
- **No predominant dependence on the sale of assets** (Art. 20.13)
- **Expertise of the servicer in servicing exposures of a similar nature** (Art. 21.8)

Yellow criteria

containing a substantial element of uncertainty or ambiguity

- **True sale, assignment or transfer with the same legal effect** (Art. 20.1, 20.2, 20.3, 20.4, 20.5)
- **Eligibility criteria for the underlying exposures/active portfolio management** (Art. 20.7)
- **Obligations of the underlying exposures** (Art. 20.8)
- **Underwriting standards** (Art. 20.10)
- **Appropriate mitigation of interest-rate and currency risks** (Art. 21.2)
- **Resolution of conflicts between investors** (Art. 21.10)
- **Environmental performance of assets** (Art. 22.4)

Green criteria

generally self-explanatory or fairly straightforward but may include a certain element of ambiguity

- **Representations and warranties** (Art. 20.6)
- **Homogeneity, periodic payment streams, no transferable securities** (Art. 20.8)
- **No resecuritisation** (Art. 20.9)
- **At least one payment made** (Art. 20.12)
- **Risk retention** (Art. 21.1)
- **Referenced interest payments** (Art. 21.3)
- **Following enforcement, acceleration** (Art. 21.4)
- **Non-sequential priority of payments** (Art. 21.5)
- **Early amortisation provisions/triggers for termination of revolving period** (Art. 21.6)
- **Transaction documentation** (Art. 21.7)
- **Remedies and actions related to delinquency and default of debtor** (Art. 21.9)
- **Data on historical default and loss performance** (Art. 22.1)
- **Verification of a sample of underlying exposures** (Art. 22.2)
- **Liability cash flow model** (Art. 22.3)
- **Compliance with the transparency requirements** (Art. 22.5)

Originator's/servicer's expertise in originating/servicing exposures of a similar nature (Art. 20.10, 21.8)

Securitisation Regulation

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

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.

EBA interpretation

Focus of interpretation:

- **Similar exposures:** belonging to one asset category
- **Determination of expertise:** balanced approach, combining general principles with some rule based requirements
- **Requirement for the servicer:** same as for the origination, however additional requirement to have a back up servicer

Originator's/servicer's expertise in originating/servicing exposures of a similar nature (Art. 20.10, 21.8) – cont.

General principles:

- **Members of the management body and senior staff responsible for managing of origination/underwriting/servicing:**
- Adequate knowledge and skills
- Adequate role and duties and capabilities
- Sufficient experience gained in previous positions, education and training
- Appropriate involvement within the governance structure
- For prudentially regulated entity: relevance of the regulatory authorisations or permissions

Rule-based requirement:

- **For well established entities:**
 - Business of the entity (or its consolidated group for accounting or prudential purposes) has included the originating/underwriting/servicing of similar exposures for at least 5 years
- **For newly established entities:**
 - Members of its management body have professional experience, with at least two of those members each having such experience for at least 5 years, and
 - Senior staff have professional experience for at least 5 years
 - ! Additional requirement for the servicer: requirement for a back up servicer
- **Demonstration of the number of years of professional experience:** the expertise should be disclosed in sufficient detail to permit investors to carry out due diligence obligations

No exposures in default and to credit impaired debtor/guarantor (Art. 20.11)

Securitisation Regulation

EBA interpretation

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

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

*(i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE; and
(ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring;*

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

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

Focus of interpretation:

- **Exposures in default:** as specified in RTS on materiality threshold and Guidelines on definition of default, unless originator not institution and application unduly burdensome
- **Exposures to a credit-impaired debtor or guarantor:** neither debtor, nor guarantor to be credit impaired (i.e. as specified under Article 20(11) points (a) to (c))
- **To the best of the originator/original lender's knowledge:** on the basis of information as specified in Recital 26; this should not require the originator/original lender to take legal or other steps to collect further information on debtor's/guarantor's credit status (nor entries on credit registries)
- **Debtor's/guarantor's entry on credit registry:** only when explicitly flagged as entity with adverse credit status (e.g. excluding entries for missed payments resolved in two payment periods)
- **Significantly higher risk of contractually agreed payments not being made:** significantly higher than average credit score of all comparable exposures (as defined in the RTS on risk retention)

No predominant dependence on the sale of assets (Art. 20.13)

Securitisation Regulation

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

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

EBA interpretation

Focus of the interpretation: ‘predominant’ dependence

3 requirements:

- the residual values on which the transaction relies are sufficiently low on a relative basis: the **value of assets** at the time of transfer of the exposures corresponds to **no more than 30 % of the total initial exposure value of all securitisation positions held in this securitisation**
- the **dates of sale of assets** securing the underlying exposures which are dependent on the sale of assets, are **not subject to material concentrations** across the life of the transaction;
- the **granularity** of the pool of underlying exposures is sufficiently high i.e. the pool contains **at least 500 exposures**.

Exemption:

- Where value of assets is guaranteed/fully mitigated by a repurchase obligation by a third party that is an eligible provider of unfunded credit protection (in accordance with Article 201(1) of CRR, and Article 249 of amended CRR)

True sale, assignment or transfer with the same legal effect (Art. 20.1, 20.2, 20.3, 20.4, 20.5)

Securitisation Regulation

*Article 20(1): The title to the underlying exposures shall be acquired by the SSPE by means of **a true sale or assignment or transfer with the same legal effect** in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller's insolvency.*

...

Article 20(5): Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection shall include at least the following events:

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

*(b) **insolvency of the seller**; and*

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

EBA interpretation

Focus of interpretation:

- **Legal opinion:**
 - Should be required to confirm the transfer of exposures, and assess clawback, re-characterisation, commingling and set-off risks related to the transaction
 - Should be accessible to third parties (including third party certifiers and competent authorities)
- **Insolvency of the seller, as a trigger for perfection of transfer of exposures in case of assignment:**
 - Trigger insolvency of the seller refers to the events of legal insolvency and to resolution

Eligibility criteria for the underlying exposures/active portfolio management (Art. 20.7)

Securitisation Regulation

*The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for **active portfolio management** of those exposures on a discretionary basis.*

For the purpose of this paragraph, substitution of exposures that are in breach of representations and warranties shall not be considered active portfolio management.

*Exposures transferred to the SSPE **after the closing of the transaction shall meet the eligibility criteria** applied to the initial underlying exposures.*

EBA interpretation

Focus of interpretation:

- **Techniques of allowed/disallowed portfolio management:**
 - Allowed: substitution/repurchase due to breach of representation/warranties; replenishment; ramp up period
 - Disallowed: sale and other types of active selection of assets
- **Eligibility criteria:**
 - No less strict than criteria applied to initial exposures
 - Specified in the documentation transaction
 - Exposures level criteria

Underwriting standards (Art. 20.10)

Securitisation Regulation

*The underlying exposures shall be originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or original lender applied at the time of origination to **similar exposures** that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and **any material changes from prior underwriting standards** shall be fully disclosed to potential investors without undue delay.*

*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 paragraphs 1 to 4, point (a) of paragraph 5, and paragraph 6 of Article 18 of Directive 2014/17/EU or, where applicable, equivalent requirements in third countries.*

EBA interpretation

Focus of interpretation:

- **Similar exposures:** belonging to same asset category
- **Material changes from prior underwriting standards:**
 - Before issuance: changes over 5 years before issuance or over the longest maturity plus one year (whichever is shorter)
 - After issuance: changes in context of substitutions, repurchase, replenishment, ramp up periods
- **Residential loans:** only when loans where both marketed and underwritten on the premise
- **Equivalent requirements in third countries:** evaluation of equivalence should be responsibility of originator

Environmental performance of assets (Art. 22.4)

Securitisation Regulation

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

EBA interpretation

Focus of interpretation:

- **Available information related to the environmental performance:** This requirement should only be applicable in case the information on the energy performance certificates for the assets financed by the underlying exposures is available to the originator, sponsor or the SSPE and captured in its internal database or IT systems. When the information is not available, the requirement does not apply.

ABCP securitisation: EBA mandate

Non-ABCP

Legal basis: Article 19

Mandate: By 18 October 2018, the EBA [...] shall adopt [...] guidelines and recommendations on the [...] requirements set out in Articles 20, 21 and 22.

ABCP

Legal basis: Article 23

Mandate: By 18 October 2018, the EBA [...] shall adopt [...] guidelines and recommendations on the [...] requirements set out in Articles 24 and 26.

Simple Art. 20	Transparent Art. 21	Standardised Art. 22	Transaction Art. 24	Sponsor Art. 25	Programme Art. 26
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ABCP securitisation: traffic light approach

Red criteria

cannot be interpreted without additional guidance

- **No exposures in default and to credit impaired debtor/guarantor** (Art. 24.9)
- **No predominant dependence on the sale of assets** (Art. 24.11)
- **Expertise of the seller in originating exposures of a similar nature** (Art. 24.18),
- **of the sponsor in credit underwriting** (26.7)
- **and of the servicer in servicing** (26.8)

Yellow criteria

containing a substantial element of uncertainty or ambiguity

- **True sale, assignment or transfer with the same legal effect** (Art. 24.1, 24.2, 24.3, 24.4, 24.5)
- **Eligibility criteria for the underlying exposures/active portfolio management** (Art. 24.7)
- **Appropriate mitigation of interest-rate and currency risks** (Art. 24.12, 26.6)
- **Underwriting standards** (Art. 24.18)
- **Obligations of the underlying exposures** (Art. 24.15)
- **Temporary non-compliance** (26.1)
- **Documentation of the ABCP programme** (26.7)

Green criteria

generally self-explanatory or fairly straightforward but may include a certain element of ambiguity

- **Representations and warranties** (Art. 24.6)
- **At least one payment made** (Art. 24.10)
- **Remedies and actions related to delinquency and default of debtor** (Art. 24.13)
- **Data on historical default and loss performance** (Art. 24.14)
- **Homogeneity, periodic payment streams, no transferable securities** (Art. 24.15)
- **Referenced interest payments** (Art. 24.16)
- **Following enforcement, acceleration** (Art. 24.17)
- **Triggers for termination of revolving period** (Art. 24.19)
- **Transaction documentation** (Art. 24.20)
- **Remaining weighted average life** (26.2)
- **No resecuritisation at ABCP transaction level (Art. 24.8) and programme level** (26.4)
- **No call options and other clauses** (26.5)
- **Full support by sponsor** (26.3)

Comparison of interpretation for ABCP and non-ABCP

For ABCP criteria for which no equivalent exist in the non-ABCP criteria, **a new guidance has been provided:**

- requirement allowing a limited temporary non-compliance with certain STS transaction-level criteria under Art. 26(1)
- requirement on the remaining weighted average life limit under Art. 24(15) and 26(2)
- requirement on the full support by sponsor under Art. 26(3)
- requirement on no resecuritisation and no second layer of tranching established by the credit enhancement at ABCP programme level under Article 26(4)
- requirement on no prolongation options for the seller, sponsor or SSPE under Article 26(5)

For ABCP criteria which are the same for non-ABCP, **the guidance has been adapted/extended** to address particularities of ABCP:

- requirement on remedies and actions related to delinquency and default of the debtor under Art. 24(13)
- requirement on the access to the data on static and dynamic historical default and loss performance for substantially similar exposures under Art. 24(14)
- requirement on homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities under Art. 24(15)
- requirement on referenced interest payments (Art. 24(16))
- requirement on underwriting standards under Art. 24(18)
- requirement for the transaction documentation to specify the duties of the servicer, trustee and the sponsor under Art. 24(20)
- requirement for the programme documentation to specify the duties of the trustee and sponsor under Art. 26(7)

For ABCP criteria which are the same for non-ABCP, **the interpretation is the same** as for non-ABCP criteria:

- All the remaining criteria



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