

Annex 1

Transparency

Information	Non-ABCP	ABCP	STS (Non-ABCP) ⁸⁸	Comments
Information on the underlying exposures	Quarterly no later than one month after interest payment date.	Monthly, at latest one month after the end of the period the report covers. Information to be made available in aggregate form to holders of securitisation positions and, upon request, to potential investors. Loan level data to be provided to the sponsor and, upon request, to competent authorities.	Information to be made available to potential investors before pricing upon request.	Information to be specified in RTS and to be provided using the applicable reporting template.
All underlying documentation that is essential to understand the transaction, including the final offering document or prospectus, the asset sale or transfer agreement and any declaration of trust, derivatives and guarantee agreements, servicing, back-up servicing, administration and cash management agreements, trust deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms and definitions, intercreditor agreements, subordinated loan agreements and liquidity facility agreements. A detailed description of the priority of payments must be included in the documentation.	Before pricing.	Before pricing.	Before pricing in at least draft or initial form. Final documentation no later than 15 days after closing.	STS wording on timing of disclosure differs from non-STS wording. Not clear that documentation can be provided in draft or initial form, as opposed to final form, before pricing for non-STS.

⁸⁸ Article 22 SR. Additional information must be disclosed for STS securitisations – see Annex 2 (STS criteria and additional CRR criteria) for details.

Information	Non-ABCP	ABCP	STS (Non-ABCP) ⁸⁸	Comments
If there is not a prospectus (where required under the Prospectus Directive), a summary or overview of the transaction with the main features of the transaction, including the structure, exposure characteristics, cash flows, waterfall, credit enhancement, liquidity, voting rights and all material triggers and events.	Before pricing.	Before pricing. Details of exposure characteristics, cash flows, waterfall, credit enhancement and liquidity to be provided in aggregate form to holders of securitisation positions and, upon request, to potential investors.	Before pricing in at least draft or initial form.	STS wording on timing of disclosure differs from non-STS wording. Not clear that summary/overview can be provided in draft or initial form, as opposed to final form, before pricing for non-STS. This requirement applies to “private” securitisations (defined as those for which no prospectus is required to be published) as well as public securitisations, even where the investors are closely involved and may not require such information. This will be an additional cost and administrative burden for many private transactions.
Any notification that the securitisation is an STS transaction	Before pricing.	Before pricing.	Before pricing in at least draft or initial form	STS wording on timing of disclosure differs from non-STS wording. Not clear that STS notification can be provided in draft or initial form, as opposed to final form, before pricing for non-STS.
Investor reports containing: <ul style="list-style-type: none"> all materially relevant data on credit quality and performance of the underlying exposures; trigger events for changes in the priority of payments or replacement of counterparties; for non-ABCP transactions, data on the cash flows of the underlying exposures and the liabilities of the securitisation; information regarding the risk retention and the method used. 	Quarterly no later than one month after interest payment date.	Monthly, at latest one month after the end of the period the report covers. All materially relevant data on credit quality and performance of the underlying exposures to be provided in aggregate form to holders of securitisation positions and, upon request, to potential investors.		Information to be specified in RTS and to be provided using the applicable reporting template.

Information	Non-ABCP	ABCP	STS (Non-ABCP) ⁸⁸	Comments
<p>Inside information which is required to be made public in accordance with the Market Abuse Regulation.</p>	<p>Without delay.</p>	<p>Without delay.</p>		<p>The Draft Transparency RTS provides that in the case of public deals, such information will need to be provided using the applicable reporting template.</p>
<p>If the previous item is not applicable, any significant event such as a material breach of obligations, structural changes, a change in the risk characteristics, ceasing to meet the STS requirements or any material amendment to the transaction documents.</p>	<p>Without delay.</p>	<p>Without delay.</p>		<p>The Draft Transparency RTS provides that in the case of public deals, such information will need to be provided using the applicable reporting template.</p>

Annex 2

STS criteria and additional CRR criteria

STS criteria for non-ABCP and ABCP transactions

The second and third columns specify whether or not the relevant criteria apply with respect to non-ABCP or ABCP transactions and also set out any additional criteria for non-ABCP or ABCP transactions, as applicable. We have included some comments on certain of the criteria but these are not exhaustive and there are likely to be further issues to take into account as market participants consider how to interpret the relevant criteria, including by reference to the guidelines once they are finalised, with reference to the particular transaction.

Criteria	Non-ABCP securitisations	ABCP securitisation transactions	Comments
	Article 20 (Simplicity)	Article 24	
Legal true sale; no severe clawback risk	✓ ⁸⁹	✓ ⁹⁰	Legal opinion as to true sale will generally be required. Intermediate transfers will also need to meet the true sale requirements. Local insolvency laws will need to be considered. Synthetic securitisations will not be STS. ⁹¹
Specified perfection triggers including severe deterioration in seller's credit quality, seller insolvency and seller breaches.	✓ ⁹²	✓ ⁹³	
Seller to represent that assets not encumbered and no adverse effect on enforceability of the sale.	✓ ⁹⁴	✓ ⁹⁵	

89 SR Article 20(1)-(4).

90 SR Article 24(1)-(4).

91 However, it is anticipated that a separate STS framework may be developed for balance sheet synthetic securitisations as discussed above.

92 SR Article 20(5).

93 SR Article 24(5).

94 SR Article 20(6).

95 SR Article 24(6).

Criteria	Non-ABCP securitisations	ABCP securitisation transactions	Comments
<p>Clear eligibility criteria.</p> <p>No active portfolio management on discretionary basis.</p> <p>Later transferred assets must meet eligibility criteria that applied to the initial exposures.</p>	✓ ⁹⁶	✓ ⁹⁷	<p>This is one of a number of criteria that will involve a degree of subjective judgment as to whether the criteria are sufficiently "clear". Eligibility criteria in securitisation transactions can be very detailed and vary from deal to deal, and arguably many of those criteria should not be relevant in considering whether a transaction is STS, but it appears that they will all need to be "clear".</p> <p>The STS Guidelines state that the criteria will 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. Substitution of exposures that are in breach of representations will not be "active portfolio management". However, so-called "managed CLOs", in which an investment manager manages a pool of securitised corporate loans acquired from third parties, cannot be STS. Amending the eligibility criteria in the future could be difficult if STS treatment is to be maintained.</p>
<p>Assets must be homogeneous as to asset type.</p> <p>Obligations must be contractually binding and enforceable.</p> <p>Defined periodic payments required.</p> <p>No transferable securities other than unlisted corporate bonds.</p>	<p>✓</p> <p>Full recourse to debtors and guarantors.</p> <p>Instalments for the assets may differ in amount.⁹⁸</p>	<p>✓</p> <p>Full recourse to debtors.</p> <p>Remaining weighted average life ("WAL") of pool must be ≤ 1 year , or ≤ 3½ years for auto loans, auto leases and equipment leases</p> <p>Residual maturity of all exposures must be ≤ 3, or ≤ 6 years for auto loans, auto leases and equipment leases.</p> <p>No residential or commercial mortgage loans.</p> <p>Exposures may generate proceeds from sale of financed/leased assets.⁹⁹</p>	<p>Final Draft RTS on homogeneity, published on 31 July 2018 and adopted by European Commission on 28 May 2019.</p>

96 SR Article 20(7).

97 SR Article 24(7).

98 SR Article 20(8).

99 SR Article 24(15).

Criteria	Non-ABCP securitisations	ABCP securitisation transactions	Comments
Assets cannot include securitisations.	✓ ¹⁰⁰	✓ ¹⁰¹	Even non-STS securitisations that include securitisations (except where grandfathered and other limited exceptions) will be prohibited by the Article 8 ban on resecuritisation.
Assets must have been originated in ordinary course. Credit underwriting criteria to be no less stringent than for retained assets and must be disclosed.	✓ No "self-certified" residential mortgage loans. Assessment of borrower's creditworthiness to meet regulatory requirements. ¹⁰²	✓ ¹⁰³	Even non-STS securitisations of "self-certified" residential loans (except in limited circumstances) will be prohibited by the credit-granting standards in Article 9(2).
No assets in default or exposures to credit-impaired obligors.	✓ ¹⁰⁴	✓ ¹⁰⁵	It was queried whether this requirement should apply with respect to defaulted receivables that may be sold (e.g. in a buy-all transaction) but which are not eligible for funding. The STS Guidelines with respect to ABCP securitisation clarify that transaction and programme level requirements that refer to the underlying exposures should be applied only with respect to those underlying exposures that comply with the eligibility criteria and are funded by commercial paper, a liquidity facility or otherwise. However, this does not apply with respect to non-ABCP securitisation transactions.
At least one payment made (except in the case of revolving securitisations with assets payable in one instalment or with a maturity of < 1 year).	✓ ¹⁰⁶	✓ ¹⁰⁷	The exception is particularly important for trade receivables securitisations, although it will not work for non-revolving trade receivables securitisations.

100 SR Article 20(9).

101 SR Article 24(8).

102 SR Article 20(10).

103 SR Article 24(18).

104 SR Article 20(11).

105 SR Article 24(9).

106 SR Article 20(12).

107 SR Article 24(10).

Criteria	Non-ABCP securitisations	ABCP securitisation transactions	Comments
Repayment not dependent predominantly on sale of assets, provided that assets may be rolled over, refinanced, or subject to a repurchase obligation.	✓ ¹⁰⁸	✓ ¹⁰⁹	Useful exception included for refinancing of assets such as auto and equipment leases, and more generally for repurchase of receivables, e.g. for breach of representations. However, typical CMBS transactions (in which the asset-backed debt instruments would mature much earlier than the underlying credits) cannot be STS.
	Article 21 (Standardisation)		
Risk retention per Article 6.	✓ ¹¹⁰	✓	Risk retention is required in any event. In the case of ABCP, the requirement is in the sponsor criteria. ¹¹¹
Interest rate and currency risks appropriately hedged per common standards; no other derivatives.	✓ ¹¹²	✓ ¹¹³	
Interest payments per market rates or "sectoral" cost of funds, no reference to complex formulae or derivatives.	✓ ¹¹⁴	✓ Interest payments may reflect ABCP programme's cost of funds. ¹¹⁵	
After enforcement or acceleration notice, no cash trapping, sequential payment and no automatic liquidation of assets at market value.	✓ Repayment of securitisation positions not to be reversed with regard to seniority. ¹¹⁶	✓ ¹¹⁷	
Non-sequential priority of payments must include triggers for sequential payments, including deterioration in credit quality of assets below specified threshold.	✓ ¹¹⁸	✓	

108 SR Article 20(13).

109 SR Article 24(11).

110 SR Article 21(1).

111 SR Article 25(5).

112 SR Article 21(2).

113 SR Article 24(12).

114 SR Article 21(3).

115 SR Article 24(16).

116 SR Article 21(4).

117 SR Article 24(17).

118 SR Article 21(5).

Criteria	Non-ABCP securitisations	ABCP securitisation transactions	Comments
For revolving securitisations, specified triggers for termination of revolving period: deterioration in credit quality of assets below specified threshold, or originator or servicer insolvency-related event.	✓ Same specified triggers to apply for early amortisation for revolving securitisations, plus the following additional triggers: value of assets falls below specified threshold (early amortisation event), or failure to generate sufficient new assets of the required credit quality (termination of revolving period). ¹¹⁹	✓ ¹²⁰	
Transaction documents to specify clearly: contractual obligations of servicer, trustee and other service providers, provisions for continuity of servicing on servicing default/ insolvency and for replacement of hedge counterparties, liquidity providers and account bank.	✓ ¹²¹	✓ Transaction documents must also specify how the sponsor meets solvency and liquidity test (see below). ¹²²	The first part of this criterion is imprecise. It could be difficult to determine whether the requirement to specify clearly the contractual obligations has been met.
Servicer expertise in servicing similar assets and well documented policies, procedures and controls.	✓ ¹²³	✓	
Transaction documents to set out in clear and consistent terms definitions, remedies and actions regarding delinquency, default etc. Priorities of payment and triggers for changes to priorities of payment to be specified. Material changes to the priority of payments to be reported to investors.	✓ ¹²⁴	✓ ¹²⁵	
Provisions for timely resolution of conflicts between classes of investors; clearly defined voting rights allocated to noteholders, clearly specified responsibilities of trustee.	✓ ¹²⁶	✓	

119 SR Article 21(6).

120 SR Article 24(19).

121 SR Article 21(7).

122 SR Article 24(20).

123 SR Article 21(8).

124 SR Article 21(9).

125 SR Article 24(13).

126 SR Article 21(10).

Criteria	Non-ABCP securitisations	ABCP securitisation transactions	Comments
	Article 22 (Transparency)		
Historical data on defaults and losses for similar exposures to be provided before pricing.	✓ ≥ 5 years of data. ¹²⁷	✓ ≥ 5 years of data, or ≥ 3 years of data for trade receivables and other short-term receivables ¹²⁸	The shorter data period for trade and other short-term receivables does not apply to non-ABCP transactions – it is not clear why this should be the case. The requirement to have such a long period of historical data could mean that some assets will not be capable of being securitised.
Third party verification of asset sample by “appropriate and independent party” before issuance.	✓ ¹²⁹	✓	This could result in an additional cost.
Provision of liability cash flow model to investors before pricing and on ongoing basis.	✓ ¹³⁰	✓	
For residential loans and auto loans or leases, disclosure of environmental performance by originator and sponsor per Article 7.	✓ ¹³¹	✓	
Loan level data before pricing. Transaction documents, prospectus or transaction summary and STS notification drafts before pricing. Final documents within 15 days after closing.	✓ ¹³²	✓	

127 SR Article 22(1).

128 SR Article 24(14).

129 SR Article 22(2).

130 SR Article 22(3).

131 SR Article 22(4).

132 SR Article 22(5).

STS criteria for ABCP programmes

Criteria	Comments
Sponsor	
Sponsor must be a credit institution supervised under Capital Requirements Directive (CRD) ¹³³¹³⁴	
Sponsor must be a full support liquidity provider. Transaction level support to be disclosed to investors. ¹³⁵	
Sponsor must demonstrate to competent authority that its role as full support liquidity provider not endanger its solvency and liquidity even in extreme stress situation. ¹³⁶	
Sponsor to perform due diligence per Articles 5(1) and (3) and verify the seller's servicing capabilities and processes per Article 265(2)(h)-(p) of the CRR (as amended by the CRR Amending Regulation). ¹³⁷	Article 265(2)(h)-(p) of the CRR is part of the provisions in relation to the conditions for the application of the Internal Assessment Approach ("IAA"). It is not at all clear what relevance this has to servicing or how this should be interpreted.
Seller (for transaction) or sponsor (for programme) to satisfy risk retention requirement in Article 6. ¹³⁸	
Sponsor shall comply with transparency obligations in Article 7 at programme level and make available the information to potential investors before pricing per Article 7(1)(a) (aggregate information), and (b)-(e) (at least in draft form). ¹³⁹	
Liquidity must be drawn before expiry if not renewed and maturing securities repaid. ¹⁴⁰	
Transactions in the programme	
All transactions must fulfil ABCP transaction criteria, except for the criteria with respect to no assets in default or exposures to credit-impaired obligors (Article 24(9)), at least one payment to have been made (Article 24(10)) and repayment not being dependent predominantly on sale of assets (Article 24(11)), where $\leq 5\%$ of the aggregate amount of the underlying exposures may temporarily be non-compliant, provided that an appropriate and independent party needs to verify externally a sample with respect to such criteria. ¹⁴¹	The requirement that all transactions must fulfil the ABCP criteria for an ABCP programme to be STS, except for the limited exception for temporary non-compliance with Articles 24(9), (10) and (11) for $\leq 5\%$ of aggregate exposures, presents a very high bar and is likely to mean that very few ABCP programmes will be capable of being STS.

133 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

134 SR Article 25(1).

135 SR Article 25(2).

136 SR Article 25(3).

137 SR Article 25(4).

138 SR Article 25(5).

139 SR Article 25(6).

140 SR Article 25(7).

141 SR Article 26(1).

Criteria	Comments
Programme	
Remaining WAL of underlying exposures must be \leq 2 years. ¹⁴²	
Programme must be fully supported by sponsor (per sponsor criteria). ¹⁴³	This is already covered in the sponsor requirements.
Programme must not contain any re-securitisation and no programme-level tranching credit protection. ¹⁴⁴	
Securities may not include call options, extension clauses or other clauses that affect final maturity and which may be exercised by seller, sponsor or SSPE. ¹⁴⁵	Many programmes include call options for early redemption by the issuer. It would have been preferable if it had been a prohibition only of extension at the option of the issuer, i.e. extendable commercial paper as seen before the financial crisis.
Interest rate and currency risks appropriately hedged per common standards; no other derivatives. ¹⁴⁶	
Documentation to specify clearly duties of trustee (if any), sponsor and service providers, processes to ensure continuity of servicing on default/insolvency of servicer, provisions for replacement of hedge counterparties and account bank, remedies on default/insolvency of sponsor, and drawing of liquidity if not renewed. ¹⁴⁷	
Servicer expertise in servicing similar assets and well documented policies, procedures and controls. ¹⁴⁸	It would have been preferable if this criterion had been included at the transaction level, instead of at the programme level, since servicing occurs at the transaction level.

142 SR Article 26(2).

143 SR Article 26(3).

144 SR Article 26(4).

145 SR Article 26(5).

146 SR Article 26(6).

147 SR Article 26(7).

148 SR Article 26(8).

Additional CRR criteria

Criteria	Non-ABCP transactions	ABCP transactions/ programmes	Comments
	Article 243(2) of Amended CRR	Article 243(1) of Amended CRR	
Exposures to single obligor (or aggregate exposure to group of connected clients) must be ≤ 2% of pool/ programme.	✓	<p>✓</p> <p>Exception for trade receivables fully covered by eligible credit protection provided by credit institution or insurance or reinsurance undertaking, after taking into account purchase price discount and overcollateralisation.</p> <p>Exception for securitised residual leasing values covered by enforceable repurchase or refinancing commitment from eligible guarantor (eligible provider of unfunded credit risk mitigation ("CRM") under the CRR – including rated corporate)</p>	<p>For ABCP transactions and programmes, the 2% concentration limit applies only at programme level. For non-ABCP transactions (which would include private transactions similar to ABCP transactions), it applies to each transaction. It is difficult to understand the rationale for this difference in treatment, and it is not clear why it is necessary to apply an obligor concentration limit at programme level when normally the underlying transactions are independent of each other, without any cross-collateralisation or cross-exposure to losses between transactions. It will be difficult for programme sponsors to apply the programme-wide concentration limit and it might have been less difficult if each transaction within the programme had such a limit. The concentration limit could also prevent securitisations with large obligor concentrations (e.g. trade receivables securitisations) being STS, notwithstanding the inclusion of obligor concentration limits in those transactions which would be aimed at addressing any lack of granularity.</p> <p>It is also not clear why the exception for concentrations covered by overcollateralisation or other credit enhancement applies only in the case of ABCP programmes – this appears to be an unwarranted difference in treatment between ABCP and non-ABCP private securitisations. Furthermore, it is not clear how the concentration limit, with its exceptions, would be calculated.</p>

Criteria	Non-ABCP transactions	ABCP transactions/ programmes	Comments
<p>Maximum risk weight of assets under Standardised Approach must be:</p> <ul style="list-style-type: none"> • 75% on individual exposure basis for retail exposures; • 100% on individual exposure basis for other exposures, taking into account any CRM. 	<p>✓</p> <p>Maximum risk weight of real estate loans under Standardised Approach must be:</p> <ul style="list-style-type: none"> • 40% on portfolio weighted average basis for residential mortgage loans or fully guaranteed residential loans; • 50% on individual exposure basis for commercial mortgage loans, taking into account any CRM. <p>For real estate loans, no loans secured by lower-ranking security unless also include prior-ranking loans.</p> <p>For residential mortgage loans/ fully guaranteed mortgage loans, no loan-to-value >100%.</p>	<p>✓</p> <p>For bank authorised to apply IAA, liquidity facility risk weight $\leq 100\%$</p>	<p>No maximum risk weights specified for ABCP programmes/ transactions for residential or commercial mortgage loans as these are not permitted to be STS for ABCP transactions.</p>

Annex 3

Technical standards, guidelines and delegated acts pursuant to the Securitisation Regulation

Article	Heading	Drafter	Type	Subject	Current status
6(7)	Risk retention	EBA	RTS	Risk retention details including modalities (Art 6(3)), measurement (Art 6(1)), no hedging/ selling Art 6(1)), consolidated basis (Art 6(4)), conditions for exemption based on index (correlation trading) (Art 6(6))	Draft RTS published 18 July 2018. Awaiting Commission approval and expected to be finalised later in 2019.
7(3)	Transparency requirements	ESMA	RTS	Information to be provided under Art 7(1) (a) and (e) (on underlying exposures and in periodic investor reports)	Revised draft RTS published by ESMA 31 January 2019. Awaiting Commission approval and expected to be finalised later in 2019.
7(4)	Transparency requirements	ESMA	ITS	Format of reports – standardised templates	Revised draft RTS published by ESMA 31 January 2019. Awaiting Commission approval and expected to be finalised later in 2019.
8(5)	Ban on resecuritisation	ESMA	RTS	(Permitted) supplement to list of legitimate purposes for permitted resecuritisation (Art 8(3))	No date specified.
10(7)	Registration of a securitisation repository	ESMA	RTS	Procedures to verify reported information; application for registration; extension of registration	Revised draft RTS published by ESMA 18 January 2019. Awaiting Commission approval and expected to be finalised later in 2019.
10(8)	Registration of a securitisation repository	ESMA	ITS	Format of applications for registration and extension	As for Article 10(7).
16(2)	Supervisory fees	Commission	Delegated Act	Fees payable by securitisation data repositories to ESMA	Date not specified. Consultation Paper issued 23 March 2018. Final RTS awaited.
17(2)	Availability of data held in repository	ESMA	RTS	Information to be provided under Art 7(1); templates; operational standards for collection, aggregation, comparison of data; information to which ESAs and the European Systemic Risk Board will have access; conditions of direct and immediate access	As for Article 7(3).
17(3)	Information to repository	ESMA	ITS	Standardised templates for information to be provided to repository.	As for Article 7(4).
19(2)	STS securitisation	EBA	Guidelines	Guidelines on harmonisation and application of STS requirements in Arts 20-22	STS Guidelines published 12 December 2018.

Article	Heading	Drafter	Type	Subject	Current status
20(14)	Requirements re. simplicity	EBA	RTS	Which underlying exposures deemed homogeneous (Art 20(8))	Final Draft RTS on homogeneity published on 31 July 2018. Adopted by Commission and expected to be finalised later in 2019.
23(3)	STS ABCP securitisation	EBA	Guidelines	Harmonised interpretation and application of STS requirements in Arts 24 and 26	STS Guidelines published 12 December 2018.
24(21)	STS transaction level requirements	EBA	RTS	Which underlying exposures deemed homogeneous (Art 24(15))	As for Article 20(14).
27(6)	STS notification requirements	ESMA	RTS	Information for originator/sponsor notification (Art 27(1))	Consultation Paper published 19 December 2017. Final RTS awaited.
27(7)	STS notification requirements	ESMA	ITS	Templates for originator/sponsor notification (Art 27(6))	As for Article 27(6).
28(4)	Third party verifying STS compliance	ESMA	RTS	Information to be provided in application for authorisation (Art 28(1))	RTS adopted February 2019 and published in Official Journal.
36(8)	Cooperation between competent authorities and ESAs	ESMA	RTS	Cooperation obligation and information exchange (Art 36(1)); notification obligations (Art 36(4), (5))	Final RTS awaited.
39(1)	Amendment to Directive 2009/138/EC	Commission	Delegated Act	Circumstances for imposition of proportional additional capital charge for breach of Arts 5 or 6	Not specified.
39(1)	Amendment to Directive 2009/138/EC	EIOPA	RTS	Methods for calculation of proportional additional capital charge	Not specified.
42(6)	Amendment to Regulation (EC) No 248/2012	ESAs	RTS	Which arrangements under covered bonds or securitisations adequately mitigate counterparty risk (amended EMIR Art 4(5))	Final RTS awaited.
42(3)	Amendment to Regulation (EC) No 248/2012	ESAs	RTS	Risk management procedures (amended EMIR Art 11(3)), procedures for competent authorities applying exemptions (amended EMIR Art 11(6)-(10)), criteria (amended EMIR Art 11(5)-(10))	As for Article 42(6).