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COMMISSION DELEGATED REGULATION (EU) .../...

of 28.5.2019

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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 20(14) of Regulation (EU) No 2017/2402 ('the Securitisation Regulation') empowers the Commission to adopt, following the submission of draft technical standards ('RTS') by the European Banking Authority ('EBA'), and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, delegated acts to further specify which underlying exposures in the non-ABCP securitisation are deemed to be homogeneous.

A similar empowerment is provided in Article 24(21) of the Securitisation Regulation for the Commission to adopt delegated acts to further specify which underlying exposures are homogeneous in the ABCP securitisation.

The provisions in this delegated act define the conditions for the homogeneity of underlying exposures for both non-ABCP and ABCP securitisation and thus address both above-referred and directly interlined mandates. The homogeneity is one of crucial requirements for securitisation to be assessed as simple, transparent and standardised ('STS') and to be eligible for more risk-sensitive risk weights under the new EU securitisation framework. Homogeneity is a key element in investors' assessment of the underlying risks and assists the investors in performing their due diligence.

The requirement on the homogeneity of the underlying exposures should be specified in a way that does not interfere with other conditions for the qualification of a securitisation as STS or with other general securitisation requirements. It should be specified in a way that avoids imposing unnecessary limitations on the market and should not disincentivise the originator from structuring a diversified portfolio, nor should it lead to excessive concentration in the portfolios.

In accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft regulatory technical standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1093/2010, the EBA has carried out a public consultation on the RTS developed pursuant to Articles 20(14) and 24(21) of the Securitisation Regulation. A consultation paper was published on 15 December 2017 and the consultation closed on 15 March 2018. In addition, a public hearing was held on the RTS on 19 February 2018. In accordance with the legal mandate, the EBA has closely cooperated with ESMA and EIOPA in the process of development of the RTS.

As specifically requested by the Commission, only the RTS and explanatory memorandum are submitted to the Commission for the adoption of the RTS. All relevant background information –notably the background and rationale of the RTS, the impact assessment and the feedback on the public consultation– is included in the final report accompanying the draft RTS, which was approved by the EBA's Board of Supervisors on 27 July 2018 and published on the EBA's public website.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The Securitisation Regulation establishes a new EU securitisation framework which is one of the cornerstones of the Capital Markets Union, the Commission's pivotal project to build a single market for capital in the EU. The Securitisation Regulation lays down common rules on securitisation and creates a European framework for simple, transparent and standardised securitisation.

This delegated act has been developed in accordance with Article 20(14) and 24(21) of the Securitisation Regulation and further specifies which underlying exposures in securitisation are deemed homogeneous. Homogeneity is one of the requirements with respect to simplicity, standardisation and transparency ('STS') of a securitisation transaction as laid down in the Securitisation Regulation. The application of the homogeneity requirement - together with other STS requirements – is a prerequisite for a more risk sensitive regulatory treatment of the securitisation, as established in the EU securitisation framework. The overarching objective of the homogeneity requirement is, in accordance with the Securitisation Regulation, to enable the investor to assess the underlying risks of the pool of the underlying exposures on the basis of common methodologies and parameters. Building on this objective, the delegated act establishes a set of four conditions for the underlying exposures to be considered homogeneous: (i) they have been underwritten according to similar underwriting standards; (ii) they are serviced according to similar servicing procedures; (iii) they fall within the same asset type; (iv) and, for a majority of asset types, they need to be homogeneous with reference to at least one homogeneity factor.

The delegated act specifies a list of asset types as well as a list of homogeneity factors available for the majority of the asset types. Those asset types reflect the most common types of underlying exposures securitised in the market. Those asset types are not all-encompassing and should not hinder financial innovation or existing market practice in originating exposures or structuring securitisations. Therefore, particular pools of underlying exposures that do not correspond to one of those well-established asset types should also be allowed to be considered a single asset type on the basis of the internal methodologies and parameters consistently applied by the originator or sponsor.

It is possible that one exposure could be assigned to more than one asset type. This notwithstanding, all underlying exposures in a particular securitisation should belong to one and the same asset type.

Given the wide-ranging scope of such asset types, it is required that the underlying exposures falling within one asset type should be homogeneous with reference to at least one of the homogeneity factors, which are designed to enable the investor to assess the underlying risks of the pool of the underlying exposures on the basis of common methodologies and parameters. This is with the exception of the asset type of trade receivables, and of credit facilities to individuals for personal, family and household consumption purposes, which are considered sufficiently homogeneous and where application of homogeneity factors would lead to excessive and undesirable concentrations in the pool of exposures.

It should be noted that according to Recital 29 of the Securitisation Regulation commercial mortgage-backed securities (CMBS) should not be considered to be STS securitisations due to the strong reliance of the repayment of the securitisation positions in the CMBS on the sale of assets securing the underlying exposures observed during the financial crisis. This issue is addressed by the STS requirements in accordance with Article 20(13) of Regulation (EU) No 2017/2402 for non-ABCP securitisation and Article 24(11) of that Regulation for ABCP securitisation and the use of loans secured with commercial mortgages as underlying

exposures of securitisations should therefore not preclude such securitisations from compliance with the homogeneity requirement.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2017/2402 of the European Parliament and of the Council of 12 December 2017 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 648/2012¹, and in particular the third subparagraph of Article 20(14) and the third subparagraph of Article 24(21) thereof,

Whereas:

- (1) In order to achieve robust due diligence by investors, and to facilitate their assessment of underlying risks in accordance with the aims of Regulation (EU) No 2017/2402, the underlying exposures of a securitisation should share similar risk profiles. It is therefore necessary to lay down uniform criteria to determine the homogeneity of a given pool of underlying exposures.
- (2) A pool of underlying exposures should only be considered homogenous where it contains exposures of a single asset type. Distinct asset types should therefore be identified so that exposures may be assigned accordingly. Market practice has already identified well established asset types to determine the homogeneity of a given pool of underlying exposures. However, in order to ensure that financial innovation is not limited and existing market practice is not hindered, particular pools of underlying exposures that do not correspond to one of those well-established asset types should also be allowed to be considered a single asset type on the basis of the internal methodologies and parameters consistently applied by the originator or sponsor. It is also possible that one exposure would allow for an assignment to more than one asset type. Notwithstanding, all underlying exposures in a particular securitisation should belong to the same asset type.
- (3) Underwriting standards are designed to measure and assess the credit risk associated with the underlying exposures to a securitisation and are therefore useful indicators of the homogeneity of those exposures. Accordingly, the application of similar underwriting standards should be used as an indicator that a pool of underlying exposures have similar risk profiles while the application of underwriting standards that are not similar may result in exposures with materially different risk profiles, even if such underwriting standards are all of a high quality.

¹ OJ L 347, 28.12.2017, p. 35.

- (4) The servicing of underlying exposures, including monitoring, collecting and administering cash receivables from the underlying exposures on the asset side of the SSPE, has a substantial impact on the cash flows expected from those underlying exposures and therefore facilitates cash flow projections and allows for statistically reliable assumptions by investors about payment and default characteristics. Irrespective of whether the servicing is administered by the originator, originators and third party or third parties, administering the servicing of the pool of underlying exposures by means of similar procedures, systems and governance should be a necessary condition for recognising the pool of underlying exposures as homogeneous. Underlying exposures in the pool should therefore be subject to servicing procedures that are similar enough to enable an investor to confidently assess the impact of servicing within similar parameters.
- (5) For certain asset types, investors may not be able to properly assess the underlying risks of the pool of the underlying exposures based only on the use of similar servicing and underwriting standards. Certain factors should therefore be applied to some asset types to ensure an accurate assessment of homogeneity. An originator or sponsor should therefore apply one or more relevant factors on a case-by-case basis, taking into account the type of securitisation (i.e. non-ABCP or ABCP securitisation), the characteristics specific to the particular pool of underlying exposures and whether investors are able to assess the underlying risks of the resulting pool on the basis of common methodologies and parameters. However, the asset types ‘credit facilities to individuals for personal, family or household consumption purposes’ and ‘trade receivables’ are deemed sufficiently homogeneous as asset types, provided that similar underwriting standards and servicing procedures are also applied. The application of additional requirements to those asset types in the form of homogeneity factors would lead to excessive concentrations in the securitised portfolios. The application of homogeneity factors should therefore not be required for those asset types.
- (6) Where the underlying exposures change their characteristics with respect to the homogeneity conditions, including the homogeneity factors, due to reasons outside of the control of the originator or the sponsor, and not due to error on the part of the originator, this should not be deemed to impact the homogeneity of the pool, as long as the exposures were otherwise compliant with the requirements of this Regulation at the time of origination of the securitisation and such change occurred after the origination of the securitisation. Given that the conditions for determining the homogeneity of underlying exposures are relevant to both ABCP and non-ABCP securitisations, uniform provisions should apply to both types of securitisations, irrespective of individual homogeneity factors which may be relevant only for certain asset types of ABCP or non-ABCP securitisations.
- (7) The provisions in this Regulation are closely linked since they deal with homogeneity for both ABCP and non-ABCP securitisations. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is appropriate to include both regulatory technical standards on homogeneity required by the Regulation (EU) No 2017/2402 in a single Regulation. This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (8) The European Banking Authority has worked in close cooperation with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) before submitting the draft technical

standards on which this Regulation is based. It has also conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010²,

HAS ADOPTED THIS REGULATION:

Article 1
Homogeneity of underlying exposures

For the purposes of Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, underlying exposures shall be deemed to be homogeneous where all of the following conditions are met:

- (a) they correspond to one of the following asset types:
 - (i) residential loans that are either secured by one or more mortgages on residential immovable property or that are fully guaranteed by an eligible protection provider among those referred to in Article 201(1) of Regulation (EU) No 575/2013 and qualifying for the credit quality step 2 or above as set out in Part Three, Title II, Chapter 2 of that Regulation;
 - (ii) commercial loans that are secured by one or more mortgages on commercial immovable property, including offices or other commercial premises;
 - (iii) credit facilities provided to individuals for personal, family or household consumption purposes;
 - (iv) credit facilities, including loans and leases, provided to any type of enterprise or corporation;
 - (v) auto loans and leases;
 - (vi) credit card receivables;
 - (vii) trade receivables;
 - (viii) other underlying exposures that are considered by the originator or sponsor to constitute a distinct asset type on the basis of internal methodologies and parameters;
- (b) they are underwritten in accordance with standards that apply similar approaches for assessing associated credit risk;
- (c) they are serviced in accordance with similar procedures for monitoring, collecting and administering cash receivables on the asset side of the SSPE;
- (d) one or more of the homogeneity factors are applied in accordance with Article 2.

For the purposes of point (a) of this Article, where an underlying exposure corresponds to more than one asset type, that exposure shall be assigned to only one asset type in that securitisation.

² 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).

Any changes to underlying exposures in a pool that is deemed to be homogenous pursuant to this Regulation shall not affect such homogeneity where such changes are due to reasons outside the control of the originator or sponsor.

Article 2

Homogeneity factors

1. The homogeneity factors for the asset type referred to in Article 1(a)(i) shall be the following:
 - (a) ranking of security rights, whereby the pool of underlying exposures consists of only one of the following:
 - (i) loans secured by first ranking security rights on a residential immovable property;
 - (ii) loans secured by lower and all prior ranking rights on a residential immovable property;
 - (iii) loans secured by lower ranking security rights on a residential immovable property;
 - (b) type of residential immovable property, whereby the pool consists of only one of the following types:
 - (i) income-producing properties;
 - (ii) non-income producing properties;
 - (c) jurisdiction, whereby the pool consists of exposures secured by residential immovable properties located in the same jurisdiction.
2. The homogeneity factors for the asset type referred to in Article 1(a)(ii) shall be the following:
 - (a) ranking of security rights, whereby the pool consists of only one of the following types of underlying exposures:
 - (i) loans secured by first ranking security rights on a commercial immovable property;
 - (ii) loans secured by lower and all prior ranking rights on a commercial immovable property;
 - (iii) loans secured by lower ranking security rights on a commercial immovable property;
 - (b) type of immovable commercial property, whereby the pool consists of only one of the following types:
 - (i) office buildings;
 - (ii) retail space;
 - (iii) hospitals;
 - (iv) storage facilities;
 - (v) hotels;
 - (vi) industrial properties;
 - (vii) other specific type of commercial immovable properties;

- (c) jurisdiction, whereby the pool consists of underlying exposures secured by properties located in the same jurisdiction.
3. The homogeneity factors for the asset type referred to in Article 1(a)(iv) shall be the following:
- (a) type of obligor, whereby the pool consists of only one of the following types of obligors:
 - (i) micro-, small- and medium-sized enterprises;
 - (ii) other types of enterprises and corporates;
 - (b) jurisdiction, whereby the pool consists of only one of the following types of underlying exposures:
 - (i) exposures secured by immovable property located in the same jurisdiction;
 - (ii) exposures to obligors with residence in the same jurisdiction.
4. The homogeneity factors for the asset type referred to in Article 1(a)(v) shall be the following:
- (a) type of obligor, whereby the pool consists of underlying exposures with only one of the following types of obligors:
 - (i) individuals;
 - (ii) micro-, small- and medium-sized enterprises;
 - (iii) other types of enterprises and corporates;
 - (iv) public sector entities;
 - (v) financial institutions;
 - (b) jurisdiction, whereby the pool consists of underlying exposures to obligors with residence in the same jurisdiction.
5. The homogeneity factors for the asset type referred to in Article 1(a)(vi) shall be the following:
- (a) type of obligor, whereby the pool consists of underlying exposures with only one of the following types of obligors:
 - (i) individuals;
 - (ii) micro-, small- and medium-sized enterprises;
 - (iii) other types of enterprises and corporates;
 - (iv) public sector entities;
 - (v) financial institutions;
 - (b) jurisdiction, whereby the pool consists of underlying exposures to obligors with residence in the same jurisdiction.
6. The homogeneity factors for the asset type referred to in Article 1(a)(viii) shall be any of the following:
- (a) type of obligor;
 - (b) ranking of security rights;
 - (c) type of immovable property;

(d) jurisdiction.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28.5.2019

For the Commission
The President
Jean-Claude JUNCKER