



Brussels, 22 September 2014
(OR. en)

13450/14

Interinstitutional File:
2011/0062 (COD)

EF 239
ECOFIN 834
CONSOM 175
DELECT 173

COVER NOTE

| | |
|------------------|---|
| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 19 September 2014 |
| To: | Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union |
| No. Cion doc.: | C(2014) 6515 final |
| Subject: | COMMISSION DELEGATED REGULATION (EU) No .../.. of 19.9.2014 supplementing Directive 2014/17/EU of the European Parliament and of the Council with regard to regulatory technical standards on the minimum monetary amount of the professional indemnity insurance or comparable guarantee to be held by credit intermediaries |

Delegations will find attached document C(2014) 6515 final.

Encl.: C(2014) 6515 final



Brussels, 19.9.2014
C(2014) 6515 final

COMMISSION DELEGATED REGULATION (EU) No .../..

of 19.9.2014

supplementing Directive 2014/17/EU of the European Parliament and of the Council with regard to regulatory technical standards on the minimum monetary amount of the professional indemnity insurance or comparable guarantee to be held by credit intermediaries

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 29(2)(a) of Directive 2014/17/ EU on credit agreements for consumers relating to residential immovable property ('the Directive') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying the minimum monetary amount of the professional indemnity insurance (PII) or comparable guarantee for mortgage credit intermediaries.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft 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 No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 29(2)(a) of Directive 2014/17/ EU. A consultation paper was published on the EBA internet site on 19 December 2013, and the consultation closed on 18 March 2014. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at <http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/draft-regulatory-technical-standards-rts-on-professional-indemnity-insurance-pii-for-mortgage-credit-intermediaries>, pages 12-17 of the Final Draft Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act sets the minimum monetary amount of the PII or comparable guarantee by specifying an amount for each individual claim (EUR 460 000) and an aggregate amount per calendar year for all claims (EUR 750 000).

This was the result of a policy approach that involved calculating the minimum monetary amount for the PII or comparable guarantee based on the arithmetic average of the existing national minimum amounts of the PII or comparable guarantees. Such an approach was chosen due to the current absence of data that would be required if alternative methods were

to be employed. As the Directive provides for the review of this delegated act by 21 March 2018, if additional data is available then, the approach to be followed will be reviewed then.

COMMISSION DELEGATED REGULATION (EU) No .../..

of 19.9.2014

supplementing Directive 2014/17/EU of the European Parliament and of the Council with regard to regulatory technical standards on the minimum monetary amount of the professional indemnity insurance or comparable guarantee to be held by credit intermediaries

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directive 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010¹, and in particular the second subparagraph of Article 29(2)(a) thereof,

Whereas:

- (1) Article 29(2)(a) of Directive 2014/17/EU requires credit intermediaries to hold a professional indemnity insurance ('PII') covering the territories in which they offer services, or some other comparable guarantee against liability arising from professional negligence.
- (2) While the requirement for credit intermediaries in the mortgages sector to hold PII or comparable guarantee is a novel regulatory requirement at Union level, that requirement exists at national level in certain Member States. Indeed, those jurisdictions with experience in PII requirements exhibit the highest shares of intermediated mortgage sales across the Union, a history of significant market penetration by credit intermediaries and, consequently, also follow a more specific approach to regulating that sector. Therefore, Union rules on the minimum amount of PII or comparable guarantee should be based on the experience of those jurisdictions when it comes to determining the most suitable approach for calculating that minimum amount.
- (3) That approach would be appropriate for the Union as a whole, including for jurisdictions with smaller mortgage markets. This is because claims against credit intermediaries are not correlated to the underlying mortgage credit amount, which may vary widely across the Union, but are based on professional negligence, the resultant detriment of which vary much less.

¹ OJ L 60, 28.2.2014, p.34.

- (4) The third subparagraph of Article 29(2)(a) of Directive 2014/17/EU requires a review of the minimum monetary amount of the professional indemnity insurance or comparable guarantee at regular intervals. Consequently, it could be possible in the future that other options or methodologies become more appropriate for determining the level of those obligations for credit intermediaries, especially with the availability of further historical data and increased supervisory experience related to the functioning of the professional indemnity insurance.
- (5) For a clear stipulation of the minimum monetary amount of the PII or comparable guarantee and to ensure a more harmonised approach throughout the Union, it would be appropriate to specify the application of that minimum amount per claim and per year. Directive 2002/92/EC of the European Parliament and of the Council² lays down a requirement for a per-year-and-per-claim minimum amount of PII or comparable guarantee. Consequently, most intermediaries carrying out insurance intermediation, and their insurers, are familiar with that approach and therefore it is appropriate to establish a similar system for credit intermediaries. Further, the majority of Member States whose national laws require professional indemnity insurance by credit intermediaries also use such an approach. Therefore, rules on PII for credit intermediaries should also propose such a per-year-and-per-claim distinction.
- (6) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (7) The European Banking Authority has 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 1093/2010 of the European Parliament and of the Council³,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum monetary amount of the professional indemnity insurance or comparable guarantee required to be held by credit intermediaries as referred to in the first subparagraph of Article 29(2)(a) of Directive 2014/17/EU shall be:

- (a) EUR 460 000 for each individual claim;
- (b) in aggregate, EUR 750 000 per calendar year for all claims.

² Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3).

³ 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).

Article 2

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, 19.9.2014

For the Commission
The President
José Manuel BARROSO