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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 13 November 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: C(2019) 8008 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 12.11.2019
supplementing Regulation (EU) 2017/2402 of the European Parliament and
of the Council of 12 December 2017 and laying down regulatory technical
standards specifying the information to be provided in accordance with the
STS notification requirements

Delegations will find attached document C(2019) 8008 final.

Encl.: C(2019) 8008 final



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

of 12.11.2019

supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 and laying down regulatory technical standards specifying the information to be provided in accordance with the STS notification requirements

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 27(6) of Regulation (EU) No 2017/2402 ('the Securitisation Regulation') mandates the European Securities and Markets Authority (ESMA) to develop draft regulatory technical standards (RTS) specifying the information that originators and sponsors are required to provide in order to comply with the STS notification requirements. ESMA was required to submit those draft standards to the Commission by 18 July 2018.

In accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 establishing the ESMA, 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 (EU) No 1095/2010, ESMA has carried out a public consultation on the RTS developed in accordance with Article 27(6) of the Securitisation Regulation. A consultation paper was published on 19 December 2017, and the consultation period closed on 19 March 2018. In accordance with the legal mandate, ESMA has closely cooperated with the European Banking Authority and the European Insurance and Occupational Pensions Authority while developing the RTS.

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, all relevant background information -notably the background and rationale of the draft technical standards, the impact assessment and the feedback on the public consultation- is included in the final report. The final report was approved by ESMA's Board of Supervisors on 16 July 2018 and published on ESMA's public website.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The Securitisation Regulation sets out a common regulatory framework for all securitisations and includes requirements to identify STS securitisations, distinguishing between "short term" (asset-backed commercial paper; ABCP) and "long term" (non-ABCP) securitisations. When a securitisation meets the STS criteria, the originator and sponsor may use the STS designation, provided that ESMA has been notified in compliance with these RTS. Institutional investors should be able to rely on the STS notification and the information included therein, while still conducting their due diligence, as per Article 5 of the Securitisation Regulation.

In order to provide investors with the appropriate level of information to assess the compliance of a securitisation with each of the STS criteria, the draft RTS distinguish between general information, required for identifying the securitisation, and information about the compliance of the securitisation with each individual STS criterion.

With regard to the individual STS criteria, the draft RTS sets out separate STS notifications for "short-term" and "long term" securitisations in order to properly take into account their specificities and to ensure their proper identification. Regarding "short-term" securitisations in particular, the draft RTS provides separate templates for transactions and programmes.

These RTS group the STS criteria into three categories, each of which is associated with a different degree of detail, depending on their complexity, in order to enable investors to understand how the securitisation complies with the STS requirements:

- (a) **Confirmation** from the originators and sponsors that the content of the STS criterion is already included in the underlying documentation for requirements that are self-explanatory and straightforward;
- (b) **Concise explanation** for requirements where the nature of the criterion (e.g. requirement setting the true sale mechanism; measures used to mitigate interest rates and currency risks) requires more than a simple confirmation;
- (c) **Detailed explanation** is necessary to ensure investors/potential investors are sufficiently well informed about whether and how compliance with more complex STS criteria is achieved. This shall apply in particular to those STS criteria that are addressed by the EBA guidelines on the harmonised interpretation of the STS criteria and by the RTS on the homogeneity of the underlying exposures.

Where concise or detailed explanations are required, it is preferable to avoid generalised statements and include only those explanations that are directly connected to the fulfilment of the transaction with the STS requirements.

Cross-reference to Prospectuses or other securitisation documentation

The originator and sponsor can choose to cross-reference a Prospectus, where one exists, if the information can be relevant to some of the STS criteria. This approach should facilitate access and help demonstrate compliance with the applicable STS requirements. Such cross-references can be used independently of the categories of explanation described above.

In cases where the required information is not available in a Prospectus or the information in the Prospectus is not sufficiently detailed or specific enough, the originator and sponsor can reference the securitisation documentation, submitted as per Article 7(1)(b) of the Securitisation Regulation. The use of such cross-references must be limited to facilitating access to information and demonstrating compliance with the STS requirements.

Private securitisations

In cases of private securitisations, originators and sponsors notify ESMA via two STS templates: a fully completed STS notification and an anonymised STS notification suitable for publication on ESMA website. The non-anonymised STS notification will not be published on ESMA's website and will be stored by ESMA in a secure register available and accessible to the relevant competent authorities. Originators and sponsors are expected to inform their respective competent authorities about the full contents of STS notification for private securitisations as per Article 27(1) of the Securitisation Regulation.

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

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supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 and laying down regulatory technical standards specifying the information to be provided in accordance with the STS notification requirements

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 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 Article 27(6) thereof,

Whereas:

- (1) Regulation (EU) 2017/2402 requires originators and sponsors to submit certain information to the European Securities Markets Authority (ESMA) where they consider that a securitisation meets the requirements regarding simple, transparent and standardised criteria (STS) set out in Articles 19 to 22 and Articles 23 to 26 of that Regulation. The information to be provided varies according to the different types of securitisations notified.
- (2) In order to allow competent authorities to perform their duties and allow investors and potential investors to perform their due diligence, sufficiently detailed information, relevant to the STS notification, is necessary to determine whether the STS criteria is satisfied. Specifically, the rationale for selecting a homogeneity factor and for excluding others should be included in the notification to inform the assessment of the homogeneity criterion. For certain STS criteria, simple confirmation of compliance is sufficient while other criteria require further information. It is therefore necessary to distinguish requirements for which a simple confirmation is sufficient from those for which a concise explanation or a detailed explanation is necessary.
- (3) Securitisations where no prospectus must be drawn up in accordance with Regulation (EU) 2017/1129 (private securitisations) allow parties to enter into securitisation transactions without disclosing sensitive commercial information. It is therefore appropriate to restrict the information to be published of the STS notifications of such securitisations to non-sensitive commercial information.
- (4) To facilitate access to information relevant to the STS requirements, originators and sponsors should be allowed to refer to the relevant prospectus drawn up for that securitisation in accordance with Regulation (EU) 2017/1129 of the European

¹ OJ L 347, 28.12.2017, p. 35.

Parliament and of the Council², other relevant underlying documentation as referred to in Article 7(1)(b) of Regulation (EU) 2017/2402 or any other document with information relevant to the STS notification.

- (5) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (6) ESMA 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 Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council³,

HAS ADOPTED THIS REGULATION:

Article 1

Information to be included in the STS notification

1. The information to be included in the STS notification pursuant to Article 27 of Regulation (EU) 2017/2402 shall be the following:

- (a) where the securitisation is a non-ABCP securitisation, the information specified in Annex I to this Regulation;
- (b) where the securitisation is an ABCP securitisation, the information specified in Annex II to this Regulation;
- (c) for an ABCP programme, the information specified in Annex III to this Regulation.

2. For securitisations where no prospectus must be drawn up pursuant to Regulation (EU) 2017/1129, the information to be included in the STS notification pursuant to paragraph 1 shall be accompanied by the following:

- (a) where the securitisation is a non-ABCP securitisation, the information specified in fields STSS9 and STSS10 of Annex I to this Regulation;
- (b) where the securitisation is an ABCP securitisation, the information specified in fields STSAT9 and STSAT10 of Annex II to this Regulation;
- (c) for an ABCP programme, the information specified in field STSAP9 of Annex III to this Regulation.

For the purposes of the third subparagraph of Article 27(1) of Regulation (EU) 2017/2402, the publication of the STS notification for those securitisations shall be limited to the information referred to in this paragraph.

² Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 4).

Article 2
Additional Information

Where the following documents include information relevant to the STS notification, a reference to the relevant parts of those documents may be provided in the “Additional information” column in Annexes I, II or III to this Regulation and, where such information is provided, that documentation shall be clearly identified:

- (d) a prospectus drawn up pursuant to Regulation (EU) 2017/1129;
- (e) any other underlying documentation referred to in Article 7(1)(b) of Regulation (EU) 2017/2402;
- (f) any other document with information relevant to the STS notification.

Article 3
Entry into force

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, 12.11.2019

For the Commission
The President
Jean-Claude JUNCKER