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THE EUROPEAN PARLIAMENT

THE COUNCIL

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Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 575/2013 as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis

REGULATION (EU) 2021/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Regulation (EU) No 575/2013
as regards adjustments to the securitisation framework to support the economic recovery
in response to the COVID-19 crisis

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 377, 9.11.2020, p. 1.

² OJ C 10, 11.1.2021, p. 30.

³ Position of the European Parliament of 25 March 2021 (not yet published in the Official Journal) and decision of the Council of

Whereas:

- (1) The COVID-19 crisis is severely affecting people, companies, health systems and Member State economies. In its Communication of 27 May 2020 entitled 'Europe's moment: Repair and Prepare for the Next Generation', the Commission stressed that liquidity and access to finance would continue to be a challenge in the months to come. It is therefore crucial to support the recovery from the severe economic shock caused by the COVID-19 pandemic by introducing targeted amendments to existing pieces of financial legislation.
- (2) Credit institutions and investment firms (institutions) will have a key role in contributing to the recovery. At the same time, they are likely to be affected by the deteriorating economic situation. Competent authorities have provided temporary capital, liquidity and operational relief to institutions to ensure that they can continue to fulfil their role in funding the real economy in a more challenging environment. For the same purpose, the European Parliament and the Council have already adopted certain targeted adjustments to Regulations (EU) No 575/2013¹ and (EU) 2019/876² of the European Parliament and of the Council in response to the COVID-19 crisis.

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

² Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

- (3) Securitisation is an important element of well-functioning financial markets since it contributes to diversifying the funding sources of institutions and releasing regulatory capital that can be reallocated to support further lending. Furthermore, securitisation provides institutions and other market participants with additional investment opportunities, thereby allowing portfolio diversification and facilitating the flow of funding to businesses and individuals both within Member States and on a cross-border basis throughout the Union.
- (4) It is important to reinforce the capacity of institutions to provide the necessary flow of funding to the real economy in the aftermath of the COVID-19 pandemic, while ensuring that adequate prudential safeguards are in place to preserve financial stability. Targeted changes to Regulation (EU) No 575/2013 as regards the securitisation framework would contribute to the achievement of those objectives and enhance the coherence and complementarity of that framework with the various measures taken at Union and national level to address the COVID-19 crisis.

- (5) The final elements of the Basel III framework published on 7 December 2017 impose, in case of securitisation exposures, a minimum credit rating requirement upon a limited set of protection providers only, namely entities that are not sovereign entities, public sector entities, institutions or other prudentially regulated financial institutions. It is therefore necessary to amend Article 249(3) of Regulation (EU) No 575/2013 to align it with the Basel III framework in order to enhance the effectiveness of national public guarantee schemes that support institutions' strategies to securitise non-performing exposures (NPEs) in the aftermath of the COVID-19 pandemic.
- (6) The current Union prudential framework for securitisation is designed on the basis of the most common features of typical securitisation transactions, namely performing loans. In its Opinion on the Regulatory Treatment of Non-Performing Exposure Securitisations¹ (the 'EBA Opinion'), the European Banking Authority (EBA) pointed out that the current prudential framework for securitisation set out in Regulation (EU) No 575/2013 leads to disproportionate capital requirements when applied to securitisations of NPEs because the Securitisation Internal Ratings Based Approach (SEC-IRBA) and the Securitisation Standardised Approach (SEC-SA) are not consistent with the specific risk drivers of NPEs. A specific treatment for the securitisation of NPEs should therefore be introduced, building upon the EBA Opinion as well as internationally agreed standards.

¹ Opinion of the European Banking Authority to the European Commission on the Regulatory Treatment of Non-Performing Exposure Securitisations, EBA-OP-2019-13, published on 23 October 2019.

- (7) Since the market for NPEs is very likely to grow and change quite substantially as a result of the COVID-19 crisis, the NPE securitisation market should be closely monitored and the prudential framework for NPE securitisation should be reassessed in the future in the light of a potentially larger pool of data.
- (8) In its ‘Report on STS framework for synthetic securitisation’ of 6 May 2020, EBA recommended that a specific framework be introduced for simple, transparent and standardised (STS) on-balance sheet securitisations. Given the lower agency risk and modelling risk of an STS on-balance sheet securitisation compared with a non-STS synthetic securitisation, an appropriate risk-sensitive calibration of own funds requirements for STS on-balance sheet securitisations, as considered in that report, should be introduced, taking into account the current preferential regulatory treatment of senior tranches of SME portfolios. EBA should be mandated to monitor the functioning of the STS on-balance sheet securitisation market. Greater recourse to the STS on-balance sheet securitisation promoted by a more risk sensitive treatment of the senior tranche of such securitisations would free up regulatory capital and could ultimately further expand the capacity of institutions to lend in a prudentially sound manner.
- (9) Grandfathering should be introduced for outstanding senior positions in synthetic securitisations that met the conditions for the preferential prudential treatment that applied before the date of entry into force of this amending Regulation.

- (10) In the context of the economic recovery from the COVID-19 crisis, it is essential that end-users can effectively hedge their risks so as to protect the robustness of their balance sheets. The Final report of the High Level Forum on the Capital Markets Union noted that an overly conservative Standardised Approach for Counterparty Credit Risk (SA-CCR) might have a detrimental impact on the availability and cost of financial hedges to end-users. In that regard, the Commission should review the calibration of the SA-CCR by 30 June 2021 while taking due account of the specificities of the European banking sector and economy, the international level playing field and any developments in international standards and fora.
- (11) Synthetic excess spread (SES) is a mechanism commonly used in the securitisation of certain asset classes for originators and investors to reduce the cost of protection and the exposure at risk, respectively. A dedicated prudential treatment of SES should be set out to prevent SES from being used for regulatory arbitrage purposes. In that context, regulatory arbitrage occurs when an originator institution provides credit enhancement to the securitisation positions held by protection providers by contractually designating certain amounts to cover losses of the securitised exposures during the life of the transaction, and such amounts, which encumber the originator institution's income statement in a manner similar to an unfunded guarantee, are not risk-weighted.

- (12) EBA should be mandated to develop draft regulatory technical standards to ensure a harmonised determination of the exposure value of SES. Those regulatory technical standards should be in place before the new prudential treatment becomes applicable. In order to avoid disruptions to the synthetic securitisations market, institutions should be given sufficient time to apply the new prudential treatment of SES.
- (13) As part of its report on the functioning of the prudential framework for securitisations the Commission should also review the new prudential treatment of SES in light of developments at international level.
- (14) Since the objectives of this Regulation, namely to maximise the capacity of institutions to lend and to absorb losses related to the COVID-19 crisis, while still ensuring their continued resilience, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (15) Regulation (EU) No 575/2013 should therefore be amended accordingly.

- (16) In view of the need to introduce targeted measures to support economic recovery from the COVID-19 crisis as quickly as possible, this Regulation should enter into force as a matter of urgency on the third day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EU) No 575/2013

Regulation (EU) No 575/2013 is amended as follows:

(1) in Article 242, the following point is added:

‘(20) “synthetic excess spread” means a synthetic excess spread as defined in point (29) of Article 2 of Regulation (EU) 2017/2402.’;

(2) Article 248 is amended as follows:

(a) in paragraph 1, the following point is added:

‘(e) the exposure value of a synthetic excess spread shall include, as applicable, the following:

(i) any income from the securitised exposures already recognised by the originator institution in its income statement under the applicable accounting framework that the originator institution has contractually designated to the transaction as synthetic excess spread and that is still available to absorb losses;

- (ii) any synthetic excess spread that is contractually designated by the originator institution in any previous periods and that is still available to absorb losses;
- (iii) any synthetic excess spread that is contractually designated by the originator institution for the current period and that is still available to absorb losses;
- (iv) any synthetic excess spread contractually designated by the originator institution for future periods.

For the purposes of this point, any amount that is provided as collateral or credit enhancement in relation to the synthetic securitisation and that is already subject to an own funds requirement in accordance with this Chapter shall not be included in the exposure value.’;

(b) the following paragraph is added:

- ‘4. EBA shall develop draft regulatory technical standards to specify how originator institutions are to determine the exposure value referred to in point (e) of paragraph 1, taking into account the relevant losses expected to be covered by the synthetic excess spread.

EBA shall submit those draft regulatory technical standards to the Commission by ... [six months after the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’;

(3) in Article 249(3), the first subparagraph is replaced by the following:

‘3. By way of derogation from paragraph 2 of this Article, the eligible providers of unfunded credit protection listed in point (g) of Article 201(1), shall have been assigned a credit assessment by a recognised ECAI which was credit quality step 2 or above at the time the credit protection was first recognised and is currently credit quality step 3 or above.’;

(4) in Article 256, the following paragraph is added:

‘6. For the purposes of calculating the attachment points (A) and detachment points (D) of a synthetic securitisation, the originator institution of the securitisation shall treat the exposure value of the securitisation position corresponding to synthetic excess spread referred to in point (e) of Article 248(1) as a tranche, and adjust the attachment points (A) and detachment points (D) of the other tranches it retains by adding that exposure value to the outstanding balance of the pool of underlying exposures in the securitisation. Institutions other than the originator institution shall not make this adjustment.’;

(5) the following article is inserted:

‘Article 269a

Treatment of non-performing exposures (NPE) securitisations

1. For the purposes of this Article:

(a) “NPE securitisation” means an NPE securitisation as defined in point (25) of Article 2 of Regulation (EU) 2017/2402;

- (b) “qualifying traditional NPE securitisation” means a traditional NPE securitisation where the non-refundable purchase price discount is at least 50 % of the outstanding amount of the underlying exposures at the time they were transferred to the SSPE.
2. The risk weight for a position in an NPE securitisation shall be calculated in accordance with Article 254 or 267. The risk weight shall be subject to a floor of 100 %, except when Article 263 is applied.
 3. By way of derogation from paragraph 2 of this Article, institutions shall assign a risk weight of 100 % to the senior securitisation position in a qualifying traditional NPE securitisation, except when Article 263 is applied.
 4. Institutions that apply the IRB Approach to any exposures in the pool of underlying exposures in accordance with Chapter 3 and that are not permitted to use own estimates of LGD and conversion factors for such exposures shall not use the SEC-IRBA for the calculation of risk-weighted exposure amounts for a position in an NPE securitisation and shall not apply paragraph 5 or 6.

5. For the purposes of Article 268(1), expected losses associated with exposures underlying a qualifying traditional NPE securitisation shall be included after deduction of the non-refundable purchase price discount and, where applicable, any additional specific credit risk adjustments.

Institutions shall perform the calculation in accordance with the following formula:

$$CR_{max} = RWEA_{IRB} \cdot 8\% + \max \left[EL_{IRB} - NRPPD \cdot \frac{EV_{IRB}}{EV_{Pool}} - SCRA_{IRB}; 0 \right] + RWEA_{SA} \cdot 8\%$$

where:

CR_{max} = the maximum capital requirement in the case of a qualifying traditional NPE securitisation;

$RWEA_{IRB}$ = the sum of risk-weighted exposure amounts of the underlying exposures subject to the IRB Approach;

EL_{IRB} = the sum of expected loss amounts of the underlying exposures subject to the IRB Approach;

$NRPPD$ = the non-refundable purchase price discount;

EV_{IRB} = the sum of exposure values of the underlying exposures that are subject to the IRB Approach;

EV_{Pool} = the sum of exposure values of all underlying exposures in the pool;

$SCRA_{IRB}$ = for originator institutions, the specific credit risk adjustments made by the institution with respect to those underlying exposures subject to the IRB Approach only if and to the extent these adjustments exceed the NRPPD; for investor institutions the amount is zero;

$RWEA_{SA}$ = the sum of risk-weighted exposure amounts of the underlying exposures subject to the Standardised Approach.

6. By way of derogation from paragraph 3 of this Article, where the exposure-weighted average risk weight calculated in accordance with the look-through approach set out in Article 267 is lower than 100 %, institutions may apply the lower risk weight, subject to a 50 % risk-weight floor.

For the purposes of the first subparagraph, originator institutions that apply the SEC-IRBA to a position and that are permitted to use own estimates of LGD and conversion factors for all underlying exposures subject to the IRB Approach in accordance with Chapter 3, shall deduct the non-refundable purchase price discount and, where applicable, any additional specific credit risk adjustments from the expected losses and exposure values of the underlying exposures associated with a senior position in a qualifying traditional NPE securitisation, in accordance with the following formula:

$$RW_{\max} = \frac{RWEA_{\text{IRB}} + \max\left[12.5 \cdot \left(EL_{\text{IRB}} - \text{NRPPD} \cdot \frac{EV_{\text{IRB}}}{EV_{\text{Pool}}} - SCRA_{\text{IRB}}\right); 0\right] + RWEA_{\text{SA}}}{\max\left[EV_{\text{IRB}} - \text{NRPPD} \cdot \frac{EV_{\text{IRB}}}{EV_{\text{Pool}}} - SCRA_{\text{IRB}}; 0\right] + EV_{\text{SA}}}$$

where:

- $RW_{\max}$ = the risk weight, before applying the floor, applicable to a senior position in a qualifying traditional NPE securitisation when the look-through approach is used;
- $RWEA_{\text{IRB}}$ = the sum of risk-weighted exposure amounts of the underlying exposures subject to the IRB Approach;
- $RWEA_{\text{SA}}$ = the sum of risk-weighted exposure amounts of the underlying exposures subject to the Standardised Approach;

- EL_{IRB} = the sum of expected loss amounts of the underlying exposures subject to the IRB Approach;
- $NRPPD$ = the non-refundable purchase price discount;
- EV_{IRB} = the sum of exposure values of the underlying exposures that are subject to the IRB Approach;
- EV_{pool} = the sum of exposure values of all underlying exposures in the pool;
- EV_{SA} = the sum of exposure values of the underlying exposures that are subject to the Standardised Approach;
- $SCRA_{IRB}$ = the specific credit risk adjustments made by the originator institution with respect to the underlying exposures subject to the IRB Approach only if and to the extent these adjustments exceed the $NRPPD$.

7. For the purposes of this Article, the non-refundable purchase price discount shall be calculated by subtracting the amount referred to in point (b) from the amount referred to in point (a):
- (a) the outstanding amount of the underlying exposures of the NPE securitisation at the time those exposures were transferred to the SSPE;
 - (b) the sum of the following:
 - (i) the initial sale price of the tranches or, where applicable, parts of the tranches of the NPE securitisation sold to third party investors; and
 - (ii) the outstanding amount, at the time the underlying exposures were transferred to the SSPE, of the tranches or, where applicable, parts of tranches of that securitisation held by the originator.

For the purposes of paragraphs 5 and 6, throughout the life of the transaction, the calculation of the non-refundable purchase price discount shall be adjusted downwards taking into account the realised losses. Any reduction in the outstanding amount of the underlying exposures resulting from realised losses shall reduce the non-refundable purchase price discount, subject to a floor of zero.

Where a discount is structured in such a way that it can be refunded in whole or in part to the originator, such discount shall not count as a non-refundable purchase price discount for the purposes of this Article.’;

- (6) Article 270 is replaced by the following:

‘Article 270

Senior positions in STS on-balance sheet securitisations

1. An originator institution may calculate the risk-weighted exposure amounts of a securitisation position in an STS on-balance sheet securitisation as referred to in Article 26a(1) of Regulation (EU) 2017/2402 in accordance with Article 260, 262 or 264 of this Regulation, as applicable, where that position meets both of the following conditions:
 - (a) the securitisation meets the requirements set out in Article 243(2);
 - (b) the position qualifies as the senior securitisation position.
2. EBA shall monitor the application of paragraph 1 in particular with regard to:
 - (a) the market volume and market share of STS on-balance sheet securitisations in respect of which the originator institution applies paragraph 1, across different asset classes;

- (b) the observed allocation of losses to the senior tranche and to other tranches of STS on-balance sheet securitisations, where the originator institution applies paragraph 1 in respect of the senior position held in such securitisations;
 - (c) the impact of the application of paragraph 1 on the leverage of institutions;
 - (d) the impact of the use of STS on-balance sheet securitisations in respect of which the originator institution applies paragraph 1 on the issuance of capital instruments by the respective originator institutions.
3. EBA shall submit a report on its findings to the Commission by ... [24 months after the date of entry into force of this amending Regulation].
4. By ... [30 months after the date of entry into force of this amending Regulation], the Commission shall, on the basis of the report referred to in paragraph 3, submit a report to the European Parliament and to the Council, on the application of this Article with particular regard to the risk of excessive leverage resulting from the use of STS on-balance sheet securitisations qualifying for the treatment in accordance with paragraph 1 and to the potential substitution of the issuance of capital instruments by originator institutions through that use. That report shall, where appropriate, be accompanied by a legislative proposal.’;

(7) in Article 430, the following paragraph is inserted:

‘1a. For the purposes of point (a) of paragraph 1 of this Article, when institutions report on own funds requirements on securitisations, the information they report shall include information on NPE securitisations benefitting from the treatment set out in Article 269a, on STS on-balance sheet securitisations that they originate, and on the breakdown of the assets underlying those STS on-balance sheet securitisations by asset class.’;

(8) the following article is inserted:

‘Article 494c

Grandfathering of senior securitisation positions

By way of derogation from Article 270, an originator institution may calculate the risk-weighted exposure amounts of a senior securitisation position in accordance with Article 260, 262 or 264 where both the following conditions are met:

- (a) the securitisation was issued before ... [date of entry into force of this amending Regulation];
- (b) the securitisation met, on ... [day before the date of entry into force of this amending Regulation], the conditions laid down in Article 270 as applicable at that date.’;

(9) in Article 501c, the introductory wording is replaced by the following:

‘EBA, after consulting the ESRB, shall, on the basis of available data and the findings of the Commission High-Level Expert Group on Sustainable Finance, assess whether a dedicated prudential treatment of exposures related to assets, including securitisations, or activities associated substantially with environmental and/or social objectives would be justified. In particular, EBA shall assess:’;

(10) the following articles are inserted:

‘Article 506a

CIUs with an underlying portfolio of euro area sovereign bonds

In close cooperation with the ESRB and EBA, the Commission shall publish a report by 31 December 2021 in which it shall assess whether changes to the regulatory framework are needed to promote the market for, and bank purchases of, exposures in the form of units or shares in CIUs with an underlying portfolio consisting exclusively of sovereign bonds of Member States whose currency is the euro, where the relative weight of each Member States’ sovereign bonds in the total portfolio of the CIU is equal to the relative weight of each Member States’ capital contribution to the ECB.

Article 506b

NPE securitisations

1. EBA shall monitor the application of Article 269a and shall evaluate the regulatory capital treatment of NPE securitisations having regard to the state of the market for NPEs in general and the state of NPE securitisation market in particular, and submit a report on its findings to the Commission by ... [18 months after the date of entry into force of this amending Regulation].
2. By ... [24 months after the date of entry into force of this amending Regulation], the Commission shall, on the basis of the report referred to in paragraph 1 of this Article, submit a report to the European Parliament and to the Council on the application of Article 269a. The Commission's report shall, where appropriate, be accompanied by a legislative proposal.';

(11) in Article 519a the following point is added:

- ‘(e) how environmental sustainability criteria could be integrated into the securitisation framework, including for exposures to NPE securitisations.’.

Article 2
Entry into force

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

By way of derogation from the first paragraph of this Article, points (2) and (4) of Article 1 shall apply from ... [12 months after entry into force of this amending Regulation].

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President
