



Council of the
European Union

060603/EU XXVII.GP
Eingelangt am 10/05/21

Brussels, 10 May 2021
(OR. en)

8615/21

EF 165
ECOFIN 423
SURE 23
DELECT 97

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 7 May 2021

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

No. Cion doc.: C(2021) 3103 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA

Delegations will find attached document C(2021) 3103 final .

Encl.: C(2021) 3103 final



EUROPEAN
COMMISSION

Brussels, 5.5.2021
C(2021) 3103 final

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

of 5.5.2021

supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 2017/2402 (“The Securitisation Regulation”) harmonises the legal framework governing the securitisation market and aims to instil higher market discipline and transparency. In view of the complexity of securitisation transactions, which involve many different players, there are a number of competent authorities charged with supervising the actions of those entities. In order to ensure a consistent and appropriate implementation of the new legal framework, the relationship between the different competent authorities needs to be clarified.

To that end, Article 36(8) of the Securitisation Regulation empowers the Commission to adopt, following submission of draft regulatory technical standards by the European Securities and Markets Authority (‘ESMA’), a delegated act specifying in greater detail the cooperation obligations and the information to be exchanged among competent authorities. The European Securities and Markets Authority was required to submit the draft standards to the Commission by 18 January 2019. The Board of Supervisors of the Authority adopted the draft technical standards and submitted it to the Commission on 8 January 2019.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with Article 10(1) of Regulation (EU) 1095/2010 (“ESMA Regulation”), the proposed draft regulatory technical standards was not subject to a public consultation, but to a targeted one with only those competent authorities falling under the scope of the Securitisation Regulation, as well as the European Supervisory Authorities. Taking into account the addressees of the proposed draft standards, the European Securities and Markets Authority considered that performing a public consultation would have been disproportionate in relation to the scope and impact of the proposed draft standards. For the above mentioned reasons, the proposed act was not subject to a cost-benefit analysis either.

A consultation paper was published on 16 July 2018, and the consultation period closed on 15 September 2018. The European Securities and Markets Authority also sought the opinion of the Securities and Markets Stakeholder Group, established in accordance with Articles 15(1) and 37(1) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council. 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 consultation – is included in the final report.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The text identifies the supervisory duties and the supervised entities that are in the scope of the obligations for cooperation, exchange of information and notification.

This delegated regulation specifies common procedures for requesting and replying to a request for cooperation. It is expected that requests for cooperation are made in writing and addressed to a designated contact point using the provided standardised forms. The text also contains provisions for unsolicited exchanges of information.

The delegated regulation specifies the confidentiality conditions under which the information should be exchanged or transmitted. In accordance with the legal acts granting them the powers to be used for carrying out their duties and the relevant legal provisions on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the competent authorities should, keep confidential any non-public information related to the provision of cooperation arrangements, information exchange or notification under the proposed draft standards.

The text provides clarification on the two types of notifications, foreseen in the Securitisation Regulation in order to ensure the proper and consistent functioning of these provisions.

Further in the same regard, the conditions for notifying a potential infringement or a suspected infringement have been specified.

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

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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) 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 36(8) thereof,

Whereas:

- (1) Article 36 of Regulation (EU) 2017/2402 requires the competent authorities referred to in Article 29 of Regulation (EU) 2017/2402 (the competent authorities) and the three European Supervisory Authorities (ESAs), namely the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), to cooperate closely with each other and exchange information in order to carry out their duties under Articles 30 to 34 of that Regulation. It also requires competent authorities who find that an entity has or may have infringed certain requirements of that Regulation to notify the entity's competent authority of their findings, and, where the infringement concerns an incorrect or misleading notification pursuant to Article 27(1) of that Regulation, to notify the competent authority of the entity that has been designated as the first contact point to inform, in turn, the ESAs.
- (2) The scope and nature of the cooperation, the exchange of information and the notifications required to take place under Article 36 of Regulation (EU) 2017/2402 should be sufficient to allow the competent authorities and the ESAs to discharge their supervisory, investigatory and sanctioning duties effectively. To this end, this Regulation sets out the minimum information which the competent authorities and the ESAs should exchange, including, where relevant, reports of their supervisory and enforcement activities.

¹ OJ L 347, 28.12.2017, p. 35.

- (3) It is essential that, subject to national and Union law governing the protection of confidentiality of information and the processing of personal data, competent authorities and the ESAs are able to cooperate and exchange information throughout the entire process of their activities.
- (4) In order to ensure that the cooperation and exchange of information under Article 36(1) of Regulation (EU) 2017/2402 takes place in an efficient and timely manner, it is appropriate to establish common procedures and forms to be used for the purposes of requesting cooperation or information and responding to such requests.
- (5) A common procedure and form should also be used by competent authorities and the ESAs to transmit information on a voluntary basis when they consider that information in their possession may be of use to another competent authority or an ESA. For example, that could include information held by the competent authority of an institutional investor or third party authorised to assess whether a securitisation complies with the simple, transparent and standardised (STS) requirements, where that information may be of use to the competent authority of the originator, sponsor, securitisation special purpose entity or original lender.
- (6) The common procedure and form to be used for voluntary exchanges of information should also be used for notifying findings of an infringement or suspected infringement under Article 36(4) and (5) of Regulation (EU) 2017/2402. This is in order to ensure the smooth and timely performance of the infringement notification duties under that Article.
- (7) The competent authorities and the ESAs should be required to ensure the confidentiality of any request for cooperation or information, any information actually exchanged or notified, and any notification made, and to ensure compliance with the rules on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- (8) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (9) ESMA did not conduct open public consultations on the draft regulatory standards on which this Regulation is based, nor did it analyse the potential costs and benefits, as this would have been highly disproportionate to the scope and impact of those standards, taking into account the fact that they principally concern competent authorities and the ESAs.
- (10) ESMA has 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 Council²,

² 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. 84).

HAS ADOPTED THIS REGULATION:

Article 1

Contact points

1. The competent authorities referred to in Article 29 of Regulation (EU) 2017/2402 ('the competent authorities') and the ESAs shall each designate contact points for the purposes of cooperating, exchanging information and making notifications pursuant to Article 36 of Regulation (EU) 2017/2402.
2. The competent authorities, the EBA and EIOPA shall communicate the details of the contact points designated by them to ESMA by [Publications Office, please insert a date 30 days after the date of entry into force of this Regulation]. They shall keep ESMA informed of any changes in those details.
3. ESMA shall maintain an up-to-date list of all contact points designated under this Article and update that list as necessary for use by the competent authorities, the EBA and EIOPA.
4. The most recent list referred to in paragraph 3 shall be used by the competent authorities and the ESAs for the purposes mentioned in paragraph 1.

Article 2

Means of communication

1. Except where otherwise stated in this Regulation, any forms to be used under this Regulation shall be transmitted in writing by post, fax or electronic means.
2. In determining the most appropriate means of communication in any particular case, due account shall be taken of confidentiality considerations, the time necessary for correspondence, the volume of material to be communicated, and ease of access to the information.

Article 3

Information to be exchanged

Upon a request made pursuant to Article 4, the competent authorities and the ESAs shall exchange at least the following information pursuant to Article 36(1) of Regulation (EU) 2017/2402:

- (a) information on the arrangements, processes and mechanisms referred to in Article 30(2) of that Regulation;
- (b) information on the risk management policies and procedures referred to in Article 30(3) of that Regulation;
- (c) information on the specific effects and material risks referred to in Article 30(4) of that Regulation;

- (d) information and, to the extent available, reports or extracts of reports on any investigation or proceedings commenced with respect to the situations listed in Article 32(1) of that Regulation;
- (e) information and, to the extent available, reports or extracts of reports on any criminal sanction, administrative sanction or remedial measure imposed or taken pursuant to Article 32 or 34 of that Regulation.

Article 4

Requests for cooperation or exchange of information ”

1. Requests for cooperation or exchange of information under Article 36(1) of Regulation (EU) 2017/2402 shall be made using the form set out in Annex I to this Regulation.
2. Where the requesting party believes that the request needs to be executed urgently, the request may be made orally provided that a request using the form set out in Annex I is subsequently transmitted without undue delay.
3. The requesting party shall specify the desired time period for reply and where appropriate indicate the urgency of the request.
4. Where the request for cooperation involves a request for information, the requesting party shall:
 - (a) specify, to the extent possible the details of the information sought, including the reasons why that information is considered to be relevant for the purposes of carrying out its duties under Articles 30 to 34 of Regulation (EU) 2017/2402;
 - (b) identify, where appropriate, any issue relating to the confidentiality of the information sought, including any special precaution for the collection of that information.

Article 5

Response to requests for cooperation or exchange of information

1. On receipt of a request made pursuant to Article 4, if the recipient party requires any clarification of the request, it shall seek that clarification from the requesting party as soon as possible using any means appropriate, whether oral or written. The requesting party shall provide the clarification promptly.
2. In responding to a request made pursuant to Article 4, the recipient of the request shall:
 - (a) use the form set out in Annex II to this Regulation;
 - (b) take reasonable steps within its powers to provide the cooperation or information requested;

- (c) execute the request in a manner that will allow any necessary regulatory action to proceed in a timely manner, taking into account the complexity of the request and any need to involve another competent authority or an ESA.

Article 6

Unsolicited exchange of information

1. Where competent authorities or the ESAs provide unsolicited information, they shall use the form set out in Annex III to this Regulation.
2. Where the sending party believes that the unsolicited information should be transmitted urgently, the information may be communicated orally provided that it is subsequently transmitted without undue delay using the form in Annex III.

Article 7

Notification obligations

1. Notifications under Article 36(4) and (5) of Regulation (EU) 2017/2402 shall be made using the form set out in Annex III to this Regulation.
2. Where the notifying party believes that the information needs to be transmitted urgently, the notification may be made orally provided that a notification using the form set out in Annex III is subsequently transmitted without undue delay.
3. The notifying competent authority shall specify the factual elements, the nature, materiality and duration of the infringement found or suspected and provide any other relevant information which could be of assistance to the notified competent authority.

Article 8

Confidentiality and permissible use of information

1. The competent authorities and the ESAs, in accordance with the legal acts granting them the powers to be used for the purposes of carrying out their duties under Regulation (EU) 2017/2402, shall keep confidential the existence and content of any request for cooperation or information provided under Article 36 of that Regulation, of any response to such a request, and of any notification or other information provided under that Article.
2. The competent authorities and the ESAs, in accordance with the legal acts referred to in paragraph 1, shall use information provided to them pursuant to Article 36 of Regulation (EU) 2017/2402 for the purposes of carrying out their duties under that Regulation only.

Article 9

Entry into force

This Regulation shall enter into force on the twentieth day following 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, 5.5.2021

For the Commission
The President
Ursula VON DER LEYEN



Brussels, 5.5.2021
C(2021) 3103 final

ANNEXES 1 to 3

ANNEXES

to the

Commission Delegated Regulation (EU) .../...

supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA

ANNEX I

Form for a request for cooperation and exchange of information

Request for cooperation and exchange of information

Reference number:

Date:

General information

FROM:

Member State (if applicable):

Competent authority:

Please tick the appropriate box(es)

- Supervisor of originator
- Supervisor of sponsor
- Supervisor of original lender
- Supervisor of SSPE
- Other (please specify)
- ESMA
- EBA
- EIOPA

Address: [insert address]

[Insert the contact details of the designated contact point under Article 1 of the Commission Delegated Regulation (EU) .../... [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA]³, for dealing with this request]

Name:

Telephone:

Email:

TO:

Member State (if applicable):

Competent authority:

Acting in its capacity as:

Please tick the appropriate box(es)

- Supervisor of originator
- Supervisor of sponsor
- Supervisor of original lender

³ COMMISSION DELEGATED REGULATION (EU) .../... of XXX supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA

- Supervisor of SSPE
- Other (please specify)
- ESMA
- EBA
- EIOPA

Address: [insert address]

[Insert the contact details of the designated contact point under Article 1 of Commission Delegated Regulation (EU) .../... [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA], for dealing with this request]

Name:

Telephone:

Email:

Dear [insert appropriate name]

In accordance with Article 4 of the Commission Delegated Regulation (EU) .../... [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA] your cooperation is sought in relation to the matter(s) set out in further detail below.

[I would be grateful for the above cooperation by] *[Insert indicative date for the reply]* OR [Given the urgency of the matter(s), I would be grateful for the above cooperation by] *[Insert date for the reply]* or, if that is not possible, for an indication as to when you anticipate being in a position to provide the cooperation which is sought.

Reasons for the request

.....

[Insert provision(s) of Regulation (EU) 2017/2402 under which the requesting competent authority, ESMA, the EBA or EIOPA is competent to deal with the matter]

The request concerns cooperation in

.....

[Insert description of the subject matter of the request, the purpose for which the request for cooperation is sought, contextual information for the request and an explanation for its relevance for fulfilling the requesting

competent authority's duties under Articles 30 to 34 of Regulation (EU) 2017/2402 and, where applicable, ESMA, the EBA or EIOPA's powers and tasks under that Regulation.]

Further to.....
.....
.....

[If applicable, insert details of previous request(s) for cooperation on the same matter, including the reference number(s), in order to enable it (them) to be identified]

Exchange of information (if applicable)

.....
.....
.....

[Please provide a detailed description of the specific information sought.]

Please note the following:

ISIN:

Securitisation identifier:

LEI code:

STS notification identifier as provided by ESMA.....

[If the request concerns information relating to originator(s), sponsor(s), original lender(s) or SSPE(s) please complete the above, as relevant.]

Confidentiality

.....
.....
.....

[If there are special considerations on the confidentiality of the information sought, please provide an indication of the level of confidentiality of the information contained in the request and any special precautions that have to be taken in collecting the information.]

Additional information (if applicable)

.....
.....
.....

[Please provide any additional information, if any.]

Yours sincerely,

[Name and signature]

ANNEX II

Form for the reply to a request for cooperation and exchange of information

Reply to a request for cooperation and exchange of information

Reference number:

Date:

General information

FROM:

Member State (if applicable):

Competent authority:

Acting in its capacity as:

Please tick the appropriate box(es)

- Supervisor of originator
- Supervisor of sponsor
- Supervisor of original lender
- Supervisor of SSPE
- Other (please specify)
- ESMA
- EBA
- EIOPA

Address: [insert address]

[Insert the contact details of the designated contact point under Article 1 of Commission Delegated Regulation (EU) .../... [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA], for dealing with this request]

Name:

Telephone:

Email

TO:

Member State (if applicable):

Competent authority:

Acting in its capacity as:

Please tick the appropriate box(es)

- Supervisor of originator
- Supervisor of sponsor
- Supervisor of original lender
- Supervisor of SSPE
- Other (please specify)
- ESMA

- EBA
- EIOPA

Address: [insert address]

[Insert the contact details of the designated contact point under Article 1 of Commission Delegated Regulation (EU) .../... [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA], for dealing with this request]

Name:
Telephone:
Email:

Dear [Insert appropriate name]

In accordance with Article 5 of *Commission Delegated Regulation (EU) .../...* [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA], your request dated [dd.mm.yyyy] with reference [insert request reference number] has been processed by us.

Information Gathered

.....
.....
.....

[If it is possible to provide the cooperation requested, including whether it involves a request for information please set out all the relevant details or provide an explanation of how the cooperation will be provided.]

The information provided is confidential and is disclosed to [insert name of the requesting competent authority, ESMA, the EBA or EIOPA] and on the basis that the information shall remain confidential in accordance with Article 8 of *Commission Delegated Regulation (EU) .../...* [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA].

The [Insert name of the requesting competent authority, ESMA, the EBA or EIOPA] shall observe the requirements of the Article 8 of *Commission Delegated Regulation (EU) .../...* [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA].

.....
.....
.....

[Insert any other necessary confidentiality warnings or any necessary restrictions on the permissible uses of information in compliance with the Union law.]

.....
.....
.....

[Where relevant, please explain any clarification you may require in relation to the cooperation or information

requested.]

Additional information (if applicable)

[Please provide, on you own initiative, any essential information that could further assist the cooperation for the purposes of the request.]

.....
.....
.....

Yours sincerely,

[Name and signature]

ANNEX III

**Form for the provision of unsolicited information and notification of infringement(s) or
suspected infringement(s)**

**Provision of unsolicited information or notification of infringement(s) or
suspected infringement(s)**

Reference number:

Date:

General information

FROM:

Member State (if applicable):

Competent authority:

Acting in its capacity as:

Please tick the appropriate box(es):

- Supervisor of originator
- Supervisor of sponsor
- Supervisor of original lender
- Supervisor of SSPE
- Other (please specify)
- ESMA
- EBA
- EIOPA

Address: [insert address]

[Insert the contact details of the contact point designated in accordance with Article 1 of Commission Delegated Regulation (EU) .../... [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA] for dealing with this request]

Name:

Telephone:

Email:

TO:

Member State:

Competent authority:

Acting in its capacity as:

Please tick the appropriate box(es)

1. Supervisor of originator
2. Supervisor of sponsor
3. Supervisor of original lender
4. Supervisor of SSPE
5. Other (please specify)

- 6. ESMA
- 7. EBA
- 8. EIOPA

Address: [insert address]

[Insert the contact details of the contact point designated in accordance with Article 1 of Commission Delegated Regulation (EU) .../... [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA], for dealing with this request]

Name:

Telephone:

Email:

SUBJECT MATTER:

- Unsolicited information pursuant to Article 6 of *Commission Delegated Regulation (EU) .../...* [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA]
- Notification pursuant to Article 36(4) of Regulation (EU) 2017/2402
- Notification to a competent authority pursuant to Article 36(5) of Regulation (EU) 2017/2402
- Notification to ESMA, the EBA and EIOPA pursuant to Article 36(5) Regulation (EU) 2017/2402

Dear [Insert appropriate name]

In accordance with Article(s) [please insert relevant Articles of Commission Delegated Regulation (EU) .../... [Commission Delegated Regulation (EU) .../... with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA]], please find attached the information in relation to the matter(s) set out in further detail below.

ISIN:

Securitisation identifier:

LEI code:

STS notification identifier as provided by ESMA.....

[If the information relating to originator(s), sponsor(s), original lender(s), or SSPE(s) or other, please complete the above as relevant]

Reasons for unsolicited information or notification of infringement(s) or suspected infringement(s)

The purpose of this is

.....
.....
.....
.....
.....

[Insert description of the subject matter of the information transmitted or the infringement(s) notified, including the nature, materiality and duration of the infringement found or suspected and provide any other relevant information that could be of assistance to the notified competent authority]

Further to.....
.....
.....
.....

[If applicable, insert details of previous information provided or notification(s) made on the same matter]

Yours sincerely,

[Name and signature]

