Commission Delegated Regulation (EU) 2020/1224 of 16 October 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2020/1224

of 16 October 2019

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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 648/2012[(1)], and in particular Articles 7(3) and 17(2)(a) thereof,

Whereas:

(1) The scope of Article 7(3) of Regulation (EU) 2017/2402 refers to all securitisations, including securitisations where a prospectus has to be drawn up pursuant to Regulation (EU) 2017/1129 of the European Parliament and of the Council[(2)] (commonly referred to as 'public' securitisations) and securitisations where a prospectus does not have to be drawn up (commonly referred to as 'private' securitisations). Article 17(2)(a) of Regulation (EU) 2017/2402 refers to securitisations making information available via a securitisation repository, which does not include private securitisations. To reflect this distinction, this Regulation has been organised into separate sections specifying the information concerning all securitisations and the information concerning public securitisations only.

(2) The disclosure of certain information relating to a securitisation is necessary for investors and potential investors so that they may effectively conduct due diligence and a proper risk-assessment of the credit risks of the underlying exposures, the model risk, the legal risk, the operational risk, the counterparty risk, the servicing risk, the liquidity risk, and the concentration risk. The information to be disclosed should also be sufficiently detailed so as to enable the entities listed in Article 17(1) of Regulation (EU) 2017/2402 to effectively monitor the overall functioning of securitisation markets, trends in underlying asset pools, securitisation structures, interconnectedness among

counterparties and the effects of securitisation in the broader macro-financial landscape of the Union.

(3) Securitisations accommodate many types of underlying exposures, such as loans, leases, debts, credits or other cash flow generating receivables. It is therefore appropriate to establish tailored reporting requirements for the underlying exposure types that are the most prominent in the Union, taking into account both outstanding amounts and presence across localities. Specific reporting requirements for 'esoteric' underlying exposures that do not conform to the most prominent types should also be established in order to ensure that all types of underlying exposures are disclosed.

(4) An underlying exposure type may fall within several possible sets of reporting requirements under this Regulation. In line with current market practice, information on a pool of underlying exposures that is comprised entirely of automobile underlying exposures should be reported using the corresponding template on automobile underlying exposures set out in the Annexes to this Regulation, regardless of whether the underlying automobile underlying exposures are loans or leases. Equally, in line with current market practice, information on a pool of underlying exposures where the underlying exposures are entirely leases should be reported using the corresponding template on leasing underlying exposures set out in the Annexes to this Regulation, unless the pool of underlying exposures is comprised entirely of automobile leases in which case the template on automobile underlying exposures set out in the Annexes to this Regulation should be used to report information.

(5) For reasons of consistency, terms relating to residential and commercial real estate lending which derive from Recommendation ESRB/2016/14 of the European Systemic Risk Board should be applied[(3)]. In line with that Recommendation, a property that has a mixed commercial and residential use should be considered as different properties, where it is feasible to make such a breakdown. Where such a breakdown is not possible, the property should be classified according to its dominant use.

(6) In order to provide continuity with existing templates for disclosures of certain information, terms relating to micro, small, and medium-sized enterprises which derive from Commission Recommendation (2003/361/EC)[(4)] should also be applied. Equally, terms relating to automobile, consumer, credit card, and leasing underlying exposures which derive from Commission Delegated Regulation (EU) 2015/3[(5)] should be applied.

(7) The granularity of the information to be disclosed for non-ABCP securitisation underlying exposures should reflect the loan/lease-level depth used in existing disclosure and data collection provisions. For due-diligence, monitoring, and supervisory purposes, disaggregated underlying exposure-level data is valuable for securitisation investors, potential investors, competent authorities and, with regard to public securitisations for the other entities listed in Article 17 of Regulation (EU) 2017/2402. Furthermore, disaggregated underlying exposure-level data is key to restoring public and investor confidence in securitisation markets. As regards ABCP, both the short-term nature of the liabilities and the presence of additional forms of support beyond underlying exposures reduce the need for loan/lease-level data.

(8) It is less useful for investors, potential investors, competent authorities and, with regard to public securitisations, the other entities listed in Article 17(1) of Regulation (EU) 2017/2402, to continue receiving information on 'inactive' exposures. This is because 'inactive' exposures, such as loans that have defaulted with no further recoveries expected or loans that have been redeemed, prepaid, cancelled, repurchased or substituted, no longer contribute to the risk profile of the securitisation. It is therefore appropriate that information on the transition of inactive exposures from 'active' to 'inactive' status is reported for reasons of transparency, but there is no need to report such exposures thereafter.

(9) It is possible that the reporting requirements under Regulation (EU) 2017/2402 require making available a substantial number and variety of documents and other items. In order to facilitate the tracking of such documentation, a set of item codes should be used by the originator, sponsor, or SSPE when making information available to a securitisation repository.

(10) In accordance with best practices for reporting requirements and in order to assist investors, potential investors, competent authorities and, with regard to public securitisations, the other entities listed in Article 17(1) of Regulation (EU) 2017/2402 in tracking the relevant information, standardised identifiers should be assigned to the information made available. Furthermore, those standardised identifiers should be unique and permanent so that the evolution of securitisation information may be effectively monitored over time.

(11) In order to allow investors, potential investors, competent authorities and, with regard to public securitisations, the other entities listed in Article 17(1) of Regulation (EU) 2017/2402 to satisfy their due diligence and other obligations under that Regulation, it is essential that information made available is complete, consistent and up-to-date. A change in the risk characteristics of the underlying exposures or in the aggregated cash flows generated by those underlying exposures or in other information set out in the investor report can materially impact the performance of the securitisation and have a significant effect on the prices of the tranches/bonds of that securitisation. Therefore, inside information or significant event information should be made available, for public securitisations, the moment information on underlying exposures and investor report is made available via a securitisation repository. Furthermore, for public securitisations, inside information or significant event information should include detailed information on the non-ABCP securitisation, the ABCP programme, the ABCP transaction, the tranches/bonds, the accounts, the counterparties and information on features that are relevant for synthetic or Collateralised Loan Obligation securitisations.

(12) For reasons of transparency, where information cannot be made available or is not applicable, the originator, sponsor, or SSPE should signal and explain, in a standardised manner, the specific reason and circumstances why the data is not reported. A set of 'No data' options should therefore be developed for that purpose, reflecting existing practices for disclosures of securitisation information.

(13) The set of 'No data' ('ND') options should only be used where information is not available for justifiable reasons, including where a specific reporting item is

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not applicable due to the heterogeneity of the underlying exposures for a given securitisation. The use of ND options should however in no way constitute a circumvention of reporting requirements. The use of ND options should therefore be objectively verifiable on an ongoing basis, in particular by providing explanations to competent authorities at any time, upon request, of the circumstances that have resulted in the use of the ND values.

(14) For reasons of accuracy, reported information should be up-to-date. Therefore, information made available should reference a time period that is as close as possible to the date of submission, having due regard to the operational steps to be undertaken by the originator, sponsor, or SSPE to organise and submit the required information.

(15) The provisions in this Regulation are closely linked, since they deal with the information about a securitisation that the originator, sponsor or SSPE of that securitisation are to make available to various parties as required under Regulation (EU) 2017/2402. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and efficient access to all the relevant information of a securitisation, it is necessary to include the regulatory technical standards in a single Regulation.

(16) This Regulation is based on the draft regulatory technical standards submitted by European Securities and Markets Authority (ESMA) to the Commission.

(17) ESMA has conducted open public consultation 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 Council[6],

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘reporting entity’ means the entity designated in accordance with the first subparagraph of Article 7(2) of Regulation (EU) 2017/2402;

(2) ‘data cut-off date’ means the reference date of the information being reported in accordance with this Regulation;

(3) ‘active underlying exposure’ means an underlying exposure which, at the data cut-off date, may be expected to generate cash inflows or outflows in the future;

(4) ‘inactive underlying exposure’ means an underlying exposure that has defaulted with no further recoveries expected or that has been redeemed, prepaid, cancelled, repurchased or substituted;

(5) ‘debt service coverage ratio’ means the annual rental income generated by commercial real estate that is wholly or partially financed by debt, net of taxes and net of any

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operational expenses to maintain the property's value, relative to the annual combined interest and principal repayment on a borrower's total debt over a given period on the loan secured by the property;

(6) 'interest coverage ratio' means the gross annual rental income, before operational expenses and taxes, accruing from a buy-to-let property or the net annual rental income accruing from a commercial real estate property or set of properties relative to the annual interest cost of the loan secured by the property or set of properties.

SECTION 1

Information to be made available for all securitisations

Article 2

Information on underlying exposures

1 The information to be made available for a non-ABCP securitisation pursuant to Article 7(1)(a) of Regulation (EU) 2017/2402 is specified in:

a Annex II for loans to private households secured by residential real estate, regardless of the purpose of those loans;

b Annex III for loans for the purposes of acquiring commercial real estate or secured by commercial real estate;

c Annex IV for corporate underlying exposures, including underlying exposures to micro, small- and medium-sized enterprises;

d Annex V for automobile underlying exposures, including both loans and leases to legal or natural persons backed by automobiles;

e Annex VI for consumer underlying exposures;

f Annex VII for credit card underlying exposures;

g Annex VIII for leasing underlying exposures;

h Annex IX for underlying exposures that do not fall within any of the categories set out in points (a) to (g).

For the purposes of point (a), residential real estate means any immovable property, available for dwelling purposes (including buy-to-let housing or property), acquired, built or renovated by a private household and that is not qualified as commercial real estate.

For the purposes of point (b), commercial real estate means any income-producing real estate, either existing or under development, and excludes social housing and property owned by end-users.

2 Where a non-ABCP securitisation includes more than one of the types of underlying exposures listed in paragraph 1, the reporting entity for that securitisation shall make available the information specified in the applicable Annex for each underlying exposure type.

3 The reporting entity for a non-performing exposure securitisation shall make available the information specified in:

a the Annexes referred to in points (a) to (h) of paragraph 1, as relevant to the underlying exposure type;

b Annex X.