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Commission Delegated Regulation (EU) 2019/1851 of 28 May 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/1851

of 28 May 2019

supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation

(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 the third subparagraph of Article 20(14) and the third subparagraph of Article 24(21) thereof,

Whereas:

(1) In order to achieve robust due diligence by investors, and to facilitate their assessment of underlying risks in accordance with the aims of Regulation (EU) 2017/2402, the underlying exposures of a securitisation should share similar risk profiles. It is therefore necessary to lay down uniform criteria to determine the homogeneity of a given pool of underlying exposures.

(2) A pool of underlying exposures should only be considered homogenous where it contains exposures of a single asset type. Distinct asset types should therefore be identified so that exposures may be assigned accordingly. Market practice has already identified well established asset types to determine the homogeneity of a given pool of underlying exposures. However, in order to ensure that financial innovation is not limited and existing market practice is not hindered, particular pools of underlying exposures that do not correspond to one of those well-established asset types should also be allowed to be considered a single asset type on the basis of the internal methodologies and parameters consistently applied by the originator or sponsor. It is also possible that one exposure would allow for an assignment to more than one asset type. Notwithstanding, all underlying exposures in a particular securitisation should belong to the same asset type.

(3) Underwriting standards are designed to measure and assess the credit risk associated with the underlying exposures to a securitisation and are therefore useful indicators

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of the homogeneity of those exposures. Accordingly, the application of similar underwriting standards should be used as an indicator that a pool of underlying exposures have similar risk profiles while the application of underwriting standards that are not similar may result in exposures with materially different risk profiles, even if such underwriting standards are all of a high quality.

(4) The servicing of underlying exposures, including monitoring, collecting and administering cash receivables from the underlying exposures on the asset side of the SSPE, has a substantial impact on the cash flows expected from those underlying exposures and therefore facilitates cash flow projections and allows for statistically reliable assumptions by investors about payment and default characteristics. Irrespective of whether the servicing is administered by the originator, originators and third party or third parties, administering the servicing of the pool of underlying exposures by means of similar procedures, systems and governance should be a necessary condition for recognising the pool of underlying exposures as homogeneous. Underlying exposures in the pool should therefore be subject to servicing procedures that are similar enough to enable an investor to confidently assess the impact of servicing within similar parameters.

(5) For certain asset types, investors may not be able to properly assess the underlying risks of the pool of the underlying exposures based only on the use of similar servicing and underwriting standards. Certain factors should therefore be applied to some asset types to ensure an accurate assessment of homogeneity. An originator or sponsor should therefore apply one or more relevant factors on a case-by-case basis, taking into account the type of securitisation (i.e. non-ABCP or ABCP securitisation), the characteristics specific to the particular pool of underlying exposures and whether investors are able to assess the underlying risks of the resulting pool on the basis of common methodologies and parameters. However, the asset types 'credit facilities to individuals for personal, family or household consumption purposes' and 'trade receivables' are deemed sufficiently homogeneous as asset types, provided that similar underwriting standards and servicing procedures are also applied. The application of additional requirements to those asset types in the form of homogeneity factors would lead to excessive concentrations in the securitised portfolios. The application of homogeneity factors should therefore not be required for those asset types.

(6) Where the underlying exposures change their characteristics with respect to the homogeneity conditions, including the homogeneity factors, due to reasons outside of the control of the originator or the sponsor, and not due to error on the part of the originator, this should not be deemed to impact the homogeneity of the pool, as long as the exposures were otherwise compliant with the requirements of this Regulation at the time of origination of the securitisation and such change occurred after the origination of the securitisation. Given that the conditions for determining the homogeneity of underlying exposures are relevant to both ABCP and non-ABCP securitisations, uniform provisions should apply to both types of securitisations, irrespective of individual homogeneity factors which may be relevant only for certain asset types of ABCP or non-ABCP securitisations.

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(7) The provisions in this Regulation are closely linked since they deal with homogeneity for both ABCP and non-ABCP securitisations. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is appropriate to include both regulatory technical standards on homogeneity required by the Regulation (EU) 2017/2402 in a single Regulation. This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.

(8) The European Banking Authority has worked in close cooperation with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) before submitting the draft technical standards on which this Regulation is based. It has also 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 Council[(2)],

HAS ADOPTED THIS REGULATION:

Article 1

Homogeneity of underlying exposures

For the purposes of Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, underlying exposures shall be deemed to be homogeneous where all of the following conditions are met:

(a) they correspond to one of the following asset types:

(i) residential loans that are either secured by one or more mortgages on residential immovable property or that are fully guaranteed by an eligible protection provider among those referred to in Article 201(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(3)]and qualifying for the credit quality step 2 or above as set out in Part Three, Title II, Chapter 2 of that Regulation;

(ii) commercial loans that are secured by one or more mortgages on commercial immovable property, including offices or other commercial premises;

(iii) credit facilities provided to individuals for personal, family or household consumption purposes;

(iv) credit facilities, including loans and leases, provided to any type of enterprise or corporation;

(v) auto loans and leases;

(vi) credit card receivables;

(vii) trade receivables;

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(viii) other underlying exposures that are considered by the originator or sponsor to constitute a distinct asset type on the basis of internal methodologies and parameters;

(b) they are underwritten in accordance with standards that apply similar approaches for assessing associated credit risk;

(c) they are serviced in accordance with similar procedures for monitoring, collecting and administering cash receivables on the asset side of the SSPE;

(d) one or more of the homogeneity factors are applied in accordance with Article 2.

For the purposes of point (a) of this Article, where an underlying exposure corresponds to more than one asset type, that exposure shall be assigned to only one asset type in that securitisation.

Any changes to underlying exposures in a pool that is deemed to be homogenous pursuant to this Regulation shall not affect such homogeneity where such changes are due to reasons outside the control of the originator or sponsor.

Article 2

Homogeneity factors

1 The homogeneity factors for the asset type referred to in Article 1(a)(i) shall be the following:

a ranking of security rights, whereby the pool of underlying exposures consists of only one of the following:

(i) loans secured by first ranking security rights on a residential immovable property;

(ii) loans secured by lower and all prior ranking rights on a residential immovable property;

(iii) loans secured by lower ranking security rights on a residential immovable property;

b type of residential immovable property, whereby the pool consists of only one of the following types:

(i) income-producing properties;

(ii) non-income producing properties;

c jurisdiction, whereby the pool consists of exposures secured by residential immovable properties located in the same jurisdiction.

2 The homogeneity factors for the asset type referred to in Article 1(a)(ii) shall be the following:

a ranking of security rights, whereby the pool consists of only one of the following types of underlying exposures:

(i) loans secured by first ranking security rights on a commercial immovable property;