Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) No 1075/2013 of the European Central Bank. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Regulation (EU) No 1075/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (recast) (ECB/2013/40)

REGULATION (EU) No 1075/2013 OF THE EUROPEAN CENTRAL BANK

of 18 October 2013

concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions

(recast)

(ECB/2013/40)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 5 thereof,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank[(1)], and in particular Articles 5(1) and 6(4) thereof,

Having regard to the opinion of the European Commission,

Whereas:

(1) Since Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (ECB/2008/30)[(2)] needs to be substantially amended, in particular in light of Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union[(3)], it should be recast in the interests of clarity.

(2) Regulation (EC) No 2533/98 provides in Article 2(1) that, for the fulfilment of its statistical reporting requirements, the European Central Bank (ECB), assisted by the national central banks (NCBs), has the right to collect statistical information within the limits of the reference reporting population and of what is necessary to carry out the tasks of the European System of Central Banks (ESCB). It follows from Article 2(2)(a) of Regulation (EC) No 2533/98 that financial vehicle corporations engaged in securitisation transactions (hereinafter 'FVCs') form part of the reference reporting population for the purposes of fulfilling the ECB's statistical reporting requirements, inter alia, in the field of monetary and financial statistics. Furthermore, Article 3 of Regulation (EC) No 2533/98 requires the ECB to specify the actual reporting population within the limits of the reference reporting population and entitles it to fully or partly exempt specific classes of reporting agents from its statistical reporting requirements.

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(3) The purpose of FVC data is to provide the ECB with adequate statistics on the financial activities of the FVC sub-sector in the Member States whose currency is the euro (hereinafter the 'euro area Member States'), which are viewed as one economic territory.

(4) Given the close links between the securitisation activities of FVCs and monetary financial institutions (MFIs), consistent, complementary and integrated reporting of FVCs and MFIs is required. Therefore, the statistical information provided in accordance with this Regulation needs to be considered together with the data requirements for MFIs on securitised loans, as laid down in Regulation (EU) No 1071/2013 of the European Central Bank of 24 September 2013 concerning the balance sheet of the monetary financial institutions sector (ECB/2013/33)[(4)].

(5) The integrated reporting approach of FVCs and MFIs and the derogations provided for in this Regulation aim at minimising the reporting burden for reporting agents and avoiding overlaps in the reporting of statistical information by FVCs and MFIs.

(6) NCBs should be entitled to exempt FVCs from statistical reporting requirements that would cause unreasonably high costs compared to their statistical benefit.

(7) Although regulations adopted by the ECB under Article 34.1 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') do not confer any rights or impose any obligations on Member States whose currency is not the euro (hereinafter the 'non-euro area Member States'), Article 5 of the Statute of the ESCB applies to both euro and non-euro area Member States. Recital 17 to Regulation (EC) No 2533/98 refers to the fact that Article 5 of the Statute of the ESCB, together with Article 4(3) of the Treaty on European Union, implies an obligation to design and implement at national level all the measures that the non-euro area Member States consider appropriate to collect the statistical information needed to fulfil the ECB's statistical reporting requirements and make timely preparations in the field of statistics in order to become euro area Member States.

(8) The standards for the protection and use of confidential statistical information laid down in Article 8 of Regulation (EC) No 2533/98 apply.

(9) Article 7(1) of Regulation (EC) No 2533/98 provides that the ECB has the power to impose sanctions on reporting agents which fail to comply with statistical reporting requirements set out in ECB regulations or decisions,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

(1) 'FVC' means an undertaking which is constituted pursuant to national or Union law under one of the following:

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(i) contract law as a common fund managed by management companies;

(ii) trust law;

(iii) company law as a public or private limited company;

(iv) any other similar mechanism;

and whose principal activity meets both of the following criteria:

(a) it intends to carry out, or carries out, one or more securitisation transactions and its structure is intended to isolate the payment obligations of the undertaking from those of the originator, or the insurance or reinsurance undertaking; and

(b) it issues, or intends to issue, debt securities, other debt instruments, securitisation fund units, and/or financial derivatives (hereinafter the 'financing instruments') and/or legally or economically owns, or may own, assets underlying the issue of financing instruments that are offered for sale to the public or sold on the basis of private placements.

This definition does not include:

(a) monetary financial institutions (MFIs) as defined in Article 1 of Regulation (EU) No 1071/2013 (ECB/2013/33);

(b) investment funds (IFs) as defined in Article 1 of Regulation (EU) No 1073/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of investment funds (ECB/2013/38)[(5)];

(c) insurance undertakings or reinsurance undertakings as defined in Article 13 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)[(6)];

(d) managers of alternative investment funds which manage and/or market alternative investment funds as defined in Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers that fall under the scope of Directive 2011/61/EU pursuant to Article 2 thereof[(7)];

(2) 'securitisation' means a transaction or scheme whereby an entity that is separate from the originator or insurance or reinsurance undertaking and is created for or serves the purpose of the transaction or scheme issues financing instruments to investors, and one or more of the following takes place:

(a) an asset or pool of assets, or part thereof, is transferred to an entity that is separate from the originator and is created for or serves the purpose of the transaction or scheme, either by the transfer of legal title or beneficial interest of those assets from the originator or through sub-participation;

(b) the credit risk of an asset or pool of assets, or part thereof, is transferred through the use of credit derivatives, guarantees or any similar mechanism to the investors in the financing instruments issued by an entity that is separate from the originator and is created for or serves the purpose of the transaction or scheme;

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(c) insurance risks are transferred from an insurance or reinsurance undertaking to a separate entity that is created for or serves the purpose of the transaction or scheme, whereby the entity fully funds its exposure to such risks through the issuance of financing instruments, and the repayment rights of the investors in those financing instruments are subordinated to the reinsurance obligations of the entity;

Where such financing instruments are issued, they do not represent the payment obligations of the originator, or insurance or reinsurance undertaking;

(3) 'originator' means the transferor of an asset or a pool of assets, and/or the credit risk of the asset or pool of assets to the securitisation structure;

(4) 'reporting agent' has the same meaning as defined in Article 1 of Regulation (EC) No 2533/98;

(5) 'resident' has the same meaning as defined in Article 1 of Regulation (EC) No 2533/98. For the purposes of this Regulation, if a legal entity lacks a physical dimension its residence shall be determined by the economic territory under whose laws the entity is incorporated. If the entity is not incorporated, legal domicile shall be used as a criterion, namely the country whose legal system governs the creation and continued existence of the entity;

(6) 'relevant NCB' means the NCB of the euro area Member State in which the FVC is resident;

(7) 'taking up business' means any activity, including any preparatory measures, related to the securitisation, other than merely establishing an entity that is not expected to commence the securitisation activity in the next six months. Any activity by the FVC taken after the securitisation activity becomes foreseeable means taking up business.

Article 2

Reporting population

1 FVCs resident in the territory of a euro area Member State shall form the reference reporting population. The reference reporting population shall be subject to the obligation laid down in Article 3(2).

2 The actual reporting population shall consist of the reference reporting population excluding those FVCs which have been fully exempted from statistical reporting requirements pursuant to Article 5(1)(c). The actual reporting population shall be subject to the statistical reporting requirements laid down in Article 4, subject to the derogations laid down in Article 5. The FVCs that are subject to reporting their annual financial statement pursuant to Article 5(3) or that are subject to ad hoc reporting obligations pursuant to Article 5(5) shall also form part of the actual reporting population.

3 If an FVC does not have legal personality under its national law, the persons legally entitled to represent the FVC or, in the absence of formalised representation, persons that under the applicable national laws are liable for acts of the FVC, shall be considered reporting agents under this Regulation.

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Article 3

List of FVCs for statistical purposes

1 The Executive Board shall establish and maintain, for statistical purposes, a list of FVCs that form the reference reporting population subject to this Regulation. FVCs shall submit to the NCBs the data that the NCBs require in accordance with Guideline ECB/2007/9 of 1 August 2007 on monetary, financial institutions and markets statistics[8]. The NCBs and the ECB shall make this list and its updates available in an appropriate form, including by electronic means, via the internet or, at the request of the reporting agents concerned, in paper form.

2 An FVC shall inform the relevant NCB of its existence within one week from the date on which it has taken up business irrespective of whether it expects to be subject to any of the statistical reporting requirements under this Regulation.

3 If the latest accessible electronic version of the list referred to in paragraph 1 is incorrect, the ECB shall not impose sanctions on a reporting agent which did not properly fulfil its statistical reporting requirements to the extent that the requirement set out in paragraph 2 was met and that the reporting agent relied on the incorrect list in good faith.

Article 4

Quarterly statistical reporting requirements and reporting rules

1 The actual reporting population shall provide to the relevant NCB data on outstanding amounts, financial transactions and write-offs/write-downs on the assets and liabilities of FVCs on a quarterly basis, in accordance with Annexes I and II.

2 NCBs may collect the statistical information on securities issued and held by FVCs necessary to fulfil the statistical reporting requirements under paragraph 1 on a security-by-security basis, to the extent that the data referred to in paragraph 1 can be derived according to minimum statistical standards as specified in Annex III. Without prejudice to the timeliness requirements set out in Article 6, NCBs may require the provision of security-by-security data on financial transactions in debt securities held by FVCs in accordance with one of the approaches listed in Section 2 of Part I of Annex I of Regulation (EU) No 1011/2012 of the European Central Bank (ECB/2012/24)[9].

3 Without prejudice to the reporting rules laid down in Annex II, all assets and liabilities of FVCs shall be reported under this Regulation in accordance with the reporting rules laid down in the relevant national law transposing Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions[10]. The accounting rules in the relevant national law transposing the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies[11] shall apply to FVCs that do not fall within the scope of the national law transposing Directive 86/635/EEC. Any other relevant national or international accounting standards or practices shall apply to FVCs not falling under national law transposing either of these directives.

4 Where paragraph 3 requires the reporting of instruments on a mark-to-market basis, NCBs may exempt FVCs from reporting these instruments on a mark-to-market basis where the costs entailed by the FVC would be unreasonably high. In this case the FVCs shall apply the valuation used for the purpose of the investor reports.