

Chapter 4

Commission Delegated Regulation (EU) 2020/1230

Preamble

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, and in particular the third subparagraph of Article 10(7) thereof insofar as it relates to points (b) and (c) of the first subparagraph of that paragraph,

01/01/2021

Whereas:

(1) Article 7(2) of Regulation (EU) 2017/2402 requires the information for a securitisation transaction to be made available by means of a securitisation repository or, where no such repository is registered in accordance with Article 10 of that Regulation, by means of a website meeting certain requirements. Article 10 of Regulation (EU) 2017/2402 sets out the conditions and procedure for the registration of securitisation repositories, including the requirement to submit either an application for registration or, in the case of trade repositories already registered under Chapter 1 of Title VI of Regulation (EU) No 648/2012 of the European Parliament and of the Council or under Chapter III of Regulation (EU) 2015/2365 of the European Parliament and of the Council, an application for extension of registration for the purposes of Article 7 of Regulation (EU) 2017/2402.

(2) In order to minimise additional operational costs for market participants, the rules for the registration of securitisation repositories, including the rules for registration by means of an extension of registration for the purposes of Article 7 of Regulation (EU) 2017/2402, should build on existing infrastructures, operational processes and formats introduced in connection with the reporting of securities financing transactions and derivative contracts. The rules on registration should, however, also reflect the specificities of securitisations, including complexities associated with hosting securitisation data and documentation and should reflect recent market developments, such as the common use of Legal Entity Identifiers, which improves the organisation and classification of information on legal entities to be provided in the application. For clarity and ease of reference for applicants, it is also desirable for the rules on registration to follow the order of the relevant requirements in Regulation (EU) 2017/2402.

(3) Securitisations are highly complex instruments involving many different types of information, including information on the features of underlying exposures, information on their cash flows, information on the structure of the securitisation and information on the legal and operational arrangements entered into with third parties. It is therefore important that a prospective securitisation repository is able to demonstrate sufficient knowledge and working experience with securitisations, and the capacity to receive, process and make available the relevant information set out in Regulation (EU) 2017/2402. Prospective securitisation repositories should also be able to demonstrate that their staff, systems, controls and procedures are adequate for ensuring compliance with the requirements set out in Regulation (EU) 2017/2402.

(4) Securitisation repositories may provide services, referred to as "ancillary securitisation services", which are directly related to and arise from the delivery of services for which registration as a securitisation repository is required under Regulation (EU) 2017/2402 (referred to as "core securitisation services"). For example, securitisation repositories may provide research or consultancy services to a prospective securitisation issuer which make use of the securitisation data available to the securitisation repository. Securitisation repositories may also provide ancillary services that are neither directly related to, nor arise from the delivery of core securitisation services (ancillary non-securitisation services). However, the use of common resources within a securitisation repository for the provision of both core securitisation services and ancillary securitisation services, or indeed ancillary non-securitisation services, could lead to contagion of operational risks across those services. Services involving the validation, reconciliation, processing or record-keeping of information may therefore require an effective means of operational separation in order to avoid such contagion. On the other hand, practices such as common front-end systems, a common access point to information or use of the same staff working in sales, compliance or a client services helpdesk may be considered less prone to contagion and hence will not necessarily require operational separation. Applicants for registration as a securitisation repository should therefore be required to demonstrate that they have established an appropriate level of operational separation between the resources, systems and procedures used in those business lines that are involved in the provision of core securitisation services and the resources, systems and procedures used in other business lines involved in the provision of ancillary services, regardless of whether those other business lines are run by the securitisation repository, an affiliated entity, or another entity.

(5) Article 10(5) of Regulation (EU) 2017/2402 envisages a simplified application for an extension of registration, where trade repositories registered under Regulation (EU) No 648/2012 or under Regulation (EU) 2015/2365 apply for their existing registration as a trade repository to be extended for the purposes of Article 7 of Regulation (EU) 2017/2402. Therefore, to avoid any duplication of requirements, the information to be provided by a trade repository applying for an extension of registration should be confined to details about the adaptations necessary to ensure compliance with Regulation (EU) 2017/2402.

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

(7) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, ESMA has conducted an 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 that Regulation,

HAS ADOPTED THIS REGULATION: