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COMMISSION DELEGATED REGULATION (EU) 2024/1703

of 11 March 2024

amending Delegated Regulation (EU) 2020/1732 as regards harmonisation of certain aspects of fees charged by the European Securities and Markets Authority to securitisation repositories

(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 Article 16(2) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2020/1732 ([2]) specifies the type and amount of fees charged by the European Securities and Markets Authority (ESMA) to securitisation repositories, and the payment modalities thereof.

(2) In 2018, both the Commission's Internal Audit Service's review and the European Court of Auditors' audit ([3]) concluded that ESMA's fee funding system is unnecessarily complex. To simplify the collection of fees and reduce risks linked to the incorrect calculation or inefficient allocation of fees, it is necessary to ensure consistency of technical aspects across the different delegated acts on fees charged by ESMA.

(3) To fully cover ESMA's expenditures relating to the supervision of securitisation repositories, the annual supervisory fees should be determined on the basis of the annual estimate of all direct costs necessary for the supervisory tasks performed by ESMA and a reasonable apportionment of ESMA's fixed and variable overheads.

(4) In line with Commission Delegated Regulation (EU) 2019/715 ([4]), fees charged to securitisation repositories should be set at a level that ensures that the full cost of services provided by ESMA is covered and a deficit is avoided, but at the same time avoids the accumulation of a significant surplus. Where a significant positive or negative budget result becomes recurrent, the level of the fees should be revised.

(5) ESMA should be able to establish its annual budget in time, based on certified turnover data. To enable ESMA to calculate the annual supervisory fees, a deadline should be set by which securitisation repositories are to submit to ESMA their audited accounts.

(6) The applicable turnover of securitisation repositories is calculated in euros. It is therefore necessary to specify a mechanism for the conversion into euros of revenues generated in other currencies.

([1]) OJ L 347, 28.12.2017, p. 35, ELI: http://data.europa.eu/eli/reg/2017/2402/oj.
([2]) Commission Delegated Regulation (EU) 2020/1732 of 18 September 2020 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to securitisation repositories (OJ L 390, 20.11.2020, p. 1, ELI: http://data.europa.eu/eli/reg_del/2020/1732/oj).
([3]) Court of Auditors, Annual report on EU agencies for the financial year 2018 (OJ C 417, 11.12.2019, p. 29 and p. 85 ff).
([4]) Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1, ELI: http://data.europa.eu/eli/reg_del/2019/715/oj).

(7) The registration and extension-of-registration fee is meant to cover the costs incurred by ESMA to investigate whether the securitisation repository concerned fulfils all conditions for registration or extension of registration. Where an applicant securitisation repository withdraws its application, ESMA will have incurred costs and is under no obligation to refund fees related to such registration or extension of registration.

(8) The administrative cost linked to the first year supervisory fee for a securitisation repository registered in December, is not proportionate to the fee itself. Therefore, a securitisation repository that is registered in December should be exempted from the requirement to pay an annual supervisory fee for the year in which that securitisation repository was registered.

(9) To ensure consistency among delegated acts on fees to be paid to ESMA, ESMA should calculate the penalty in case of late payments in line with the provisions on default interest set out in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([5]).

(10) To further simplify the fee management, and to ensure that ESMA has the necessary resources to carry out its planned supervisory activities, ESMA should not refund annual supervisory fees.

(11) In order to avoid legal uncertainty for the ongoing fee collection process, this Regulation should apply from 1 January 2025.

(12) Delegated Regulation (EU) 2020/1732 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2020/1732

Delegated Regulation (EU) 2020/1732 is amended as follows:

(1) Article 1 is replaced as follows:

'*Article 1*

Recovery of supervisory costs in full

The fees charged to securitisation repositories shall cover:

(a) all direct and indirect costs relating to the registration and supervision of securitisation repositories by ESMA in accordance with Regulation (EU) 2017/2402, including costs resulting from the extension of registration for trade repositories that have already been registered under Title VI, Chapter 1 of Regulation (EU) No 648/2012 or Chapter III of Regulation (EU) 2015/2365;

(b) all costs for the reimbursement of direct and indirect costs of competent authorities that have carried out work pursuant to Regulation (EU) 2017/2402, and as a result of any delegation of tasks pursuant to Article 14(1) of that Regulation.';

(2) Article 2 is amended as follows:

(a) the following paragraph 4a is inserted:

'4a. Securitisation repositories shall provide ESMA on an annual basis with audited accounts as referred to in paragraph 1. The documents shall be submitted to ESMA by electronic means by 30 September each year (n-1).';

([5]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1046/oj).

(b) the following paragraph 5a is added:

'5a. Where the revenues referred to in this Article are reported in another currency than euro, ESMA shall convert those revenues into euro using the average euro foreign exchange rate applicable to the period during which those revenues were recorded. For that purpose, ESMA shall use the euro foreign exchange reference rate published by the European Central Bank.';

(3) in Article 4, paragraphs 2 and 3 are replaced by the following:

'2. The annual supervisory fee to be paid by a securitisation repository for the year in which that securitisation repository was registered shall be equal to the registration fee due under Article 3, multiplied by the number of calendar days from the securitisation repository's date of registration until the end of that year and divided by the total number of days in that year.

By way of derogation from the first subparagraph, where a securitisation repository is registered during the month of December, that repository shall not be required to pay an annual supervisory fee for the year in which it was registered.

3. The annual supervisory fee for a given year n to be paid by a securitisation repository registered on or after 1 October of the preceding year shall be equal to the registration fee due under Article 3.';

(4) in Article 5, paragraph 2 is replaced by the following:

'2. Any late payments shall incur the default interest laid down in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (*).

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(*) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1046/oj).';

(5) Article 6 is amended as follows:

(a) the title is replaced by the following:

'**Payment of registration fees**';

(b) paragraph 2 is replaced by the following:

'2. ESMA shall not refund registration or extension-of-registration fees where an applicant withdraws its application for registration or extension of registration.';

(c) paragraphs 3 is deleted;

(6) in Article 7, the following subparagraph is added:

'ESMA shall not refund the annual supervisory fee.'

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2025.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 March 2024.

For the Commission
The President
Ursula VON DER LEYEN