II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/206

of 5 October 2022

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the types of factors to be considered for the assessment of the appropriateness of risk weights for exposures secured by immovable property and the conditions to be taken into account for the assessment of the appropriateness of minimum loss given default values for exposures secured by immovable property

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 ([1]), and in particular Article 124(4), third subparagraph, and Article 164(8), third subparagraph thereof,

Whereas:

(1) Article 124(2) of Regulation (EU) No 575/2013, on the one hand, deals with the assessment of the appropriateness of risk weights for exposures secured by mortgages on residential property and commercial immovable property. Article 164(6), of Regulation (EU) No 575/2013, on the other hand, deals with the assessment of the appropriateness of minimum loss given default ('LGD') values for exposures secured by mortgages on residential property or commercial immovable property. Both provisions thus deal with the calibration of parameters for exposures secured by immovable property. It is therefore appropriate that the types of factors to be considered for the assessment of the appropriateness of those risk weights and the conditions to be taken into account for the assessment of the appropriateness of those minimum LGD values are specified in a coherent manner.

(2) When specifying those factors and conditions, it is necessary to ensure proportionality and to account for the heterogeneity of the immovable property markets across Member States, while at the same time setting out a sufficiently harmonised framework for the assessment of the appropriateness of the risk weights and the minimum LGD values for exposures secured by mortgages on immovable property. To that end, a one-size-fits-all approach should be avoided.

(3) When specifying the loss expectation for the purposes of determining the appropriateness of risk weights a number of factors providing insights into forward-looking market developments should be considered, including past and present structural characteristics of immovable property markets and national specificities related to real estate financing.

([1]) OJ L 176, 27.6.2013, p. 1.

(4) Given the economic relevance of real estate markets for Member States, sources of systemic risk, rather than merely economic downturns and idiosyncratic risks, should be taken into account when specifying the conditions for assessing the minimum LGD values. When taking into account the conditions for assessing minimum LGD values, a number of conditions related to sources of systemic risk that affect forward-looking property market developments should be considered, among them whether macroeconomic imbalances relate to a downturn, whether other macroprudential measures are in place, and national specificities related to immovable property markets and their financing.

(5) Furthermore, given the significant differences between the real estate markets of the Member States, the specificities exclusively related to a national real estate market and its financing should be taken into account when assessing both the appropriateness of risk weights for exposures secured by immovable property, and the appropriateness of minimum loss given default values for such exposures.

(6) Article 124(2) and Article 164(6), of Regulation (EU) No 575/2013 allow for the assessment of the appropriateness of risk weights or minimum LGD values for one or more property segments or for one or more parts of the territory of a Member State. It should thus be provided that the types of factors or the conditions for the assessment of the appropriateness of risk weights or minimum LGD values may be applied to one or more property segments or to one or more parts of the territory of a Member State. It is however possible that data collected by means of Union harmonised reporting are not sufficiently granular to allow for the assessment of the appropriateness of risk weights or minimum LGD values at the level of such property segment or part of a territory of a Member State. Where that is the case, the authorities designated in accordance with Article 124(1a) and Article 164(5) of Regulation (EU) No 575/2013 should be able to use additional sources of data for those assessments.

(7) Given that both Articles 124 and 164 of Regulation (EU) No 575/2013 deal with the assessments of the appropriateness of input parameters for the determination of own funds requirements for exposure types secured by immovable property, it is necessary to ensure coherence between the two assessments. It is therefore appropriate to include both sets of the relevant regulatory technical standards required by those Articles in a single Regulation.

(8) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority (EBA).

(9) The EBA 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 advice 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

Types of factors to be considered for the assessment of the appropriateness of risk weights for exposures secured by immovable property

1. When assessing the appropriateness of the risk weights referred to in Article 124(2), first subparagraph, of Regulation (EU) No 575/2013, the authorities designated in accordance with Article 124(1a) of that Regulation shall determine all of the following:

(a) the loss experience as the ratio of the following:

(i) in the case of exposures secured by mortgages on residential property as referred to Article 124(2), first subparagraph, of Regulation (EU) No 575/2013, the losses reported in accordance with Article 430a(1), point (a), of that Regulation and the exposure value reported in accordance with Article 430a(1), point (c), of that Regulation;

[2] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

(ii) in the case of exposures secured by mortgages on commercial immovable property as referred to in Article 124(2), first subparagraph, of Regulation (EU) No 575/2013, the losses reported in accordance with Article 430a(1), point (d), of that Regulation and the exposure value reported in accordance with Article 430a(1), point (f), of that Regulation;

(b) the loss expectation as the best estimate of losses to be realised during a forward-looking horizon of at least one year, and, if so determined by that authority, up to three years.

For the purposes of point (b), the loss expectation shall be determined as the average of the estimated losses for each year during the chosen forward-looking horizon.

2. The authorities designated in accordance with Article 124(1a) of Regulation (EU) No 575/2013 shall determine the loss expectation referred to in paragraph 1, point (b), in either of the following ways:

(a) by adjusting the loss experience referred to in paragraph 1, point (a), upwards or downwards;

(b) by keeping the loss experience unchanged.

When determining the loss expectation referred to in paragraph 1, point (b), the authorities shall reflect the forward-looking immovable property market developments referred to in Article 124(2), first subparagraph, point (b), of Regulation (EU) No 575/2013 during a forward-looking horizon of at least one year and, if so determined by that authority, up to three years.

3. The loss expectation referred to in paragraph 1, point (b), and determined in accordance with paragraph 2, shall be based on all of the following:

(a) the historical evolution and cyclical characteristics of the immovable property market as reflected in immovable property market transactions and prices, and in the volatility of those prices, as evidenced by the relevant data indicators or qualitative information;

(b) the past and present structural characteristics of the immovable property market, and the future evolution of those structural characteristics related to the size of the immovable property market, the specificities of real estate financing, national taxation systems and the national regulatory provisions for buying, holding or letting immovable property;

(c) the fundamental drivers of demand and supply in the immovable property market, as evidenced by any relevant data indicators or qualitative information, including lending standards, construction activity, vacancy rates, or transaction activity;

(d) the riskiness of the exposures secured by immovable property, as measured by all of the following:

(i) indicators relevant for the property segments of the Member State and, where relevant, for parts of the territory of that Member State, having regard to Section 6 of the EBA Guidelines on subsets of exposures in the application of a Systemic Risk Buffer ([3]), issued in accordance with Article 133(6) of Directive 2013/36/EU of the European Parliament and of the Council ([4]);

(ii) the lending standard indicators specified in the recommendation of the European Systemic Risk Board on closing real estate data gaps ([5]);

(e) the expected evolution in immovable property market prices and the expected volatility in those prices, including an assessment of the uncertainty around such expectations;

([3]) Final guidelines on the appropriate subsets of sectoral exposures to which competent or designated authorities may apply a systemic risk buffer in accordance with Article 133(5)(f) of Directive 2013/36/EU (EBA/GL/2020/13).

([4]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

([5]) Recommendation of the European Systemic Risk Board of 21 March 2019 amending Recommendation ESRB/2016/14 on closing real estate data gaps (ESRB/2019/3) (OJ C 271, 13.8.2019, p. 1).

(f) the expected evolution in meaningful macroeconomic key variables that could affect the solvency of borrowers, including an assessment of the uncertainty around such expectations;

(g) the time horizon over which the forward-looking property market developments are expected to materialise;

(h) national specificities related exclusively to the real estate market and its financing, including public and private guarantee schemes, tax deductibility, and public support in the form of recourse regimes and social safety nets;

(i) any other data indicators and sources which provide insight into forward-looking property market developments which affect the loss expectation referred to in paragraph 1, point (b), or support the data quality of the loss experience referred to in paragraph 1, point (a).

4. Where there is a lot of uncertainty as to the factors referred to in paragraph 3, point (e), the authorities designated in accordance with Article 124 (1a) of Regulation (EU) No 575/2013 shall consider a margin of prudence when determining the loss expectation in accordance with paragraph 2 of this Article.

5. For the purposes of paragraph 1, the authorities designated in accordance with Article 124 (1a) of Regulation (EU) No 575/2013 shall have regard to other macroprudential measures in force that already address the identified systemic risks affecting the appropriateness of the risk weights referred to in Article 124(2), first subparagraph, of that Regulation, including the following measures in national law designed to enhance the resilience of the financial system:

(a) loan-to-value (LTV) limits;

(b) debt-to-income limits;

(c) debt-service-to-income limits;

(d) other instruments addressing lending standards.

Article 2

Conditions to be taken into account for the assessment of the appropriateness of the minimum LGD values for exposures secured by immovable property

1. When assessing the appropriateness of the minimum LGD values in accordance with Article 164(6) of Regulation (EU) No 575/2013, the authorities designated in accordance with paragraph 5 of that Article shall, when performing the systemic risk assessment on the basis of macroeconomic imbalances affecting LGD estimates beyond the economic cycle, have regard to all of the following conditions:

(a) demand and supply conditions of real estate markets, and dynamics in real estate prices, including, where relevant and where a robust estimation is available, the degree of overvaluation or undervaluation of real estate prices;

(b) conditions that affect drivers of LGD estimates, including, where relevant:

(i) changes in the length and in the effectiveness of the process for pursuing recoveries, due to changes in the recovery procedures;

(ii) changes in the frequency of the return of obligors or individual credit facilities to non-defaulted status, due to changes in unemployment rates, or changes in household or corporate debt levels;

(iii) interest rates;

(c) other conditions that indirectly affect the value of collateral taken into account in LGD estimates, including, where relevant, loan-to-value (LTV) ratios, cross collateralisation, and other common forms of credit protection relevant to retail exposures secured by immovable property in the Member State concerned.

2. For the purposes of paragraph 1, the authorities designated in accordance with Article 164(5) of Regulation (EU) No 575/2013 shall have regard to all of the following:

(a) whether the macroeconomic imbalances are related to an economic downturn and hence are considered in the downturn LGD estimation for the exposures concerned;

(b) other macroprudential measures in force that already address the identified systemic risks affecting the adequacy of minimum LGD values, including the following measures in national law designed to enhance the resilience of the financial system:

(i) loan-to-value limits;

(ii) debt-to-income limits;

(iii) debt-service-to-income limits;

(iv) other instruments addressing lending standards;

(c) the degree of uncertainty around the evolution of immovable property markets and their price volatility;

(d) national specificities exclusively related to the real estate market and its financing, including public and private guarantee schemes, tax deductibility and public support in the form of recourse regimes and social safety nets;

(e) where relevant and available, benchmarking comparisons of LGD estimates across credit institutions or Member States for comparable portfolios, comparable risk levels and comparable facilities secured by immovable property pledged as collateral.

Article 3

Assessments for property segments or specific parts of the territory of a Member State

An authority designated in accordance with Article 124(1a) or Article 164(5) of Regulation (EU) No 575/2013 may consider the factors set out in Article 1 of this Regulation, or take into account the conditions set out in Article 2 of this Regulation, for one or more property segments or one or more parts of the territory of a Member State.

Article 4

Use of other sources of data

Authorities designated in accordance with Article 124(1a) or Article 164(5), of Regulation (EU) No 575/2013 that determine the loss experience in accordance with Article 1(1), point (a), of this Regulation, or that assess the appropriateness of the minimum LGD values in accordance with Article 2 of this Regulation for a property segment or a part of the territory of a Member State, may use other sources of data, including national ad-hoc reporting and credit registers relating to that segment or that part of the territory, provided that the data collected in accordance with Article 430(1), point (a), and Article 430a, of Regulation (EU) No 575/2013 are not sufficiently granular.

Article 5

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*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 5 October 2022.

For the Commission

The President

Ursula VON DER LEYEN