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COMMISSION DELEGATED REGULATION (EU) .../...

of 1.6.2018

amending Delegated Regulation (EU) 2015/35 as regards the calculation of regulatory capital requirements for securitisations and simple, transparent and standardised securitisations held by insurance and reinsurance undertakings

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Solvency II Directive (Directive 2009/138/EC¹), which became fully applicable on 1 January 2016, introduces a modernised risk-based prudential and supervisory regime for insurance and reinsurance undertakings in the European Union. A Commission Delegated Regulation containing detailed implementing rules for Solvency II, including risk calibrations for the calculation of capital charges for specific asset categories, was adopted by the Commission on 10 October 2014².

The current low interest rate environment is increasing pressure on insurers to search for higher yields on their investments to fill the gap between promised and current real-world interest rates. Stimulating insurers' investment in new asset classes may help them to diversify and increase the yield of their investment portfolios. Simple, transparent and standardised (STS) securitisation, accompanied by robust risk management safeguards, can be designated as a new asset class.

The EU had already taken steps in the past to provide differentiated regulatory treatment for certain securitisations (so-called Type 1 securitisations). In the insurance legislative framework, building on recommendations from the European Insurance and Occupational Pensions Authority (EIOPA), the Solvency II Delegated Act includes a detailed list of criteria to identify these products³, which benefit from significantly lower capital requirements for insurers investing in senior tranches, compared to other securitisation positions.

Subsequently, as part of its Capital Markets Union (CMU) initiative, the Commission adopted on 30 September 2015 a Proposal for a Regulation on STS Securitisation⁴ and a Proposal for an amendment to the Capital Requirements Regulation for banks (CRR)⁵ to identify those features which make securitisation transactions simpler, transparent and standardised, and to ensure that appropriate incentives are in place to manage the risks of these instruments, based on clear eligibility criteria. The European Parliament and Council adopted these Regulations on 12 December 2017⁶. These Regulations entered into force on 17 January 2018, but they will apply as from 1 January 2019.

¹ 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), OJ L 335, 17.12.2009, p. 1.

² Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 12, 17.1.2015, p. 1, hereafter: Solvency II Delegated Act.

³ See Article 177 of the Solvency II Delegated Act.

⁴ Proposal for a Regulation of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, COM/2015/0472 final.

⁵ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, COM/2015/0473 final.

⁶ 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.

The concept of 'simple, transparent and standardised' refers to the process by which the securitisation is structured. The "STS standard" does not mean that the securitisation concerned is free of risks, but that the product respects a number of criteria and that a prudent and diligent investor will be able to analyse the risk involved, allowing getting higher yield on insurer investment portfolios while being able to manage properly those risks.

The STS Regulation entered into force on 17 January 2018 and will apply as from January 2019. It will be addressed to insurers and will amend the Solvency II Directive. This requires a number of changes to the Solvency II Delegated Act to ensure alignment and consistency.

Firstly, the definitions used in the Solvency II Delegated Act regarding securitisation shall be aligned with those in the STS Regulation.

Secondly, due to the direct applicability of the risk retention and the due diligence requirements in the STS Regulation, as well as the deletion through that Regulation of the empowerments for the Commission to adopt such rules under the Solvency II Directive, the related provisions in the Solvency II Delegated Act need to be repealed. This avoids insurers being subject to different requirements under the STS Regulation and the Solvency II Delegated Act.

Finally, considering the broad support in the public consultation on the CMU Green Paper, the Commission has developed a new calibration for non-senior tranches of STS securitisations, which should also benefit from an adapted capital charge under Solvency II with improved risk-sensitivity. Technical improvements also have to be made to the methodology of the calculation of the calibrations for the senior tranches.

These amendments with respect to the treatment of STS securitisation investments by insurers will contribute to the creation of an integrated Capital Markets Union.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

A public consultation on a possible EU framework for simple, transparent and standardised securitisation was carried out between 18 February and 13 May 2015. 120 replies were received⁷. This public consultation, which contained questions on the treatment in the insurance prudential framework of qualifying securitised products, indicated that there is broad support for improving the risk-sensitivity of the existing calibrations and in particular to derive specific calibrations for non-senior tranches of STS securitisation. Responses were also strongly in favour of the STS qualification applying to all tranches of a securitisation transaction.

As regards all issues covered by this Act, the Expert Group on Banking, Payments and Insurance (insurance formation), bringing together experts from the Member States, with the European Parliament as observer, was initially consulted in a meeting on 14 July 2015. Subsequently, this topic was again discussed in the meeting of 27 April 2017, with members insisting on alignment between the application date of this Delegated Regulation and the STS Regulation and the amendment to CRR. A non-paper was submitted to the EGBPI in July 2017, suggesting possible precise amendments to the Solvency II Delegated Act, and further clarifications were brought by the Commission during a meeting on 27 July 2017.

Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

⁷ Consultation document and responses can be accessed through: http://ec.europa.eu/finance/consultations/2015/securitisation/index_en.htm

In February 2018, EGBPI members were consulted on a draft legal text of these amendments. Experts broadly supported the Commission's draft for an amendment to the Solvency II Delegated Act that was presented.

3. IMPACT ASSESSMENT

The main issues addressed in this Delegated Regulation were covered by the Impact Assessment carried out jointly for the Proposal for the STS Regulation and the Proposal for an amendment to the CRR.

The Impact Assessment report was submitted to the Regulatory Scrutiny Board on 17 June 2015 and the Board meeting took place on 15 July 2015. The Board gave a positive opinion⁸ and the impact assessment was published on 30 September⁹.

4. LEGAL ELEMENTS OF THE DELEGATED ACT

The amendments proposed for the Solvency II Delegated Act concern: certain definitions regarding securitisation which need to be aligned to those used in the STS Regulation; the abolition of provisions on due diligence and risk retention; the adoption of a new calibration for STS securitisations; and transitional provisions for current investments in securitisation.

⁸ Available here: https://ec.europa.eu/info/publications/impact-assessment-accompanying-proposals-securitisation_en

⁹ Impact Assessment available at: https://ec.europa.eu/info/publications/impact-assessment-accompanying-proposals-securitisation_en

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THE EUROPEAN COMMISSION,

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

Having regard to 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)¹, and in particular Article 111(1)(c) and Article 135(2) thereof,

Whereas:

- (1) A well-functioning securitisation market provides additional funding sources to capital markets, thus improving the funding capacity of the real economy and contributing to completing the Capital Markets Union. In addition, a well-functioning securitisation market provides alternative investment opportunities to insurance and reinsurance undertakings, which need to diversify their portfolios in a low yield environment. As institutional investors, insurance and reinsurance undertakings should therefore be fully integrated into the Union's securitisation market.
- (2) To ensure a sound recovery of the Union's securitisation market, a new regulatory framework for securitisation was laid down, based on lessons learned during the financial crisis. Regulation (EU) 2017/2402 of the European Parliament and of the Council² lays down the substantive elements of an overarching securitisation framework, with criteria to identify simple, transparent and standardised ('STS') securitisations and a system of supervision to monitor the correct application of those criteria by originators, sponsors, issuers and institutional investors. Furthermore, that Regulation provides for a set of common requirements in relation to risk retention, due diligence and disclosure for all financial services sectors. In addition, Regulation (EU) 2017/2401 of the European Parliament and of the Council³ amends, with effect from 1 January 2019, Regulation (EU) No 575/2013 of the European Parliament and of the

¹ OJ L 335, 17.12.2009, p. 1.

² 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 (OJ L347, 28.12.2017, p.35).

³ Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (OJ L347, 28.12.2017, p.1).

Council⁴ to provide for revised prudential requirements for credit institutions and investment firms originating, sponsoring or investing in securitisations, in particular revised capital requirements for investments in STS securitisation.

- (3) To the extent that the revised legislative framework for securitisation overlaps with the scope of provisions laid down in Commission Delegated Regulation (EU) 2015/35⁵, it is necessary, in order to avoid double regulation and for reasons of clarity and consistency, to adapt the prudential framework applicable to insurance and reinsurance undertakings.
- (4) Regulation (EU) 2017/2402 sets out definitions of several concepts related to securitisation. As that Regulation applies to insurance and reinsurance undertakings falling within the scope of Directive 2009/138/EC it is appropriate, for the purposes of defining concepts that are also defined in Regulation (EU) 2017/2402, to refer in Delegated Regulation (EU) 2015/35 to the relevant definitions laid down in Regulation (EU) 2017/2402. For the same reasons, insofar as requirements related to risk retention and due diligence are set out in Regulation (EU) 2017/2402 for all institutional investors, such requirements should be deleted from Delegated Regulation (EU) 2015/35.
- (5) Regulation (EU) 2017/2402 sets qualifying criteria for STS securitisations in order to provide a harmonised definition of a higher quality securitisation product for Union capital markets. The 'type 1 securitisation' asset category in Delegated Regulation (EU) 2015/35 was created to achieve a similar objective for insurance and reinsurance undertakings, with comparable qualifying criteria. To ensure consistency and a level playing field on the securitisation market, the general provisions on the 'type 1 securitisation' asset category should be deleted from Delegated Regulation (EU) 2015/35 and reference should instead be made to the relevant provisions on STS securitisation laid down in Regulation (EU) 2017/2402. In order to avoid those amendments leading to adverse effects, transitional measures should be provided for with respect to existing assets falling within the 'type 1 securitisation' category.
- (6) The calibration of the Solvency Capital Requirement pursuant to Directive 2009/138/EU is risk based and is intended to provide the right incentives across the different forms of securitisation investments. In order to achieve that objective, the level of the calibration and the risk sensitivity across tranches should be commensurate with the features of STS securitisation, and consistent with the prudential requirements developed for credit institutions and investment firms. Therefore, the existing provisions of Delegated Regulation (EU) 2015/35 on calibration for 'type 1 securitisation' should be replaced by a more risk sensitive calibration for STS securitisation covering all possible tranches that also meet additional requirements in order to minimise risks.
- (7) The entry into application of the revised framework should not adversely affect the existing investments in securitisation, in particular for those institutional investors

⁴ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁵ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 012 17.1.2015, p. 1).

which have maintained some investments despite the financial crisis. Therefore, transitional measures should be laid down.

- (8) In light of the application dates of Regulation (EU) 2017/2402 and Regulation (EU) 2017/2401 as well as the transitional provisions contained in those pieces of legislation, it is important to ensure that this Regulation becomes applicable on the same date, on 1 January 2019.
- (9) Delegated Regulation (EU) 2015/35 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2015/35

Delegated Regulation (EU) 2015/35 is amended as follows:

- (1) Article 1 is amended as follows:
 - (a) the following points 18a and 18b are inserted:

'18a. 'securitisation' means a transaction or scheme as defined in Article 2(1) of Regulation (EU) 2017/2402⁶;

18b. 'STS securitisation' means a securitisation designated "simple, transparent and standardised" or "STS" in accordance with the requirements set out in Article 18 of Regulation (EU) 2017/2402;';
 - (b) point 19 is replaced by the following:

'19. 'securitisation position' means a securitisation position within the meaning of Article 2(19) of Regulation (EU) 2017/2402;';
 - (c) the following point 19a is inserted:

'19a. 'senior securitisation position' means a senior securitisation position within the meaning of Article 242(6) of Regulation (EU) No 575/2013⁷;
 - (d) points 20 to 23 are replaced by the following:

'20. 're-securitisation position' means an exposure to a re-securitisation within the meaning of Article 2(4) of Regulation (EU) 2017/2402;

21. 'originator' means an originator within the meaning of Article 2(3) of Regulation (EU) 2017/2402;

22. 'sponsor' means a sponsor within the meaning of Article 2(5) of Regulation (EU) 2017/2402;

⁶ 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, (OJ L 347, 28.12.2017, p. 35).';

⁷ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).';

23. 'tranche' means tranche within the meaning of Article 2(6) of Regulation (EU) 2017/2402;';

(2) in Article 4, paragraph 6 is replaced by the following:

'6. For the purposes of paragraph 5, the larger or more complex exposures of an undertaking shall include securitisation positions as referred to in Article 178(8) and (9) and re-securitisation positions.';

(3) Article 177 is deleted;

(4) Article 178 is replaced by the following:

Article 178

Spread risk on securitisation positions: calculation of the capital requirement

1. The capital requirement $SCR_{securitisation}$ for spread risk on securitisation positions shall be equal to the loss in the basic own funds that would result from an instantaneous relative decrease of $stress_i$ in the value of each securitisation position i .

2. The risk factor $stress_i$ shall depend on the modified duration denominated in years (dur_i). dur_i shall not be lower than 1 year.

3. Senior STS securitisation positions which fulfil the requirements set out in Article 243 of Regulation (EU) No 575/2013 and for which a credit assessment by a nominated ECAI is available shall be assigned a risk factor $stress_i$ depending on the credit quality step and the modified duration of the securitisation position i , as set out in the following table:

Credit quality step		0		1		2		3		4		5 and 6	
Duration (dur_i)	$stress_i$	a_i	b_i	a_i	b_i	a_i	b_i	a_i	b_i	a_i	b_i	a_i	b_i
up to 5	$b_i \cdot dur_i$	—	1,0%	—	1,2%	—	1,6%	—	2,8%	—	5,6%	—	9,4%
More than 5 and up to 10	$a_i + b_i \cdot (dur_i - 5)$	5,0%	0,6%	6,0%	0,7%	8,0%	0,8%	14,0%	1,7%	28,0%	3,1%	47,0%	5,3%
More than 10 and up to 15	$a_i + b_i \cdot (dur_i - 10)$	8,0%	0,6%	9,5%	0,5%	12,0%	0,6%	22,5%	1,1%	43,5%	2,2%	73,5%	0,6%
More than 15 and up to 20	$a_i + b_i \cdot (dur_i - 15)$	11,0%	0,6%	12,0%	0,5%	15,0%	0,6%	28,0%	1,1%	54,5%	0,6%	76,5%	0,6%
More than 20	$\min[a_i + b_i \cdot (dur_i - 20), 1]$	14,0%	0,6%	14,5%	0,5%	18,0%	0,6%	33,5%	0,6%	57,5%	0,6%	79,5%	0,6%

4. Non-senior STS securitisation positions which fulfil the requirements set out in Article 243 of Regulation (EU) No 575/2013 and for which a credit assessment by a nominated ECAI is available shall be assigned a risk factor $stress_i$ depending on the credit quality step and the modified duration of the securitisation position i , as set out in the following table:

Credit quality step	0	1	2	3	4	5 and 6
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Duration (dur_i)	$stress_i$	a_i	b_i	a_i	b_i	a_i	b_i	a_i	b_i	a_i	b_i	a_i	b_i
up to 5	$\min[b_i \cdot dur_i; 1]$	–	2,8 %	–	3,4 %	–	4,6 %	–	7,9 %	–	15,8 %	–	26,7 %
More than 5 and up to 10	$\min[a_i + b_i \cdot (dur_i - 5); 1]$	14,0 %	1,6 %	17,0 %	1,9 %	23,0 %	2,3 %	39,5 %	4,7 %	79,0 %	8,8 %	100,0 %	0,0 %
More than 10 and up to 15	$a_i + b_i \cdot (dur_i - 10)$	22,0 %	1,6 %	26,5 %	1,5 %	34,5 %	1,6 %	63,0 %	3,2 %	100,0 %	0,0 %	100,0 %	0,0 %
More than 15 and up to 20	$a_i + b_i \cdot (dur_i - 15)$	30,0 %	1,6 %	34,0 %	1,5 %	42,5 %	1,6 %	79,0 %	3,2 %	100,0 %	0,0 %	100,0 %	0,0 %
More than 20	$\min[a_i + b_i \cdot (dur_i - 20); 1]$	38,0 %	1,6 %	41,5 %	1,5 %	50,5 %	1,6 %	95,0 %	1,6 %	100,0 %	0,0 %	100,0 %	0,0 %

5. Senior STS securitisation positions which fulfil the criteria set out in Article 243 of Regulation (EU) No 575/2013 and for which no credit assessment by a nominated ECAI is available shall be assigned a risk factor $stress_i$ depending on the modified duration of the securitisation position i , as set out in the following table:

Duration (dur_i)	$stress_i$	a_i	b_i
up to 5	$b_i \cdot dur_i$	–	4,6 %
More than 5 and up to 10	$a_i + b_i \cdot (dur_i - 5)$	23 %	2,5 %
More than 10 and up to 15	$a_i + b_i \cdot (dur_i - 10)$	35,5 %	1,8 %
More than 15 and up to 20	$a_i + b_i \cdot (dur_i - 15)$	44,5 %	0,5 %
More than 20	$\min[a_i + b_i \cdot (dur_i - 20); 1]$	47 %	0,5 %

6. Non-senior STS securitisation positions which fulfil the criteria set out in Article 243 of Regulation (EU) No 575/2013 and for which no credit assessment by a nominated ECAI is available shall be assigned a risk factor $stress_i$ equivalent to credit quality step 5 and depending on the modified duration of the exposure, as set out in the table in paragraph 3.

7. Re-securitisation positions for which a credit assessment by a nominated ECAI is available shall be assigned a risk factor $stress_i$ equal to the following formula:

$$stress_i = \min(b_i \cdot dur_i; 1)$$

where b_i shall be assigned depending on the credit quality step of re-securitisation position i , as set out in the following table:

Credit quality step	0	1	2	3	4	5	6
b_i	33%	40%	51%	91%	100%	100%	100%

8. Securitisation positions not covered by paragraphs 3 to 7, for which a credit assessment by a nominated ECAI is available shall be assigned a risk factor $stress_i$ equal to the following formula:

$$stress_i = \min(b_i \cdot dur_i; 1)$$

where b_i shall be assigned depending on the credit quality step of securitisation position i , as set out in the following table:

Credit quality step	0	1	2	3	4	5	6
b_i	12,5 %	13,4 %	16,6 %	19,7 %	82 %	100%	100%

9. Securitisation positions not covered by paragraphs 3 to 8, shall be assigned a risk factor $stress_i$ of 100%.';

(5) the following Article 178a is inserted:

'Article 178a

Spread risk on securitisation positions: transitional provisions

1. Notwithstanding Article 178(3), securitisations issued before 1 January 2019 that qualify as type 1 securitisations in accordance with Article 177(2) in the version in force on 31 December 2018 shall be assigned a risk factor $stress_i$ in accordance with Article 178(3) even where those securitisations are not STS securitisations which fulfil the requirements set out in Article 243 of Regulation (EU) 575/2013.

2. Paragraph 1 shall apply only in circumstances where no new underlying exposures were added or substituted after 31 December 2018.

3. Notwithstanding Article 178 (3), securitisations issued before 18 January 2015 that qualify as type 1 securitisations in accordance with Article 177(4) in the version in force on 31 December 2018 shall be assigned a risk factor $stress_i$ in accordance with Articles 177 and 178 in the version in force on 31 December 2018.

4. Notwithstanding Article 178 (3), securitisations issued before 1 January 2019 that qualify as type 1 securitisations in accordance with Article 177(5) in the version in force on 31 December 2018 shall, until 31 December 2025, be assigned a risk factor $stress_i$ in accordance with Articles 177 and 178 in the version in force on 31 December 2018 .';

(6) Article 180 is amended as follows:

(a) paragraph 10 is replaced by the following:

'10. STS securitisation positions which fulfil the criteria set out in Article 243 of Regulation (EU) No 575/2013 and which are fully, unconditionally and irrevocably guaranteed by the European Investment Fund or the European Investment Bank, where the guarantee meets the requirements set out in Article 215, shall be assigned a risk factor *stress_i* of 0 %.';

(b) the following paragraph 10a is inserted:

'10a. Notwithstanding paragraph 10, securitisations issued before 1 January 2019 that qualify as type 1 securitisations in accordance with paragraph 10 in the version in force on 31 December 2018 shall be assigned a risk factor *stress_i* of 0 % even where those securitisations are not STS securitisations which fulfil the requirements set out in Article 243 of Regulation (EU) No 575/2013.';

(7) Articles 254, 255 and 256 are deleted;

(8) Article 257 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. Where insurance and reinsurance undertakings become aware that the originator, sponsor or original lender fails to comply with the requirements set out in Article 6 of Regulation (EU) 2017/2402, or insurance or reinsurance undertakings become aware that the requirements set out in Article 5(1), (2) and (3) of that Regulation are not being complied with, they shall inform the supervisory authority immediately.

2. Where the requirements in Article 5(1), (2) and (3) of Regulation (EU) 2017/2402 are not fulfilled in any respect by reason of the negligence or omission of the insurance or reinsurance undertaking, the supervisory authority shall impose a proportionate increase to the Solvency Capital Requirement in accordance with paragraph 3 of this Article. ';

(b) paragraphs 4 and 5 are replaced by the following:

'4. The risk factors shall be progressively increased with each subsequent breach of the requirements set out in Article 5 of Regulation (EU) 2017/2402.

5. Where insurance and reinsurance undertakings fail to comply with any requirement set out in Article 5(4) of Regulation (EU) 2017/2402, by reason of their negligence or omission, the supervisory authorities shall assess whether that failure should be considered a significant deviation from the undertaking's system of governance as referred to in Article 37(1)(c) of Directive 2009/138/EC.'.

Article 2

Entry into force and application

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 2019.

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

Done at Brussels, 1.6.2018

For the Commission
The President
Jean-Claude JUNCKER