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Committee on Economic and Monetary Affairs

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**2010/0250(COD)**

30.3.2011

# **AMENDMENTS 697 - 975**

**Draft report**  
**Werner Langen**  
(PE456.945v001-00)

on the proposal for a regulation of the European Parliament and of the Council  
on OTC derivatives, central counterparties and trade repositories

Proposal for a regulation  
(COM(2010)0484 – C7-0265/2010 – 2010/0250(COD))

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PE460.907v02-00

**EN**

*United in diversity*

**EN**



**Amendment 697**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 27 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall maintain, for a period of at least **ten** years, all the records on the services and activity provided so as to enable the competent authority to monitor the compliance with the requirements under this Regulation.

*Amendment*

1. A CCP shall maintain, for a period of at least **five** years, all the records on the services and activity provided so as to enable the competent authority to monitor the compliance with the requirements under this Regulation.

Or. en

**Amendment 698**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 27 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall maintain, for a period of at least **ten** years following the termination of a contract, all information on all contracts it has processed. That information shall at a minimum enable the identification of the original terms of a transaction before clearing by that CCP.

*Amendment*

2. A CCP shall maintain, for a period of at least **five** years following the termination of a contract, all information on all contracts it has processed. That information shall at a minimum enable the identification of the original terms of a transaction before clearing by that CCP.

Or. en

*Justification*

*Fine-tuning with existing EU legislation and the US Dodd-Frank Act.*

**Amendment 699**  
**Werner Langen**

**Proposal for a regulation**  
**Article 27 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

***Powers are delegated to the Commission to adopt*** regulatory technical standards specifying the details of the records and information to be retained as referred to in paragraphs 1 and 2.

*Amendment*

***In order to ensure consistent harmonisation of this Article, ESMA shall develop draft*** regulatory technical standards specifying the details of the records and information to be retained as referred to in paragraphs 1 and 2. ***ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 700**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 27 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the details of the records and information to be retained as referred to in paragraphs 1 and 2.

*Amendment*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the details of the records and information to be retained as referred to in paragraphs 1 and 2 ***and, where appropriate, a longer time length for the maintenance of records.***

Or. en

*Justification*

*Reduce the burden for CCPs, while giving power to ESMA to establish a longer period of maintenance of the required records, but only in cases where it is deemed to be appropriate.*

**Amendment 701**  
**Werner Langen**

**Proposal for a regulation**  
**Article 27 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

*The regulatory technical standards referred to in the first subparagraph **shall be adopted** in accordance with Articles [7 to 7d] of Regulation .../... [ESMA Regulation].*

*Amendment*

***Power is delegated to the Commission to adopt the** regulatory technical standards referred to in the first subparagraph in accordance with Articles **10 to 14** of Regulation .../... [ESMA Regulation].*

Or. en

*Justification*

*Procedural amendment.*

**Amendment 702**  
**Werner Langen**

**Proposal for a regulation**  
**Article 27 – paragraph 4 – subparagraph 3**

*Text proposed by the Commission*

***ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.***

*Amendment*

***deleted***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 703**

**Werner Langen**

**Proposal for a regulation**

**Article 27 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

In order to ensure uniform conditions of application of paragraph 1 and 2, **powers are conferred to the Commission to** determine the format of the records and information to be retained.

*Amendment*

In order to ensure uniform conditions of application of paragraph 1 and 2, **ESMA shall develop draft implementing technical standards** to determine the format of the records and information to be retained. **ESMA shall submit drafts on those implementing technical standards to the Commission by 30 June 2012.**

Or. en

*Justification*

*Procedural amendment.*

**Amendment 704**

**Werner Langen**

**Proposal for a regulation**

**Article 27 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

**The** implementing technical standards referred to in the first subparagraph **shall be adopted** in accordance with [Article 7e] of Regulation .../... [ESMA Regulation].

*Amendment*

**Power is conferred on the Commission to adopt the draft** implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation .../... [ESMA Regulation].

Or. en

*Justification*

*Procedural amendment.*

**Amendment 705**  
**Werner Langen**

**Proposal for a regulation**  
**Article 27 – paragraph 5 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

***ESMA shall submit drafts on those implementing technical standards to the Commission by 30 June 2012.***

***deleted***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 706**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 28 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The competent authority shall not authorise a CCP until it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings.

1. The competent authority shall not authorise a CCP until it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings. ***The qualifying holdings may not exceed 25%. At least 20% of the shareholdings must be held by a corporation under public law.***

Or. en

**Amendment 707**  
**Elena Băsescu**

**Proposal for a regulation**  
**Article 28 – paragraph 1**

*Text proposed by the Commission*

1. The competent authority shall not authorise a CCP until it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings.

*Amendment*

1. The competent authority shall not authorise a CCP until it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings. ***The competent authority shall conduct a rigorous due diligence on shareholders and members, as a prerequisite of the authorisation. The due diligence shall be aimed at revealing, amongst others, whether the shareholders or members have or had filed for bankruptcy, are or were in litigations or convicted or fined for serious offences.***

Or. en

**Amendment 708**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 28 – paragraph 2**

*Text proposed by the Commission*

2. The competent authority shall refuse authorisation to a CCP where, it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings in the CCP, taking into account the need to ensure the sound and prudent management of a CCP.

*Amendment*

2. The competent authority shall refuse authorisation to a CCP where, it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings in the CCP, taking into account the need to ensure the sound and prudent management of a CCP. ***The competent authority may prohibit the intended purchase or increase of holdings***



*if it considers that this is necessary to ensure sustainable and sound management of the CCP. For the same reason it may prohibit the owner of major holdings or a company controlled by him to exercise his voting rights or to transfer these voting rights to a trustee, which it may also instruct with selling shares of a major holding.*

Or. en

**Amendment 709**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 28 – paragraph 4**

*Text proposed by the Commission*

4. Where the persons referred to in paragraph 1 exercise an influence which is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take appropriate measures to terminate that situation.

*Amendment*

4. Where the persons referred to in paragraph 1 exercise an influence which is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take appropriate measures to terminate that situation *or withdraw the authorisation of the CCP.*

Or. en

*Justification*

*The competent authority might not be able to take any measures because out of reach.*

**Amendment 710**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 29 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Where the conduct of a member of the

*Amendment*

Where the conduct of a member of the

board is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take *appropriate* measures, including removing that member from the board.

board is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take *effective* measures, including *where appropriate* removing that member from the board.

Or. en

**Amendment 711**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 29 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

Any natural or legal person or such persons acting in concert (hereinafter referred to as 'the proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a CCP or to further increase, directly or indirectly, such a qualifying holding in a CCP as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10%, 20%, **30% or 50%** or so that the CCP would become its subsidiary (hereinafter referred to as the proposed acquisition), shall first notify in writing the competent authorities of the CCP in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 30(4).

*Amendment*

Any natural or legal person or such persons acting in concert (hereinafter referred to as 'the proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a CCP or to further increase, directly or indirectly, such a qualifying holding in a CCP as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10%, **15 % or 20%** or so that the CCP would become its subsidiary (hereinafter referred to as the proposed acquisition), shall first notify in writing the competent authorities of the CCP in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 30(4).

Or. en

**Amendment 712**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 29 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

For the period between the date of request for information by the competent authority and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. ***The interruption shall not exceed 20 working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.***

*Amendment*

For the period between the date of request for information by the competent authority and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted.

Or. en

*Justification*

*The 20 days limit would limit the power of the competent authority*

**Amendment 713**

**Jürgen Klute**

**Proposal for a regulation  
Article 29 – paragraph 6**

*Text proposed by the Commission*

6. Where the competent authority does not oppose the proposed acquisition within the assessment period, it shall be deemed to be approved.

*Amendment*

***6. The proposed acquisition is approved as soon as the competent authority agreed. The competent authority shall agree or refuse an acquisition within two working days after being informed.*** Where the competent authority does not oppose the proposed acquisition within the assessment period, it shall be deemed to be approved.

Or. en

**Amendment 714**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 29 – paragraph 6**

*Text proposed by the Commission*

6. Where the competent authority does not ***oppose*** the proposed acquisition within the assessment period, it shall be deemed to be ***approved***.

*Amendment*

6. Where the competent authority does not ***approve*** the proposed acquisition within the assessment period, it shall be deemed to be ***rejected***.

Or. en

*Justification*

*It gives more flexibility to the competent authority*

**Amendment 715**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**  
**Article 30 – paragraph 1 – subparagraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(d a) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, the costs to clients, adaptability, resilience or level of service of the system of CCPs in the Union may be adversely affected***

Or. en

**Amendment 716**  
**Elena Băsescu**

**Proposal for a regulation**  
**Article 30 – paragraph 6 – point a**

*Text proposed by the Commission*

(a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security settlement system, a UCITS management company or an AIFM authorised in another Member State;

*Amendment*

(a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security settlement system, a UCITS management company, ***an alternative investment fund*** or an AIFM authorised in another Member State;

Or. en

**Amendment 717**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**

**Article 30 – paragraph 6 – point a**

*Text proposed by the Commission*

(a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security settlement system, a UCITS management company or an AIFM authorised in another Member State;

*Amendment*

(a) ***another CCP***, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security settlement system, a UCITS management company or an AIFM authorised in another Member State;

Or. en

**Amendment 718**

**Elena Băsescu**

**Proposal for a regulation**

**Article 30 – paragraph 6 – point b**

*Text proposed by the Commission*

(b) the parent undertaking of a credit institution, assurance undertaking,

*Amendment*

(b) the parent undertaking of a credit institution, assurance undertaking,

insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security settlement system, a UCITS management company or an AIFM authorised in another Member State;

insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security settlement system, a UCITS management company, ***an alternative investment fund*** or an AIFM authorised in another Member State;

Or. en

## **Amendment 719**

**Pascal Canfin on behalf of the Verts/ALE Group**

### **Proposal for a regulation**

#### **Article 30 – paragraph 6 – point b**

*Text proposed by the Commission*

(b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security settlement system, a UCITS management company or an AIFM authorised in another Member State;

*Amendment*

(b) the parent undertaking of ***another CCP***, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security settlement system, a UCITS management company or an AIFM authorised in another Member State;

Or. en

## **Amendment 720**

**Elena Băsescu**

### **Proposal for a regulation**

#### **Article 30 – paragraph 6 – point c**

*Text proposed by the Commission*

(c) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security

*Amendment*

(c) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security

settlement system, a UCITS management company or an AIFM authorised in another Member State.

settlement system, a UCITS management company, ***an alternative investment fund*** or an AIFM authorised in another Member State.

Or. en

## **Amendment 721**

**Pascal Canfin on behalf of the Verts/ALE Group**

### **Proposal for a regulation**

#### **Article 30 – paragraph 6 – point c**

*Text proposed by the Commission*

(c) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security settlement system, a UCITS management company or an AIFM authorised in another Member State.

*Amendment*

(c) a natural or legal person controlling ***another CCP***, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a security settlement system, a UCITS management company or an AIFM authorised in another Member State.

Or. en

## **Amendment 722**

**Leonardo Domenici**

### **Proposal for a regulation**

#### **Article 31 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, or any person directly or indirectly linked to them by control or close links and its clearing members or

*Amendment*

1. A CCP shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, or any person directly or indirectly linked to them by control or close links and its clearing members or

their clients or between them. It shall maintain and implement adequate resolution procedures whenever possible conflicts of interest occur.

their clients or between them. It shall maintain and implement adequate resolution procedures whenever possible conflicts of interest occur ***in order to remove them.***

Or. en

*Justification*

*There should be no conflicts of interest.*

**Amendment 723**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 31 – paragraph 2**

*Text proposed by the Commission*

2. Where the organisational or administrative arrangements of a CCP to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a clearing member or client will be prevented, it shall clearly disclose the general nature or sources of conflicts of interest to the clearing member before accepting new transactions from that clearing member. Where the client is ***not*** known to the CCP, the CCP shall inform the clearing member whose client is concerned.

*Amendment*

2. Where the organisational or administrative arrangements of a CCP to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a clearing member or client will be prevented, it shall clearly disclose the general nature or sources of conflicts of interest to the clearing member before accepting new transactions from that clearing member. Where the client is known to the CCP, the CCP shall inform the clearing member whose client is concerned.

Or. en

*Justification*

*Notification to a client can only take place where the CCP is in a position to know that it will be affected.*



**Amendment 724**  
**Elena Băsescu**

**Proposal for a regulation**  
**Article 31 – paragraph 2**

*Text proposed by the Commission*

2. Where the organisational or administrative arrangements of a CCP to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a clearing member or client will be prevented, it shall clearly disclose the general nature or sources of conflicts of interest to the clearing member before accepting new transactions from that clearing member. Where the client is not known to the CCP, the CCP shall inform the clearing member whose client is concerned.

*Amendment*

2. Where the organisational or administrative arrangements of a CCP to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a clearing member or client will be prevented, it shall clearly disclose the general nature or sources of conflicts of interest to the clearing member **and request the resolution of the conflict** before accepting new transactions from that clearing member. Where the client is not known to the CCP, the CCP shall inform the clearing member whose client is concerned.

Or. en

**Amendment 725**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 31 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5 a. The share of exposures of a market participant may not exceed 5 percent of the exposures of the CCP.***

Or. en

**Amendment 726**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**  
**Article 32 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. A CCP shall establish, implement and maintain an adequate procedure ensuring the timely and orderly settlement or transfer of clients' assets in the event of a withdrawal of authorisation consequent to a decision under article 16.***

Or. en

**Amendment 727**  
**Werner Langen**

**Proposal for a regulation**  
**Article 32 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

***Powers are delegated to the Commission to adopt*** regulatory technical standards specifying the minimum content of the business continuity plan and the minimum level of services that the disaster recovery plan shall guarantee.

***In order to ensure consistent harmonisation of this Article, ESMA shall develop draft*** regulatory technical standards specifying the minimum content of the business continuity plan and the minimum level of services that the disaster recovery plan shall guarantee. ***ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 728**  
**Werner Langen**

**Proposal for a regulation**  
**Article 32 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*The* regulatory technical standards referred to in the first subparagraph **shall be adopted** in accordance with Articles **[7 to 7d]** of Regulation .../... [ESMA Regulation].

*Amendment*

**Power is delegated to the Commission to adopt the** regulatory technical standards referred to in the first subparagraph in accordance with Articles **10 to 14** of Regulation .../... [ESMA Regulation].

Or. en

*Justification*

*Procedural amendment.*

**Amendment 729**  
**Werner Langen**

**Proposal for a regulation**  
**Article 32 – paragraph 2 – subparagraph 3**

*Text proposed by the Commission*

**ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.**

*Amendment*

**deleted**

Or. en

*Justification*

*Procedural amendment.*

**Amendment 730**  
**Sharon Bowles, Olle Schmidt**

**Proposal for a regulation**  
**Article 32 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 32a*

***Straight Through Processing***

***1. With the aim of promoting straight-through processing (STP) across the entire transaction flow, CCPs shall use or accommodate in their systems to the participants and market infrastructures they interface with, in their communication procedures with participants and with the market infrastructures they interface with, the relevant international communication procedures and standards for messaging and reference data in order to facilitate efficient clearing and settlement across systems.***

***2. Powers are delegated to the Commission to adopt regulatory technical standards specifying the process for defining which international communication procedures and standards for messaging and reference data are to be considered relevant for the purposes of paragraph 1.***

***The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles [x] of Regulation EU 1095/2010 [ESMA Regulation].***

***ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012]***

Or. en

*Justification*

*Straight through processing and common standards of is an important means of improving efficiency in market infrastructures and is critical in facilitating competition. EMIR should not give infrastructures looking to prevent fair an open access the means to do so (through for example providing discretion to avoid adopting common standards).*

**Amendment 731**

**Jürgen Klute**

**Proposal for a regulation**

**Article 33 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(b a) The CCP prevents conflicts of interest between the service provider, its employees and managers relevant for the respective outsourcing and any of the clients of the CCP which could be subject of the respective outsourcing.***

Or. en

**Amendment 732**

**Sylvie Goulard**

**Proposal for a regulation**

**Article 33 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) outsourcing does not prevent the exercise of supervisory and oversight functions;

(d) outsourcing does not prevent the exercise of supervisory and oversight functions, ***including on-site access to related information within the service provider ;***

Or. en

**Amendment 733**  
**Sylvie Goulard**

**Proposal for a regulation**  
**Article 33 – paragraph 1 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

***(e a) the service provider implements equivalent business continuity requirements to those that would have to be fulfilled by the CCP under its domestic supervisory framework.***

Or. en

**Amendment 734**  
**Sylvie Goulard**

**Proposal for a regulation**  
**Article 33 – paragraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

(f) the CCP retains the necessary expertise to evaluate the quality of the services provided, the organisational and capital adequacy of the service provider; and to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must constantly supervise those functions and manage those risks;

(f) the CCP retains the necessary expertise ***and resources*** to evaluate the quality of the services provided, the organisational and capital adequacy of the service provider; and to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must constantly supervise those functions and manage those risks;

Or. en

**Amendment 735**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 33 – paragraph 1 – point h**

*Text proposed by the Commission*

*Amendment*

***(h) the service provider cooperates with the competent authority in connection with the outsourced activities;***

***deleted***

Or. en

*Justification*

*The responsibility for managing outsourcing arrangements must lie with the CCP - not the competent authority.*

### **Amendment 736**

**Sharon Bowles**

#### **Proposal for a regulation**

#### **Article 33 – paragraph 1 – point h**

*Text proposed by the Commission*

*Amendment*

(h) the service provider cooperates with the competent authority in connection with the outsourced activities;

***(h) when required, and without prejudice to the responsibility of the CCP for compliance, the*** service provider cooperates with the competent authority in connection with the outsourced activities;

Or. en

### **Amendment 737**

**Sharon Bowles**

#### **Proposal for a regulation**

#### **Article 33 – paragraph 1 – point i**

*Text proposed by the Commission*

*Amendment*

(i) the service provider protects any sensitive and confidential information relating to the CCP and its clearing members and clients.

(i) the service provider protects any sensitive and confidential information relating to the CCP and its clearing members and clients, ***and is established in a country recognised as having***

*appropriate data protection standards.*

Or. en

**Amendment 738**

**Sylvie Goulard**

**Proposal for a regulation**

**Article 33 – paragraph 1 – point i a (new)**

*Text proposed by the Commission*

*Amendment*

*(i a) outsourcing does not increase operational risks;*

Or. en

**Amendment 739**

**Sylvie Goulard**

**Proposal for a regulation**

**Article 33 – paragraph 1 – point i b (new)**

*Text proposed by the Commission*

*Amendment*

*(i b) the business provider is subject in its country to the same legal regime as the CCP in terms of business continuity and data protection;*

Or. en

**Amendment 740**

**Sylvie Goulard**

**Proposal for a regulation**

**Article 33 – paragraph 1 – point i c (new)**

*Text proposed by the Commission*

*Amendment*

*(i c) A CCP shall not outsource any operational functions or activities which*



*are essential for adequate risk management. In order to ensure uniform application of this prohibition, the Commission shall adopt, by means of delegated acts in accordance with Article X, and subject to the conditions of Articles Y and Z, the criteria for determining which functions or activities are essential for risk management.*

Or. en

**Amendment 741**  
**Leonardo Domenici, Udo Bullmann**

**Proposal for a regulation**  
**Article 33 – paragraph 1 – point i a (new)**

*Text proposed by the Commission*

*Amendment*

*(i a) activities linked to risk management shall not be outsourced.*

Or. en

**Amendment 742**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 34 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. A CCP shall have transparent rules for the handling of complaints.

2. A CCP shall have **accessible**, transparent **and fair** rules for the **timely** handling of complaints.

Or. en

**Amendment 743**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 35 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall establish the categories of admissible clearing members and the admission criteria. Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational **capacity** to meet the obligations arising from participation in a CCP. Criteria that restrict access shall only be permitted to the extent that their objective is to control the risk for the CCP.

*Amendment*

1. A CCP shall establish the categories of admissible clearing members and the admission criteria. Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources, **at least Euro 50,000**, and operational **capacities, in particular a commercially equipped business enterprise, the reliability and the professional aptitude of the owner or managing director to conduct securities or commodity transactions at the stock market and the guarantee of the proper execution of the stock market transactions** to meet the obligations arising from participation in a CCP. Criteria that restrict access shall only be permitted to the extent that their objective is to control the risk for the CCP. **These provisions do not apply to holdings of public corporations within the meaning of Art 28 paragraph 1.**

Or. en

*Justification*

*The members of the CCP have to hold a suitable operational infrastructure. Only financial institutions with real business activities may set up accounts with the central counterparty, not however letterbox banks and offshore subsidiaries. Unpublished accounts must be prohibited, in combination with consequent clearing system audits to sanction avoidance.*

**Amendment 744**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 35 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall establish the categories of admissible clearing members and the admission criteria. Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall only be permitted to the extent that their objective is to control the risk for the CCP.

*Amendment*

1. A CCP shall establish the categories of admissible clearing members and the admission criteria. Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall only be permitted to the extent that their objective is to control the risk for the CCP. ***Financial institutions should not be restricted from becoming clearing members in an uncompetitive or unreasonable way.***

Or. en

**Amendment 745**  
**Elena Băsescu**

**Proposal for a regulation**  
**Article 35 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall establish the categories of admissible clearing members and the admission criteria. Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall only be permitted to the extent that their

*Amendment*

1. A CCP shall establish the categories of admissible clearing members and the admission criteria. Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall only be permitted to the extent that their

objective is to control the risk for the CCP.

objective is to control the risk for the CCP.  
***The admission criteria have to be approved by the competent authority.***

Or. en

*Justification*

*The admission criteria has to be approved by the competent authority in order to avoid the situation in which the admission criteria is designed in such a way as to obstruct the participation of others.*

**Amendment 746**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 35 – paragraph 3**

*Text proposed by the Commission*

3. Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. Clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP.

*Amendment*

3. Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. ***The CCP's rules for clearing members should allow it to gather basic information to identify, monitor and manage relevant concentrations of risk related to the provision of services to clients.*** Clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP.

Or. en

*Justification*

*EMIR should ensure that CCPs have the responsibility to know who their clearing members are, and who their clients are as this contributes to their risk profile.*

**Amendment 747**  
**Elena Băsescu**

**Proposal for a regulation**  
**Article 35 – paragraph 3**

*Text proposed by the Commission*

3. Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. Clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP.

*Amendment*

3. Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. Clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP.  
***These criteria should be non-discriminatory.***

Or. en

**Amendment 748**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 35 – paragraph 6**

*Text proposed by the Commission*

6. A CCP may impose specific additional obligations on clearing members, such as, but not limited to, the participation in auctions of a defaulting clearing member's position. Such additional obligations shall be proportional to the risk brought by the clearing member and shall not restrict participation to certain categories of clearing members.

*Amendment*

6. A CCP may impose specific additional obligations on clearing members, such as, but not limited to, the participation in auctions of a defaulting clearing member's position. Such additional obligations shall be proportional to the risk brought by the clearing member and shall not restrict participation to certain categories of clearing members ***in an uncompetitive way.***

Or. en

**Amendment 749**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 36 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall publicly disclose the prices and fees associated with services provided. It shall disclose the prices and fees of **single services** and **functions** provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow its clearing members and, where relevant, their clients, separate access to specific services.

*Amendment*

1. A CCP shall publicly disclose the prices and fees associated with services provided. It shall disclose the prices and fees of **each service** and **function** provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow its clearing members and, where relevant, their clients, separate access to specific services.

Or. en

*Justification*

*Transparency in pricing is necessary to ensure fairness*

**Amendment 750**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 36 – paragraph 3**

*Text proposed by the Commission*

3. A CCP shall publicly disclose the price information used to calculate its end of day exposures with its clearing members and the volumes of the cleared transactions for each class of instruments.

*Amendment*

3. **To the maximum extent possible, consistent with its legal and contractual obligations,** a CCP shall publicly disclose the price information used to calculate its end of day exposures with its clearing members and the volumes of the cleared transactions for each class of instruments.

Or. en

## *Justification*

*Pricing information may contain proprietary information which is governed by separate legal frameworks, therefore provision must be allowed to reflect this, while still asking for as much transparency as possible.*

### **Amendment 751** **Jean-Paul Gauzès**

#### **Proposal for a regulation** **Article 36 – paragraph 3**

##### *Text proposed by the Commission*

3. A CCP shall publicly disclose the price information used to calculate its end of day exposures with its clearing members **and** the volumes of the cleared transactions for each class of instruments.

##### *Amendment*

3. A CCP shall disclose ***to its clearing members and competent authority*** the price information used to calculate its end of day exposures with its clearing members.

***A CCP shall*** publicly ***disclose*** the volumes of the cleared transactions for each class of instruments ***cleared by the CCP on an aggregated basis***.

Or. en

### **Amendment 752** **Kay Swinburne**

#### **Proposal for a regulation** **Article 36 – paragraph 3 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***3 a. A CCP shall publicly disclose the operational and technical requirements related to the communication protocols covering content and message formats it uses to interact with third-parties, including those referred to in Article 5.***

Or. en

**Amendment 753**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 36 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. A CCP shall publicly disclose the operational and technical requirements related to the communication protocols covering content and message formats it uses to interact with third-parties, including those referred to in Article 5.***

Or. en

*Justification*

*Disclosure of pricing information to third parties may be restricted where it is proprietary in nature and the text needs to reflect this legal restriction. It is important that the text reflects this legal reality which cannot be controlled by the CCPs. In order to promote open access CCPs should also be required to disclose details of the communication protocols it uses to interact with third parties.*

**Amendment 754**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**  
**Article 36 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. A CCP shall publicly disclose any breaches by clearing members of the criteria referred to in Article 35 paragraph 1 and paragraph 2.***

Or. en



## Amendment 755

Pascal Canfin on behalf of the Verts/ALE Group

### Proposal for a regulation Article 37 – paragraph 1

*Text proposed by the Commission*

1. A CCP shall **keep** records and accounts **that shall enable it, at any time and without delay, to identify and segregate** the assets and positions of **one clearing member from** the assets and positions of **any other** clearing member and from **its own** assets.

*Amendment*

1. A CCP shall **have in place** records and accounts, **systems and procedures to ensure that, upon a pre-defined trigger event,** the assets and positions of **solvent and non-defaulting clearing members and their clients, and** the assets and positions of **clients of a defaulting** clearing member, **can be determined and are protected against losses arising from such defaulting clearing member to the extent possible. Accordingly such assets and positions shall be dealt with in accordance with the provisions of this Article, the default procedures of the CCP as required by Article 45 and in accordance with this Regulation generally. Member States shall ensure that their insolvency laws include derogations sufficient to allow CCPs to meet the objectives and requirements of these provisions.**

Or. en

## Amendment 756 Sharon Bowles

### Proposal for a regulation Article 37 – paragraph 1

*Text proposed by the Commission*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to identify **and segregate** the assets and positions of one clearing member from the assets and positions of any other

*Amendment*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to identify **clearly in accounts with the CCP, the** assets and positions **held for the account** of one clearing member from

clearing member and from its own assets.

the assets and positions *held for the account* of any other clearing member and from its own assets.

***Where a CCP deposits assets and funds with a third party, it shall ensure that collateral provided by a clearing member by way of a security financial collateral arrangement are kept separately from the assets and funds belonging to the CCP, other clearing members and from assets and funds belonging to that third party.***

Or. en

## **Amendment 757**

**Kay Swinburne**

### **Proposal for a regulation**

#### **Article 37 – paragraph 1**

##### *Text proposed by the Commission*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to identify and segregate the assets and positions of one clearing member from the assets and positions of any other clearing member and from its own assets.

##### *Amendment*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to identify and segregate the assets and positions of one clearing member from the assets and positions of any other clearing member and from its own assets. ***Where a CCP deposits assets and funds with a third party, it shall ensure that assets and funds belonging to a clearing member are kept separately from the assets and funds belonging to the CCP, other clearing members and from assets and funds belonging to that third party.***

Or. en

##### *Justification*

*It is important that clients are able to request the highest level of segregation possible, at a reasonable cost as during the collapse of Lehman Brothers there was a lot of uncertainty about what level of protection clients had against its default in the case of money held in clearing houses. This should bring EMIR inline with US provisions.*

**Amendment 758**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 37 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to **identify and segregate** the **assets and** positions of one clearing member from the **assets and** positions of any other clearing member and **from its own assets**.

*Amendment*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to **distinguish** the positions of one clearing member from the positions of any other clearing member and **CCP with whom it has entered into an interoperability arrangement, and to comply with the requirements set forth in paragraphs 2 and 3**.

Or. en

**Amendment 759**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 37 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to **identify and segregate** the **assets and** positions of one clearing member from the **assets and** positions of any other clearing member and **from its own assets**.

*Amendment*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to **distinguish** the positions of one clearing member from the positions of any other clearing member and **CCP with whom it has entered into an interoperability arrangement, and to comply with the requirements set forth in paragraphs 2 and 3**.

Or. en

**Amendment 760**  
**Sari Essayah**

**Proposal for a regulation**  
**Article 37 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to **identify** and segregate the assets and positions of one clearing member from the assets and positions of any other clearing member and from its own assets.

*Amendment*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to **distinguish** and segregate the assets and positions of one clearing member from the assets and positions of any other clearing member and from its own assets.

Or. en

**Amendment 761**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 37 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to identify and segregate the assets and positions of one clearing member from the assets and positions of any other clearing member and from its own assets.

*Amendment*

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to identify and segregate the assets and positions of one clearing member from the assets and positions of any other clearing member and from its own assets **including, where relevant, the assets provided via a title transfer financial collateral arrangement.**

Or. en

**Amendment 762**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

2. **A CCP shall require each clearing member to distinguish and segregate** in accounts with the CCP the **assets and positions of that** clearing member from those of its clients. **A CCP shall allow clients to have a more detailed segregation of their assets and positions. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation.**

*Amendment*

2. **Clearing** member **shall** distinguish in **separate** accounts with the CCP the positions of **the** clearing member from those of its clients.

Or. en

**Amendment 763**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

2. **A CCP shall require each clearing member to distinguish and segregate** in accounts with the CCP the **assets and positions of that** clearing member from those of its clients. **A CCP shall allow clients to have a more detailed segregation of their assets and positions. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation.**

*Amendment*

2. **Clearing** member **shall** distinguish in **separate** accounts with the CCP the positions of **the** clearing member from those of its clients.

Or. en

**Amendment 764**  
**Sari Essayah**

**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall require each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients. ***A CCP shall allow clients to have a more detailed segregation of their assets and positions. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation.***

*Amendment*

2. A CCP shall require each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients (***“omnibus segregation”***).

Or. en

**Amendment 765  
Kay Swinburne**

**Proposal for a regulation  
Article 37 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall require each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients. A CCP shall ***allow clients to have a more detailed segregation of their assets and positions. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation.***

*Amendment*

2. A CCP shall require each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients. A CCP shall ***keep records and accounts enabling each clearing member to identify clearly in accounts with the CCP, the assets, funds and positions of that clearing member from those of the clearing member’s clients. This can also be offered via segregated accounts maintained by an independent third party.***

Or. en

*Justification*

*It is important that clients are able to request the highest level of segregation possible, at a reasonable cost as during the collapse of Lehman Brothers there was a lot of uncertainty*

about what level of protection clients had against its default in the case of money held in clearing houses. This should bring EMIR inline with US provisions.

**Amendment 766**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall **require** each clearing member to **distinguish and segregate** in accounts with the CCP the assets and positions of that clearing member from those of **its** clients. **A CCP shall allow clients to have a more detailed segregation of their assets and positions. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation.**

*Amendment*

2. A CCP shall **keep records and accounts enabling** each clearing member to **identify clearly** in accounts with the CCP the assets, **funds** and positions **held for the account** of that clearing member from those **held for the account of the clearing member's** clients.

Or. en

**Amendment 767**  
**Arturs Krišjānis Kariņš**

**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall require each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients. **A CCP shall allow clients to have a more detailed segregation of their assets and positions. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation.**

*Amendment*

2. A CCP shall require each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients. **The clearing member shall then allow clients to have a more detailed segregation of their assets and positions from that of the member.** The CCP shall publicly disclose the risks and costs associated with the different levels of

segregation.

Or. en

**Amendment 768**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall require each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients. A CCP **shall allow** clients to have a more detailed segregation of their assets and positions. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation.

*Amendment*

2. A CCP shall require each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients. A CCP **offers** clients to have a more detailed segregation of their assets and positions, **including full segregation of the assets of the clients of the clearing member**. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation.

Or. en

**Amendment 769**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**  
**Article 37 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall require each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients. A CCP shall allow clients to have a more detailed segregation

*Amendment*

2. A CCP shall require each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients. A CCP shall allow clients to have a more detailed segregation



of their assets and positions. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation.

of their assets and positions. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation. ***The CCP shall require the clearing members to inform their clients of these risks and costs. The CCP shall require the clearing members to receive a written agreement from their clients confirming their decision not to have a detailed segregation of their assets and positions and to ensure that their clients are aware of the risks associated with that choice.***

Or. en

**Amendment 770**  
**Olle Schmidt**

**Proposal for a regulation**  
**Article 37 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. A CCP shall make arrangements so it is possible for the clearing members to offer clients the opportunity to use segregated accounts.***

***Clearing members shall, as a minimum, offer clients the choice of using segregated accounts and the option of using accounts whereby assets are held by an independent third party.***

Or. en

*Justification*

*Clients that are heavy users of hedging derivatives, such as pension funds and life assurers, should have the option of having their assets and positions separated from other clients in their clearing member in segregated accounts, in order to protect the assets belonging to their ultimate investors. Also, in order to increase the systemic safety of the clearing system, it is necessary to guarantee the portability of assets by a contractual process to identify backup clearing members.*

**Amendment 771**  
**Olle Schmidt**

**Proposal for a regulation**  
**Article 37 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2 b. A CCP shall appoint one or more backup clearing member for each of its clearing members. The backup clearing member appointment process shall guarantee portability of clients' assets and positions even under a multiple defaults scenario.***

Or. en

*Justification*

*Clients that are heavy users of hedging derivatives, such as pension funds and life assurers, should have the option of having their assets and positions separated from other clients in their clearing member in segregated accounts, in order to protect the assets belonging to their ultimate investors. Also, in order to increase the systemic safety of the clearing system, it is necessary to guarantee the portability of assets by a contractual process to identify backup clearing members.*

**Amendment 772**  
**Sari Essayah**

**Proposal for a regulation**  
**Article 37 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. A CCP shall require and enable clearing members to allow any client to obtain segregation of their assets and positions from any other client (“full segregation”).***

***The CCP shall publicly disclose the risks and costs associated with the different***

*levels of segregation.*

*Details of the different levels of segregation provided by a CCP or a clearing member shall include a description of the main legal implications the respective levels of segregation offered, including information on the relevant jurisdictions' applicable insolvency law.*

Or. en

**Amendment 773**  
**Sari Essayah**

**Proposal for a regulation**  
**Article 37 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*2 b. For the purpose of this article 'segregation' shall mean the establishment of such legally effective arrangements including but not limited to accounting, record keeping, safe-keeping and deposit arrangements that ensure that collateral and positions of one person or, where relevant a group of persons, shall not be used to discharge the liabilities of or claims against any other person from whom it is intended that it is segregated, and shall not be available for any such purpose except when provided for under this Regulation or otherwise so agreed by the persons in writing.*

*In case of full segregation according to paragraph 2a a clearing member shall ensure that collateral securing client's positions is kept separately from the collateral belonging to other clients of the clearing member by means of differently titled accounts on the books of the CCP or the books of an independent third party which is not linked by control to the clearing member through whom the client*

*maintains its positions.*

Or. en

**Amendment 774**

**Alfredo Pallone**

**Proposal for a regulation**

**Article 37 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Depending on the level of segregation chosen by a client, the CCP shall ensure that it is able to transfer on request at a pre-defined trigger event, without the consent of the clearing member and within a pre-defined transfer period its assets and positions to another clearing member. That other clearing member shall only be obliged where it has previously entered into a contractual relationship for that purpose.***

***deleted***

Or. en

**Amendment 775**

**Kay Swinburne**

**Proposal for a regulation**

**Article 37 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Depending on the level of segregation chosen by a client, the CCP shall ensure that it is able to transfer on request at a pre-defined trigger event, without the consent of the clearing member and within a pre-defined transfer period its assets and positions to another clearing member. That other clearing member shall only be obliged where it has previously entered into a contractual relationship for that***

***3. A CCP shall offer to keep records and accounts enabling each clearing member to identify clearly in accounts held by the CCP the assets, funds and positions held for the account of a client from those held for the account of other clients.***

*purpose.*

Or. en

*Justification*

*It is important that clients are able to request the highest level of segregation possible, at a reasonable cost as during the collapse of Lehman Brothers there was a lot of uncertainty about what level of protection clients had against its default in the case of money held in clearing houses. This should bring EMIR inline with US provisions.*

**Amendment 776**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 37 – paragraph 3**

*Text proposed by the Commission*

***3. Depending on the level of segregation chosen by a client, the CCP shall ensure that it is able to transfer on request at a pre-defined trigger event, without the consent of the clearing member and within a pre-defined transfer period its assets and positions to another clearing member. That other clearing member shall only be obliged where it has previously entered into a contractual relationship for that purpose.***

*Amendment*

***3. Clearing members shall distinguish in separate accounts with the CCP the positions of each client (“full segregation”).***

Or. en

**Amendment 777**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 37 – paragraph 3**

*Text proposed by the Commission*

***3. Depending on the level of segregation chosen by a client, the CCP shall ensure***

*Amendment*

***3. A clearing member shall, depending on the level of service agreed with the client,***

that *it is able to transfer on request at a pre-defined trigger event, without the consent of the clearing member and within a pre-defined transfer period its assets and positions to another clearing member. That other clearing member shall only be obliged where it has previously entered into a contractual relationship for that purpose.*

ensure that *assets and funds belonging to a client are legally segregated from the assets and funds belonging to other clients of the clearing member ("full segregation"), or provide client omnibus accounts that provide the same level of legal protection as full segregation ("legally segregated omnibus accounts").*

Clearing members shall *offer full segregation or legally segregated omnibus accounts to their clients under commercially reasonable terms.*

Or. en

#### *Justification*

*More clarity between full segregation or legally segregated omnibus account requirements. Both must be offered under commercially reasonable terms to make full segregation an economic reality.*

#### **Amendment 778** **Olle Schmidt**

#### **Proposal for a regulation** **Article 37 – paragraph 3**

##### *Text proposed by the Commission*

**3. Depending on the level of segregation chosen by a client, the CCP shall ensure that it is able to transfer on request at a pre-defined trigger event, without the consent of the clearing member and within a pre-defined transfer period its assets and positions to *another* clearing member. *That other* clearing member shall only be obliged where it has previously entered into a contractual relationship for that purpose.**

##### *Amendment*

**3. The CCP shall ensure that it is able to transfer on request at a pre-defined trigger event, without the consent of the clearing member and within a pre-defined transfer period its assets and positions to *backup* clearing member *as set out in Paragraph 2b*. *The backup* clearing member shall only be obliged *to accept those assets and positions* where it has previously entered into a contractual relationship, *as set out in Paragraph 2b*, for that purpose.**

Or. en

## *Justification*

*Clients that are heavy users of hedging derivatives, such as pension funds and life assurers, should have the option of having their assets and positions separated from other clients in their clearing member in segregated accounts, in order to protect the assets belonging to their ultimate investors. Also, in order to increase the systemic safety of the clearing system, it is necessary to guarantee the portability of assets by a contractual process to identify backup clearing members.*

### **Amendment 779**

**Jürgen Klute**

#### **Proposal for a regulation**

##### **Article 37 – paragraph 3**

*Text proposed by the Commission*

**3. Depending on the level of segregation chosen by a client, the CCP shall ensure that it is able to transfer *on request* at a pre-defined trigger event, without the consent of the clearing member *and within a pre-defined transfer period* its assets and positions to another clearing member. *That other clearing member shall only be obliged where it has previously entered into a contractual relationship for that purpose.***

*Amendment*

**3. The CCP shall ensure that it is able to transfer at a pre-defined trigger event, without the consent of the clearing member *at any time* its assets and positions to another clearing member. *The clearing members shall assume the obligation for acquirement by entering into adequate contractual relationships.***

Or. en

### **Amendment 780**

**Pascal Canfin on behalf of the Verts/ALE Group**

#### **Proposal for a regulation**

##### **Article 37 – paragraph 3**

*Text proposed by the Commission*

**3. Depending on the level of segregation chosen by a client, the CCP shall ensure that it is able to transfer on request at a pre-**

*Amendment*

**3. Depending on the level of segregation chosen by a client, the CCP shall ensure that it is able to transfer on request at a pre-**

defined trigger event, without the consent of the clearing member and within a pre-defined transfer period *its* assets and positions to another clearing member. *That other clearing member shall only be obliged where it has previously entered into a contractual relationship for that purpose.*

defined trigger event, without the consent of the clearing member and within a pre-defined transfer period *the assets of that client* and positions to another clearing member. *The decision whether or not to effect the transfer upon request shall remain with the CCP, and shall be made in accordance with the default procedures of the CCP pursuant to Article 45.*

Or. en

**Amendment 781**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 37 – paragraph 3 – subparagraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

*Clients shall be given by clearing members the possibility to have their positions recorded in omnibus accounts with the CCP (opt-out).*

Or. en

**Amendment 782**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 37 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*3 a. A clearing member shall, depending on the level of service agreed with the client, offer to ensure that assets and funds belonging to a client are either legally segregated from the assets and funds belonging to other clients of the clearing member and from the clearing member (“full segregation”), or provide*



*client omnibus accounts that provide legal protection for client assets (“legally segregated omnibus accounts”).*

*Clearing members shall offer both full segregation and legally segregated omnibus accounts to their clients under commercially reasonable terms.*

Or. en

*Justification*

*It is important that clients are able to request the highest level of segregation possible, at a reasonable cost as during the collapse of Lehman Brothers there was a lot of uncertainty about what level of protection clients had against its default in the case of money held in clearing houses. This should bring EMIR inline with US provisions.*

**Amendment 783**

**Kay Swinburne**

**Proposal for a regulation**

**Article 37 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3 b. The CCP and clearing member shall publicly disclose the levels of protection and the costs associated with the different levels of segregation they provide. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the relevant jurisdictions’ applicable insolvency law.***

Or. en

*Justification*

*It is important that clients are able to request the highest level of segregation possible, at a reasonable cost as during the collapse of Lehman Brothers there was a lot of uncertainty about what level of protection clients had against its default in the case of money held in*

*clearing houses. This should bring EMIR inline with US provisions.*

**Amendment 784**

**Kay Swinburne**

**Proposal for a regulation**

**Article 37 – paragraph 3 c (new)**

*Text proposed by the Commission*

*Amendment*

***3 c. A CCP shall offer clearing members and, where relevant, clients the possibility to provide, at their discretion, their initial margin either via a title transfer collateral arrangement or via a security interest collateral arrangement. Clearing Members shall offer corresponding possibilities to their clients, except to the extent that national or EU laws restrict the use of title transfer financial collateral arrangements by retail customers.***

Or. en

*Justification*

*It is important that clients are able to request the highest level of segregation possible, at a reasonable cost as during the collapse of Lehman Brothers there was a lot of uncertainty about what level of protection clients had against its default in the case of money held in clearing houses. This should bring EMIR inline with US provisions.*

**Amendment 785**

**Sharon Bowles**

**Proposal for a regulation**

**Article 37 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. The CCP and clearing member shall publically disclose the levels of protection and the costs associated with the different***

*levels of segregation they provide. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the relevant jurisdictions' applicable insolvency law.*

Or. en

*Justification*

*More clarity between full segregation or legally segregated omnibus account requirements. Both must be offered under commercially reasonable terms to make full segregation an economic reality.*

**Amendment 786**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 37 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*3 a. Clearing members shall distinguish in separate accounts with the CCP the positions of each client (“full segregation”).*

*Clients shall be given by clearing members the possibility to have their positions recorded in omnibus accounts with the CCP (opt-out).*

Or. en

**Amendment 787**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 37 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3 b. A CCP shall keep records that shall enable it, at any time and without delay, to identify the assets posted in relation to each account kept in accordance with the present Article.***

Or. en

**Amendment 788**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 37 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. Provided that the client is not exposed to the default of the clearing member through which it has access to the CCP or of any other clients, Annex III, Part 2, point 6 of Directive 2006/48/EC shall apply.***

***4. A CCP should structure its arrangements to ensure, that when full segregation has been chosen, it can facilitate the transfer of the positions and collateral of clients of a defaulting member to one or more other participants.***

Or. en

*Justification*

*It is important that clients are able to request the highest level of segregation possible, at a reasonable cost as during the collapse of Lehman Brothers there was a lot of uncertainty about what level of protection clients had against its default in the case of money held in clearing houses. This should bring EMIR inline with US provisions.*

**Amendment 789**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 37 – paragraph 4**

*Text proposed by the Commission*

4. **Provided that *the client is not exposed to the default of the clearing member through which it has access to the CCP or of any other clients, Annex III, Part 2, point 6 of Directive 2006/48/EC shall apply.***

*Amendment*

4. **A CCP shall keep records that shall enable it, at any time and without delay, to identify the assets posted in relation to each account kept in accordance with the present Article.**

Or. en

#### **Amendment 790**

**Sharon Bowles**

#### **Proposal for a regulation**

**Article 37 – paragraph 4**

*Text proposed by the Commission*

4. Provided that the client ***is not exposed to the default of the clearing member through which it has access to the CCP or of any other clients***, Annex III, Part 2, point 6 of Directive 2006/48/EC shall apply.

*Amendment*

4. Provided that the client has ***selected full segregation, and has concluded a contract***, Annex III, Part 2, point 6 of Directive 2006/48/EC shall apply.

Or. en

#### **Amendment 791**

**Alfredo Pallone**

#### **Proposal for a regulation**

**Article 37 – paragraph 4**

*Text proposed by the Commission*

4. Provided that ***the client is not exposed to the default of the clearing member through which it has access to the CCP or of any other clients***, Annex III, Part 2, point 6 of Directive 2006/48/EC shall apply.

*Amendment*

4. Provided that ***a client has selected full segregation***, Annex III, Part 2, point 6 of Directive 2006/48/EC shall apply.

**Amendment 792**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 37 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. A CCP shall offer clearing members and where relevant, clients the possibility to provide, at their discretion, their initial margin either via title transfer collateral arrangement or via security interest collateral arrangement.***

***Clearing members shall offer corresponding possibilities to their clients.***

Or. en

*Justification*

*This permits the client the choice of providing initial margin by way of security interest or title transfer. It refers to assets funds and accounts where appropriate.*

**Amendment 793**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 37 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. The requirements set out in paragraphs 1 to 4 shall prevail over any conflicting laws, regulations and administrative provisions of the Member States that prevent the parties from fulfilling them.***      ***deleted***

Or. en

**Amendment 794**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 37 – paragraph 5**

*Text proposed by the Commission*

**5. The requirements set out in paragraphs 1 to 4 shall prevail over any conflicting laws, regulations and administrative provisions of the Member States that prevent the parties from fulfilling them.**

*Amendment*

**5. Provided that a client has selected full segregation, Annex III, Part 2, point 6 of Directive 2006/48/EC shall apply.**

Or. en

*Justification*

*The amendment aims at achieving, inter alia, two main objectives: (i) as regards derivative contracts, it introduces an obligation to segregate in the accounts of the CCP the positions of each client, which is necessary to ensure portability; and (ii) introduces a new wording which should eliminate any confusion between positions and assets.*

**Amendment 795**  
**Werner Langen**

**Proposal for a regulation**  
**Article 37 – paragraph 5 – subparagraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

***The relevant trigger events shall include insolvency of a clearing member and appropriate events, and failure to meet existing obligations.***

***In order to ensure consistent harmonisation of this Article, ESMA shall develop draft technical standards specifying the relevant events in greater detail.***

***ESA (ESMA) shall submit draft for those regulatory technical regulatory standards***

*to the Commission by 30 June 2012.*

*Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.*

Or. en

*Justification*

*Procedural amendment.*

**Amendment 796**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**

**Article 37 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

*5 a. Power shall be conferred on the Commission to adopt regulatory technical standards specifying the types of markets for which a more detailed level of segregation of assets and positions should be offered to clients, having regard to the costs and benefits of doing so. The standards shall be adopted pursuant to Articles 10 to 14 of Regulation (EU) No. 1095/2010. ESA (ESMA) shall submit draft versions of these technical regulatory standards to the Commission by 30 June 2012.*

Or. en



**Amendment 797**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 38 – paragraph 1**

*Text proposed by the Commission*

A CCP shall measure and assess its liquidity and credit exposures to each clearing member and, where relevant, to another CCP with whom it has concluded an interoperable arrangement, on a near to real time basis. A CCP shall have access in a timely manner and on a non discriminatory basis to the relevant pricing sources to effectively measure its exposures.

*Amendment*

A CCP shall measure and assess its liquidity and credit exposures to each clearing member and, where relevant, to another CCP with whom it has concluded an interoperable arrangement, on a near to real time basis. A CCP ***should, where practicable, identify, monitor and manage the potential risks arising from clearing members clearing transactions on behalf of clients.*** A CCP shall have access in a timely manner and on a non discriminatory basis to the relevant pricing sources to effectively measure its exposures. ***Such pricing sources should include as a minimum, those related to indices used to price derivatives or other financial instruments.***

Or. en

*Justification*

*While a CCP is not responsible for the behaviour of the clearing members, it should consider in its risk management tools, the exposure different clearing members have to their clients. It is important that all CCPs should be able to access indices used to value derivative products so more than one CCP will be able to clear as many products as possible, and thereby avoid mandating a monopoly situation when the clearing obligation is applied.*

**Amendment 798**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 38 – paragraph 1**

*Text proposed by the Commission*

A CCP shall measure and assess its

*Amendment*

A CCP shall measure and assess its

liquidity and credit exposures to each clearing member and, where relevant, to another CCP with whom it has concluded an interoperable arrangement, on a near to real time basis. A CCP shall have access in a timely manner and on a non discriminatory basis to the relevant pricing sources to effectively measure its exposures.

liquidity and credit exposures to each clearing member and, where relevant, to another CCP with whom it has concluded an interoperable arrangement, on a near to real time basis. A CCP ***should, to the extent practicable, identify, monitor and manage the potential risks arising from clearing members clearing transactions on behalf of clients.*** A CCP shall have access in a timely manner and on a non discriminatory basis to the relevant pricing sources to effectively measure its exposures.

Or. en

**Amendment 799**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 38 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***CCPs should be granted non-discriminatory access to information on the composition, methodology and prices of any indices that are required to calculate the value of a derivative product. This should be done on a reasonable cost basis.***

Or. en

*Justification*

*In order to maintain a level playing field between clearing houses, they must not be allowed to prevent other clearing houses offering clearing in competing products by retaining exclusive access to trade feeds.*

**Amendment 800**  
**Diogo Feio, Astrid Lulling**

**Proposal for a regulation**  
**Article 38 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1 a. For any derivative whose value is calculated by reference to a commercial index or other benchmark, CCPs should be permitted non-discriminatory access to information on the composition, methodology and prices of that benchmark and should be automatically granted at a commercially reasonable price, and in any event at a price no higher than the lowest price that the benchmark provider has licensed the relevant intellectual property rights to another CCP or related entity in the preceding 12 months, the intellectual property rights necessary in respect of such information to enable CCPs to clear such derivatives.*

Or. en

**Amendment 801**  
**Diogo Feio, Astrid Lulling**

**Proposal for a regulation**  
**Article 38 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*1 b. No CCP or related entities may enter into an agreement with any benchmark provider the effect of which would be either (i) to prevent any other CCP obtaining access to such information or*

*rights as referred to in paragraph 2; or  
(ii) to prevent any other CCP from  
obtaining access to such information or  
rights on terms any less advantageous  
than those conferred on that CCP*

Or. en

**Amendment 802**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 39 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall be sufficient to cover losses that result from at least 99 per cent of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and where relevant with CCPs which have interoperable arrangements, at least on a daily basis.

*Amendment*

1. A CCP shall impose, call and collect, **or in specific cases, secure** margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall be sufficient to cover losses that result from at least 99 per cent of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and where relevant with CCPs which have interoperable arrangements, at least on a daily basis.

Or. en

*Justification*

*In order to take into account the specific nature of long term investment funds it may be necessary to allow them to "secure" or ring fence funds for margin calls instead of having them permanently available and unable to put to use. The specific details of this should be established by ESMA.*

**Amendment 803**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 39 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall be sufficient to cover losses that result from at least 99 per cent of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and where relevant with CCPs which have interoperable arrangements, at least on a daily basis.

*Amendment*

1. A CCP shall impose, call and collect, **or secure**, margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall be sufficient to cover losses that result from at least 99 per cent of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and where relevant with CCPs which have interoperable arrangements, at least on a daily basis.

Or. en

**Amendment 804**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**  
**Article 39 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They

*Amendment*

1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable arrangements. ***Competent authorities shall ensure that CCPs respect minimum margin standards as specified in paragraph 5. These minimum standards***

shall be sufficient to cover losses that result from at least 99 per cent of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and where relevant with CCPs which have interoperable arrangements, at least on a daily basis.

***shall be calibrated in accordance with the risk level and shall be regularly revised to reflect current market conditions and in particular in response to emergency situations where it is concluded that doing so will mitigate systemic risks.*** Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall be sufficient to cover losses that result from at least 99.5 per cent of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and where relevant with CCPs which have interoperable arrangements, at least on a daily basis.

Or. en

**Amendment 805**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 39 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall be sufficient to cover losses that result from at least 99 per cent of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and where relevant with CCPs which have interoperable arrangements, at least on a daily basis.

*Amendment*

1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall be sufficient to cover losses that result from at least 99 per cent of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and where relevant with CCPs which have interoperable arrangements, at least on a daily basis.  
***Where the relevant period does not***

*include any stress periods they have to be integrated in the calculation.*

Or. en

## **Amendment 806**

**Pascal Canfin on behalf of the Verts/ALE Group**

### **Proposal for a regulation**

**Article 39 – paragraph 1 – subparagraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

*Specific margin requirements shall be defined by competent authorities and ESA (ESMA) for commodity derivatives taking proper account of stocks to consumption ratios and ratios of aggregated notional value of contracts to outstanding aggregated market value of underlying assets.*

Or. en

## **Amendment 807**

**Pascal Canfin on behalf of the Verts/ALE Group**

### **Proposal for a regulation**

**Article 39 – paragraph 1 – subparagraph 2 (new)**

*Text proposed by the Commission*

*Amendment*

*In accordance with Article 9(5) of Regulation .../... [ESMA Regulation], ESA (ESMA) may recalibrate margin requirements in emergency situations when doing so will mitigate systemic risk.*

Or. en

**Amendment 808**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 39 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters shall be validated by the competent authority and subject to **a joint** opinion of **the college** referred to in Article 15.

*Amendment*

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters shall be **independently** validated by the competent authority and subject to **an** opinion of **ESMA** referred to in Article 15.

Or. en

**Amendment 809**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 39 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters shall be validated by the competent authority and subject to **a joint** opinion of the college referred to in Article 15.

*Amendment*

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters shall be validated by the competent authority and subject to **an** opinion of the college referred to in Article 15.



## **Amendment 810**

**Pascal Canfin on behalf of the Verts/ALE Group**

### **Proposal for a regulation Article 39 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters shall be validated by the competent authority and subject to a joint opinion of the college referred to in Article 15.

*Amendment*

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters shall be validated by the competent authority and subject to a joint opinion of the college referred to in Article 15.

***Competent authorities shall assess, in particular, that such models are adequate with respect to the volatility and continuity of margin requirements in case of adverse or extreme but plausible market conditions as well as potential slippage effects and its consequences for net present values of contracts.***

Or. en

## **Amendment 811 Sharon Bowles**

### **Proposal for a regulation Article 39 – paragraph 3**

*Text proposed by the Commission*

3. A CCP shall call and collect margins on an intraday basis, at minimum when pre-defined thresholds are breached.

*Amendment*

3. A CCP shall call and collect, **or secure**, margins on an intraday basis, at minimum when pre-defined thresholds are breached.

Or. en

## **Amendment 812**

**Alfredo Pallone**

### **Proposal for a regulation**

#### **Article 39 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. A CCP shall call and collect margins that are adequate to cover the positions registered in each account kept in accordance with article 37 with respect to specific financial instruments.***

Or. en

#### *Justification*

*The Commission Proposal lacks a simple provision which links margins requirements to the CCP account structure – i.e. to the positions registered in the different accounts kept by the CCP. It is appropriate that the latter provision is included in article 39 which is devoted to “margin requirements”.*

## **Amendment 813**

**Leonardo Domenici**

### **Proposal for a regulation**

#### **Article 39 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. A CCP shall call and collect margins that are adequate to cover the positions registered in each account kept in***

*accordance with article 37 with respect to specific financial instruments. A CCP may calculate margins with respect to a portfolio of financial instruments only when the price correlation among the financial instruments included in the portfolio is high and stable.*

Or. en

*Justification*

*Amendment to link margins requirements to the CCP account structure – i.e. to the positions registered in the different accounts kept by the CCP.*

**Amendment 814**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 39 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3 b. A CCP may calculate margins with respect to a portfolio of financial instruments only when the price correlation among the financial instruments included in the portfolio is high and stable.***

Or. en

*Justification*

*The Commission Proposal lacks a provision on so-called cross-margining: cross-margining should be limited to cases where the price correlation among the financial instruments included in the portfolio is both high and stable.*

**Amendment 815**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 39 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. A CCP shall segregate the margins posted by each clearing member and, where relevant, by CCPs that have interoperable arrangements and shall ensure the protection of the margins posted against the default of other clearing members, the institution where they are deposited, or of the CCP itself and from any other loss the CCP may experience.***

***deleted***

Or. en

**Amendment 816**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 39 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

***4. A CCP shall segregate the margins posted by each clearing member and, where relevant, by CCPs that have interoperable arrangements and shall ensure the protection of the margins posted against the default of other clearing members, the institution where they are deposited, or of the CCP itself and from any other loss the CCP may experience.***

***deleted***

Or. en

*Justification*

*Legal protection of margins cannot be ensured by CCPs. It must be in the law (see*

amendment 22). Amendment in line with amendment 104 of the Langen Report, but for a different reason.

## **Amendment 817**

**Sharon Bowles**

### **Proposal for a regulation**

#### **Article 39 – paragraph 4**

*Text proposed by the Commission*

4. A CCP shall segregate the margins **posted** by each clearing member and, where relevant, by CCPs that have interoperable arrangements and shall ensure the protection of the margins posted against the default of other clearing members, the institution where they are deposited, or of the CCP itself and from any other loss the CCP may experience.

*Amendment*

4. A CCP shall segregate the margins **owned** by each clearing member and, where relevant, by CCPs that have interoperable arrangements and shall ensure the protection of the margins posted against the default of other clearing members, the institution where they are deposited, or of the CCP itself and from any other loss the CCP may experience.

Or. en

## **Amendment 818**

**Jürgen Klute**

### **Proposal for a regulation**

#### **Article 39 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. CCP limits the number of contracts and the tradable volume per clearing member per month. The Commission is authorised to determine the respective parameters for the maximum number and the maximum volume of outstanding contracts. The ESMA submits respective parameters to the Commission by 30th June 2012 at the latest.***

Or. en

**Amendment 819**  
**Werner Langen**

**Proposal for a regulation**  
**Article 39 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

***Powers are delegated to the Commission to adopt*** regulatory technical standards specifying the appropriate percentage and time horizon, as referred to in paragraph 1, to be considered for the different classes of financial instruments.

*Amendment*

***In order to ensure consistent harmonisation of this Article, ESMA, in consultation with EBA, shall develop draft*** regulatory technical standards specifying the appropriate percentage and time horizon, as referred to in paragraph 1, to be considered for the different classes of financial instruments. ***ESMA, in consultation with EBA, shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 820**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 39 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage and time horizon, as referred to in paragraph 1, to be considered for the different classes of financial instruments.

*Amendment*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage ***in excess of 99 per cent*** and time horizon, as referred to in paragraph 1, to be considered for the different classes of financial instruments, ***and the conditions referred to***

*in paragraphs 3a and/or 3b.*

Or. en

*Justification*

*Clarification.*

**Amendment 821**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 39 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage and time horizon, as referred to in paragraph 1, to be considered for the different classes of financial instruments.

*Amendment*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage and time horizon, as referred to in paragraph 1, to be considered for the different classes of financial instruments ***and the conditions referred to in paragraph 3a.***

Or. en

**Amendment 822**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 39 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage and time horizon, as referred to in paragraph 1, to be considered for the different classes of financial instruments.

*Amendment*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage and time horizon, as ***well as the appropriate mechanisms for securing margin as*** referred to in paragraph 1, to be considered for the different classes of financial instruments.

*Justification*

*ESMA should set out the way in which certain users could be allowed to secure margin in a safe way that does not increase risk.*

**Amendment 823**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 39 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage and time horizon, as referred to in paragraph 1, to be considered for the different classes of financial instruments.

*Amendment*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage and time horizon, ***and the appropriate mechanisms for collecting and securing margin***, as referred to in paragraph 1, to be considered for the different classes of financial instruments.

**Amendment 824**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**  
**Article 39 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage and time horizon, as referred to in paragraph 1, to be considered for the different classes of financial instruments.

*Amendment*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the ***minimum margin requirements and calibration standards as well as the*** appropriate percentage and time horizon, as referred to in paragraph 1, to be considered for the different classes of



financial instruments.

Or. en

**Amendment 825**  
**Werner Langen**

**Proposal for a regulation**  
**Article 39 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

*The* regulatory technical standards referred to in the first subparagraph **shall be adopted** in accordance with Articles [7 to 7d] of Regulation .../... [ESMA Regulation].

*Amendment*

**Power is delegated to the Commission to adopt the** regulatory technical standards referred to in the first subparagraph in accordance with Articles **10 to 14** of Regulation .../... [ESMA Regulation].

Or. en

*Justification*

*Procedural amendment.*

**Amendment 826**  
**Werner Langen**

**Proposal for a regulation**  
**Article 39 – paragraph 5 – subparagraph 3**

*Text proposed by the Commission*

**ESMA, in consultation with EBA, shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.**

*Amendment*

**deleted**

Or. en

*Justification*

*Procedural amendment*

**Amendment 827**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 39 – paragraph 5 – subparagraph 3**

*Text proposed by the Commission*

ESMA, *in consultation* with EBA, shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.

*Amendment*

ESMA, *jointly* with EBA, shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.

Or. en

**Amendment 828**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 40 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall maintain a default fund to cover losses arising from the default, including the opening of an insolvency procedure of one or more clearing members.

*Amendment*

1. *To further limit its credit exposures to its clearing members, a CCP shall maintain a default fund to cover losses that exceed the losses to be covered by margin requirements as referred to in Article 39, arising from the default, including the opening of an insolvency procedure of one or more clearing members.*

Or. en

**Amendment 829**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 40 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall maintain a default fund to cover losses arising from the default, including the opening of an insolvency procedure of one or more clearing members.

*Amendment*

1. **To further limit its credit exposures to its clearing members, a CCP shall maintain a default fund to cover losses that exceed the losses to be covered by margin requirements as referred to in Article 39,** arising from the default, including the opening of an insolvency procedure, of one or more clearing members.

Or. en

*Justification*

*The regulation should be consistent with the ongoing work of CPSS-IOSCO. To this end, the proposed regulation should focus on high-level principles and assign the responsibility of developing technical standards regarding the level of coverage of potential future exposures to ESMA, in close cooperation with the central banks of the ESCB.*

**Amendment 830**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 40 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall establish **the minimum size of contributions to the default fund and the criteria to calculate the contributions of the single clearing members. The contributions shall be proportional to the exposures of each clearing member, in order to ensure that the contributions to the default fund at least enable the CCP to withstand the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members, if the sum of their exposures is larger.**

*Amendment*

2. A CCP shall establish criteria to calculate the contributions of the clearing members. The contributions shall be proportional to the **initial margin contribution** of each clearing member.

Or. en

## *Justification*

*The regulation should be consistent with the ongoing work of CPSS-IOSCO. To this end, the proposed regulation should focus on high-level principles and assign the responsibility of developing technical standards regarding the level of coverage of potential future exposures to ESMA, in close cooperation with the central banks of the ESCB.*

### **Amendment 831**

**Jürgen Klute**

#### **Proposal for a regulation**

#### **Article 40 – paragraph 2**

##### *Text proposed by the Commission*

2. A CCP shall establish the minimum size of contributions to the default fund and the criteria to calculate the contributions of the single clearing members. The contributions shall be proportional to the exposures of each clearing member, in order to ensure that the contributions to the default fund at least enable the CCP to withstand the default of the clearing ***member to which it has the largest exposures or of the second and third largest clearing members, if the sum of their exposures is larger.***

##### *Amendment*

2. A CCP shall establish the minimum size of contributions to the default fund and the criteria to calculate the contributions of the single clearing members. The contributions shall be proportional to the exposures of each clearing member, in order to ensure that the contributions to the default fund at least enable the CCP to withstand the default of the clearing ***members with the two*** largest exposures.

Or. en

### **Amendment 832**

**Leonardo Domenici, Udo Bullmann**

#### **Proposal for a regulation**

#### **Article 40 – paragraph 2**

##### *Text proposed by the Commission*

2. A CCP shall establish the minimum size of contributions to the default fund and the criteria to calculate the contributions of the single clearing members. The contributions shall be proportional to the exposures of each clearing member, in order to ensure

##### *Amendment*

2. A CCP shall establish the minimum size of contributions to the default fund and the criteria to calculate the contributions of the single clearing members. The contributions shall be proportional to the exposures of each clearing member, in order to ensure

that the contributions to the default fund at least enable the CCP to withstand the default of the clearing member to which it has the largest ***exposures or of the second and third largest clearing members, if the sum of their exposures is larger.***

that the contributions to the default fund at least enable the CCP to withstand the default of the ***two*** clearing member to which it has the largest exposures.

Or. en

**Amendment 833**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 40 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. A CCP shall develop scenarios of extreme but plausible market conditions. The scenarios shall include the most volatile periods that have been experienced by the markets for which the CCP provides its services and a range of potential future scenarios. They shall take into account sudden sales of financial resources and rapid reductions in market liquidity. The size of the default fund shall include the margins calculated, in compliance with Article 39, on the positions stemming from the hypothesised scenarios.***

***In calculating credit exposures to its clearing members, a CCP shall take into account:***

- a) the exposures of each clearing member, as registered on each account kept in accordance with article 37, and***
- b) whether or not profits on proprietary positions can be used to cover losses on clients' positions.***

Or. en

*Justification*

*The amendment aims at clarifying and making more stringent a CCP's obligations under this article.*

**Amendment 834**  
**Werner Langen**

**Proposal for a regulation**  
**Article 40 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. In order to ensure consistent harmonisation of this Article, ESMA, in consultation with EBA, shall develop draft regulatory technical standards specifying the details of default funds referred to in paragraphs 1 and 3.***

***ESA (ESMA) shall, in close cooperation with the ESCB, submit drafts for those regulatory technical standards to the Commission by 30 June 2012.***

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 835**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**  
**Article 40 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3 a. Powers are delegated to the Commission to adopt regulatory technical standards specifying the details of establishment and operation of default funds referred to in paragraphs 1 and 3. Those regulatory technical standards shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.**

**The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles [7 to 7d] of Regulation .../... [ESMA Regulation].**

**ESMA, in consultation with EBA, shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.**

Or. en

**Amendment 836**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 41 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. In addition to the capital required in Article 12, a CCP shall maintain sufficient available financial resources to cover potential losses that exceed the losses to be covered by margin requirements and the default fund. **Such** resources **may** include **any other clearing fund provided by clearing members or other parties, loss sharing arrangements, insurance arrangements, the own funds of a CCP, parental guarantees or similar provisions.**

1. In addition to the capital required in Article 12, a CCP shall maintain sufficient available financial resources to cover potential losses that exceed the losses to be covered by margin requirements and the default fund, **and should be proportionate to the risks shared by the CCP and the others underwriting risk in the CCP.** **These resources shall** include the **dedicated resources of the CCP and** shall be freely available to the CCP and shall not

**Such resources** shall be freely available to the CCP and shall not be used to cover the operating losses.

be used to cover the operating losses.

Or. en

#### *Justification*

*In order for CCPs to have financial resources available to them in times of market stress when they are most needed, they must have pre-funded resources available and within their control. Maintaining access to these resources will also cause the CCP to be more risk adverse.*

#### **Amendment 837** **Sharon Bowles**

#### **Proposal for a regulation** **Article 41 – paragraph 1**

##### *Text proposed by the Commission*

1. In addition to the capital required in Article 12, a CCP shall maintain sufficient available financial resources to cover potential losses that exceed the losses to be covered by margin requirements and the default fund. Such resources may include any other clearing fund provided by clearing members or other parties, loss sharing arrangements, insurance arrangements, the own funds of a CCP, parental guarantees or similar provisions. Such resources shall be freely available to the CCP and shall not be used to cover the operating losses.

##### *Amendment*

1. In addition to the capital required in Article 12, a CCP shall maintain sufficient available financial resources to cover potential losses that exceed the losses to be covered by margin requirements and the default fund. Such resources may include any other clearing fund provided by clearing members or other parties, loss sharing arrangements, insurance arrangements, the own funds of a CCP, parental guarantees or similar provisions. Such resources shall be freely available to the CCP and shall not be used to cover the operating losses. ***The own funds shall be proportionate to the risks shared by the CCP and others underwriting risk.***

Or. en

#### *Justification*

*In order to ensure a prudent approach to risk taking, CCPs must have some of their own money at risk.*



**Amendment 838**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 41 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. The amount of own funds of a CCP, as mentioned in paragraph 1, should be proportionate to the risks shared by the CCP and the others underwriting risk in the CCP.***

Or. en

**Amendment 839**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 41 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. A CCP shall develop scenarios of extreme ***but plausible*** market conditions, which include the most volatile periods that have been experienced by the markets for which the CCP provides its services. The default fund referred to in Article 40 and the other financial resources referred to in paragraph 1 shall at all times enable the CCP to withstand the default of the two clearing members to which it has the largest exposures and shall enable the CCP to withstand sudden sales of financial resources and rapid reductions in market liquidity.

2. A CCP shall develop scenarios of extreme market conditions, which include the most volatile periods that have been experienced by the markets for which the CCP provides its services. The default fund referred to in Article 40 and the other financial resources referred to in paragraph 1 shall at all times enable the CCP to withstand the default of the two clearing members to which it has the largest exposures and shall enable the CCP to withstand sudden sales of financial resources and rapid reductions in market liquidity.

Or. en

**Amendment 840**  
**Leonardo Domenici, Udo Bullmann**

**Proposal for a regulation**  
**Article 41 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall develop scenarios of extreme ***but plausible*** market conditions, which include the most volatile periods that have been experienced by the markets for which the CCP provides its services. The default fund referred to in Article 40 and the other financial resources referred to in paragraph 1 shall at all times enable the CCP to withstand the default of the two clearing members to which it has the largest exposures and shall enable the CCP to withstand sudden sales of financial resources and rapid reductions in market liquidity.

*Amendment*

2. A CCP shall develop scenarios of extreme market conditions, which include the most volatile periods that have been experienced by the markets for which the CCP provides its services. The default fund referred to in Article 40 and the other financial resources referred to in paragraph 1 shall at all times enable the CCP to withstand the default of the two clearing members to which it has the largest exposures and shall enable the CCP to withstand sudden sales of financial resources and rapid reductions in market liquidity.

Or. en

**Amendment 841**  
**Werner Langen**

**Proposal for a regulation**  
**Article 41 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

***Powers are delegated to the Commission to adopt*** regulatory technical standards specifying the extreme conditions referred to in paragraph 2 that the CCP shall withstand.

*Amendment*

***In order to ensure consistent harmonisation of this Article, ESMA, in consultation with EBA, shall develop draft*** regulatory technical standards specifying the extreme conditions referred to in paragraph 2 that the CCP shall withstand. ***ESMA, in consultation with EBA, shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 842**

**Werner Langen**

**Proposal for a regulation**

**Article 41 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

*The* regulatory technical standards referred to in the first subparagraph **shall be adopted** in accordance with Articles 7 to 7d of Regulation .../... [ESMA Regulation].

*Amendment*

**Power is delegated to the Commission to adopt the** regulatory technical standards referred to in the first subparagraph in accordance with Articles **10 to 14** of Regulation .../... [ESMA Regulation].

Or. en

*Justification*

*Procedural amendment.*

**Amendment 843**

**Werner Langen**

**Proposal for a regulation**

**Article 41 – paragraph 5 – subparagraph 3**

*Text proposed by the Commission*

**ESMA, in consultation with EBA, shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.**

*Amendment*

**deleted**

Or. en

*Justification*

*Procedural amendment.*

**Amendment 844**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 41 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 41a**

**Liquidity risk controls**

**1. A CCP shall at all times have access to adequate liquidity to perform its services and activities. To that end, it shall obtain the necessary cash, highly liquid collateral, credit lines or similar arrangements to cover its liquidity needs in case the financial resources at its disposal are not immediately available. Each clearing member, parent undertaking or subsidiary of the clearing member may not provide more than 25 per cent of the credit lines needed by the CCP.**

**A CCP shall measure on a daily basis its potential liquidity needs.**

**2. The liquidity arrangements referred to in paragraph 1 shall at all times enable the CCP to cover potential liquidity requirements in extreme but plausible market conditions with a high degree of confidence.**

**A CCP should determine and test the sufficiency of its liquidity arrangements through regular and rigorous stress testing, including consideration of other entities that might pose material liquidity risks to a CCP.**

**3. A CCP should have clear and transparent rules and procedures to**

***address unforeseen and potentially uncovered liquidity shortfalls. A CCP's rules and procedures should also indicate its process to replenish any liquidity resources it may employ during a stress event, so that it can continue to operate in a safe and sound manner.***

Or. en

*Justification*

*In line with evolving international standards, liquidity resources should have the same minimum coverage requirement in the event of the default of a member as credit risk and aligned with the revised international standards. CCPs should consider risks they face from a wide range of additional entities and operations as part of their stress testing against the minimum level of coverage. A CCP should ensure liquidity coverage in extreme conditions and it should have contingency arrangements.*

**Amendment 845**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 42 – paragraph 3**

*Text proposed by the Commission*

***3. A CCP shall use contributions to the default fund and other contributions of non-defaulting clearing members only after having exhausted the contributions of the defaulting clearing member and, where relevant, the CCP's own funds referred to in Article 41(1).***

*Amendment*

***3. After having exhausted the contributions of the defaulting clearing member, a CCP shall use its own funds up to the amount referred to in Article 12(2a) before depleting the default fund or using any other financial resources or arrangements referred to in Article 41(1).***

Or. en

*Justification*

*The involvement of the CCP in the financial consequences of a clearing member default aims at ensuring the CCPs put in place adequate risk management techniques and at preventing potential moral hazard. The provision would be consistent with the proposal of the Basel Committee which, in determining banks' exposures towards CCPs, takes into consideration the portion of their own financial resources which CCPs intend to use before depleting the*

*surviving participants' additional contributions.*

## **Amendment 846**

**Kay Swinburne**

### **Proposal for a regulation**

#### **Article 42 – paragraph 3**

##### *Text proposed by the Commission*

3. A CCP shall use contributions to the default fund and other contributions of non-defaulting clearing members only after having exhausted the contributions of the defaulting clearing member and, **where relevant**, the CCP's own funds referred to in Article 41(1).

##### *Amendment*

3. A CCP shall use contributions to the default fund and other contributions of non-defaulting clearing members only after having exhausted the contributions of the defaulting clearing member and **having utilised** the CCP's own funds referred to in Article 41(1).

Or. en

##### *Justification*

*Consideration of using the CCP's own funds should be made before trying to access the clearing members' resources, so the CCP itself has a stake in ensuring the strength of its risk mitigation techniques.*

## **Amendment 847**

**Sharon Bowles**

### **Proposal for a regulation**

#### **Article 42 – paragraph 3**

##### *Text proposed by the Commission*

3. A CCP shall use contributions to the default fund and other contributions of non-defaulting clearing members only after having exhausted the contributions of the defaulting clearing member and, **where relevant**, the CCP's own funds referred to in Article 41(1).

##### *Amendment*

3. A CCP shall use contributions to the default fund and other contributions of non-defaulting clearing members only after having exhausted the contributions of the defaulting clearing member and the CCP's own funds referred to in Article 41(1).

*Justification*

*In order to ensure a prudent approach to risk taking, CCPs must have some of their own money at risk.*

**Amendment 848**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 42 – paragraph 4**

*Text proposed by the Commission*

4. A CCP shall not be allowed to use the margins posted by non-defaulting clearing members to cover the losses resulting from the default of another clearing member.

*Amendment*

4. A CCP shall not be allowed to use the margins posted by non-defaulting clearing members to cover the losses resulting from the default of another clearing member. ***A CCP shall not be allowed to use the margins collected or secured from a client that chooses full segregation or omnibus segregation to cover the losses resulting from the default of any clearing member, except in the case of that client's own default.***

**Amendment 849**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 42 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. In cases where a client has chosen full segregation or a legally segregated omnibus account, a CCP may not use that client's margins to cover the losses resulting from any clearing member's default, except in the case of the client's***

*own default.*

Or. en

*Justification*

*Where full segregation has been chosen by a client they should have additional protection in the case of the default of one of the clearing members.*

**Amendment 850**

**Olle Ludvigsson**

**Proposal for a regulation**

**Article 43 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall only accept highly liquid collateral with minimal credit and market risk to cover its exposure to its clearing members. *It* shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

*Amendment*

1. A CCP shall only accept highly liquid collateral with minimal credit and market risk to cover its exposure to its clearing members. ***Regarding non-financial counterparties, bank guarantees or equivalent assets may where appropriate be accepted as collateral. The CCP*** shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

Or. en

**Amendment 851**

**Kay Swinburne**

**Proposal for a regulation**

**Article 43 – paragraph 1**



*Text proposed by the Commission*

1. A CCP shall **only** accept highly liquid collateral with minimal credit and market risk to cover its exposure to its clearing members. It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

*Amendment*

1. A CCP shall accept **cash, cash equivalents such as gold, and highly liquid financial instruments as** collateral with minimal credit and market risk to cover its exposure to its clearing members. It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

Or. en

*Justification*

*CCPs should also be able to accept highly liquid financial instruments as collateral to reduce the chance that more risk could build up in the system as all market participants rush to convert assets into cash for clearing.*

**Amendment 852**

**Burkhard Balz**

**Proposal for a regulation**

**Article 43 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall only accept highly liquid collateral with minimal credit and market risk to cover its exposure to its clearing members. It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account

*Amendment*

1. A CCP shall only accept highly liquid collateral **cash and highly liquid financial instruments** with minimal credit and market risk to cover its exposure to its clearing members. It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be

the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

Or. en

## **Amendment 853** **Olle Schmidt**

### **Proposal for a regulation** **Article 43 – paragraph 1**

#### *Text proposed by the Commission*

1. A CCP shall **only** accept highly liquid collateral with minimal credit and market risk to cover its exposure to its clearing members. It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

#### *Amendment*

1. A CCP shall accept highly liquid collateral, **such as cash, government and high quality corporate bonds**, with minimal credit and market risk to cover its **initial and ongoing** exposure to its clearing members. It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

Or. en

#### *Justification*

*Institutional investors use OTC derivatives for hedging purposes. Because of the long term nature of insurance liabilities derivatives contracts are of very long duration. The costs will be substantially disproportionate on long term investors. In order to minimise this cost which would otherwise be passed on to pensioners and savers, the scope of assets to be used as collateral for initial and variation margin must be extended to allow the use of government and high quality corporate bonds.*

## Amendment 854

Pascal Canfin on behalf of the Verts/ALE Group

### Proposal for a regulation Article 43 – paragraph 1

*Text proposed by the Commission*

1. A CCP shall only accept highly liquid collateral with minimal credit and market risk to cover its exposure to its clearing members. It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

*Amendment*

1. A CCP shall only accept highly liquid collateral with minimal credit and market risk to cover its exposure to its clearing members. ***Competent authorities shall ensure that CCPs respect minimum collateral standards as specified in paragraph 3. These minimum collateral standards shall be calibrated in accordance with the risk level and shall be regularly revised to reflect current market conditions and in particular in response to emergency situations where it is concluded that doing so will mitigate systemic risks.*** It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

Or. en

## Amendment 855 Carl Haglund

### Proposal for a regulation Article 43 – paragraph 1

*Text proposed by the Commission*

1. A CCP shall **only** accept highly liquid collateral with minimal credit and market risk to cover its exposure to its clearing members. It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts.

*Amendment*

1. A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its exposure to its clearing members. It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts. ***For non-financial counterparties, CCPs may accept bank guarantees.***

Or. en

*Justification*

*For non-financial counterparties with long-term investments, there is a risk that the current proposal reduces liquidity and transparency by moving trading back to bilateral OTC derivatives. Therefore bank guarantees should also be accepted.*

**Amendment 856**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**

**Article 43 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. In accordance with Article 9(5) of Regulation .../... [ESMA Regulation]. ESA (ESMA) may recalibrate collateral standards in emergency situations if required to mitigate systemic risk.***

**Amendment 857**  
**Elena Băsescu**

**Proposal for a regulation**  
**Article 43 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. A CCP may accept, where appropriate and sufficiently prudent the underlying of the derivative contract or the financial instrument that originate the CCP exposure as collateral to cover its margin requirements.**

**deleted**

Or. en

*Justification*

*The collateral accepted should be cash or cash equivalents (highly liquid financial instruments with maturities of less than 3 months) only.*

**Amendment 858**  
**Olle Ludvigsson**

**Proposal for a regulation**  
**Article 43 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the type of collateral that can be considered highly liquid and the haircuts referred to in paragraph 1.

Powers are delegated to the Commission to adopt regulatory technical standards specifying the type of collateral that can be considered highly liquid and the haircuts referred to in paragraph 1. ***Without prejudice to the need to keep a CCP safe, the Commission shall in adopting these standards also have regard to the nature of the counterparty.***

Or. en

## Amendment 859

Pascal Canfin on behalf of the Verts/ALE Group

### Proposal for a regulation

#### Article 43 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the type of collateral that can be considered highly liquid and the haircuts referred to in paragraph 1.

*Amendment*

Powers are delegated to the Commission to adopt regulatory technical standards specifying ***minimum collateral standards as well as*** the type of collateral that can be considered highly liquid and the haircuts referred to in paragraph 1.

Or. en

## Amendment 860

Werner Langen

### Proposal for a regulation

#### Article 43 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

***Powers are delegated to the Commission to adopt*** regulatory technical standards specifying the type of collateral that can be considered highly liquid and the haircuts referred to in paragraph 1.

*Amendment*

***In order to ensure consistent harmonisation of this Article, ESMA, in consultation with ESRB and EBA, shall develop draft*** regulatory technical standards specifying the type of collateral that can be considered highly liquid and the haircuts referred to in paragraph 1. ***ESMA, in consultation with the ESCB and EBA, shall submit drafts on those regulatory technical standards to the Commission by 30 June 2012.***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 861**  
**Werner Langen**

**Proposal for a regulation**  
**Article 43 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*The* regulatory technical standards referred to in the first subparagraph **shall be adopted** in accordance with Articles [7 to 7d] of Regulation .../... [ESMA Regulation].

*Amendment*

**Power is delegated to the Commission to adopt the** regulatory technical standards referred to in the first subparagraph in accordance with Articles **10 to 14** of Regulation .../... [ESMA Regulation].

Or. en

*Justification*

*Procedural amendment.*

**Amendment 862**  
**Werner Langen**

**Proposal for a regulation**  
**Article 43 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

**ESMA, in consultation with the ESCB and EBA, shall submit drafts on those regulatory technical standards to the Commission by 30 June 2012.**

*Amendment*

**deleted**

Or. en

*Justification*

*Procedural amendment.*

**Amendment 863**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 44 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall only invest its financial resources in highly liquid financial instruments with minimal market and credit risk. The investments shall be capable of being liquidated rapidly with minimal adverse price effect.

*Amendment*

1. A CCP shall only invest its financial resources in highly liquid financial instruments with minimal market and credit risk. The investments shall be capable of being liquidated rapidly with minimal adverse price effect. ***A CCP shall invest a substantial proportion of its financial resources in reserves with a central bank. Collateral segregated pursuant to Article 49a, paragraph 2, shall not be counted for the purpose of subparagraph 1.***

Or. en

*Justification*

*The amendment is intended to increase the quality of the assets held by CCPs: CCPs are required to invest a substantial proportion, to be determined through binding technical standards, of its financial resources in central bank money.*

**Amendment 864**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 44 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. The amount of capital, together with retained earnings and reserves of a CCP, which are not invested according to paragraph 1, shall not be considered for the purposes of Article 12(2 and 2a).***



*Justification*

*The introduction of the above paragraph is aimed at clarifying that the CCPs' capital - required to face the typical risks these bear and to ensure an orderly winding-down or restructuring of the activities - can only be in cash form or alternatively invested in highly liquid financial instruments, and it cannot be held in other forms (such as property, plant or equipment).*

**Amendment 865**

**Elena Băsescu**

**Proposal for a regulation**

**Article 44 – paragraph 2**

*Text proposed by the Commission*

2. Financial instruments posted as margins shall be deposited with operators of securities settlement systems that ensure non-discriminatory access to CCPs and the full protection of those instruments. A CCP shall have prompt access to the financial instruments when required.

*Amendment*

2. Financial instruments posted as margins shall be ***formed of cash or cash equivalents and be*** deposited with operators of securities settlement systems that ensure non-discriminatory access to CCPs and the full protection of those instruments. A CCP shall have prompt access to the financial instruments when required.

Or. en

**Amendment 866**

**Sharon Bowles**

**Proposal for a regulation**

**Article 44 – paragraph 2**

*Text proposed by the Commission*

2. Financial instruments posted as margins shall be deposited with operators of securities settlement systems that ensure non-discriminatory access to CCPs and the full protection of those instruments. A CCP

*Amendment*

2. Financial instruments posted as margins shall be deposited with operators of securities settlement systems, ***or other highly secure arrangements with authorised financial institutions,*** that

shall have prompt access to the financial instruments when required.

ensure non-discriminatory access to CCPs and the full protection of those instruments. A CCP shall have prompt access to the financial instruments when required.

Or. en

#### *Justification*

*It is important for CCPs to be able to use margin for low risk liquidity and investment purposes, as they pass on the cost benefits to their users, and hence to the real economy.*

#### **Amendment 867**

**Pascal Canfin on behalf of the Verts/ALE Group**

#### **Proposal for a regulation Article 44 – paragraph 2**

##### *Text proposed by the Commission*

2. Financial instruments posted as margins shall be deposited with operators of securities settlement systems that ensure non-discriminatory access to CCPs and the full protection of those instruments. A CCP shall have prompt access to the financial instruments when required.

##### *Amendment*

2. Financial instruments posted as margins shall be deposited with operators of securities settlement systems that ensure non-discriminatory access to CCPs and the full protection of those instruments. A CCP shall have prompt access to the financial instruments when required. ***CCPs shall have robust controls over the re-hypothecation of clearing members' collateral following limits defined by the Commission.***

Or. en

#### **Amendment 868**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**  
**Article 44 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the highly liquid financial instruments referred to in paragraph 1 and the concentration limits referred to in paragraph 4.

*Amendment*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the highly liquid financial instruments referred to in paragraph 1 **limits for rehypothecation** and the concentration limits referred to in paragraph 4.

Or. en

**Amendment 869**  
**Werner Langen**

**Proposal for a regulation**  
**Article 44 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

***Powers are delegated to the Commission to adopt*** regulatory technical standards specifying the highly liquid financial instruments referred to in paragraph 1 and the concentration limits referred to in paragraph 4.

*Amendment*

***In order to ensure consistent harmonisation of this Article, ESMA, in consultation with EBA, shall develop draft*** regulatory technical standards specifying the highly liquid financial instruments referred to in paragraph 1 and the concentration limits referred to in paragraph 4. ***ESMA, in consultation with EBA, shall submit drafts on those regulatory technical standards to the Commission by 30 June 2012.***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 870**  
**Werner Langen**

**Proposal for a regulation**  
**Article 44 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

*The* regulatory technical standards referred to in the first subparagraph **shall be adopted** in accordance with Articles [7 to 7d] of Regulation .../... [ESMA Regulation].

*Amendment*

**Power is delegated to the Commission to adopt the** regulatory technical standards referred to in the first subparagraph in accordance with Articles **10 to 14** of Regulation .../... [ESMA Regulation].

Or. en

*Justification*

*Procedural amendment.*

**Amendment 871**  
**Werner Langen**

**Proposal for a regulation**  
**Article 44 – paragraph 5 – subparagraph 3**

*Text proposed by the Commission*

**ESMA, in consultation with EBA, shall submit drafts on those regulatory technical standards to the Commission by 30 June 2012.**

*Amendment*

**deleted**

Or. en

*Justification*

*Procedural amendment.*

**Amendment 872**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 45 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall have procedures in place to be followed where a clearing member does not comply with the requirements laid down in Article 35 within the time limit and according to the procedures established by the CCP. The CCP shall outline the procedures to be followed in the event the insolvency of a clearing member is not established by the CCP.

*Amendment*

1. A CCP shall have **detailed** procedures in place to be followed where a clearing member does not comply with the requirements laid down in Article 35 within the time limit and according to the procedures established by the CCP. The CCP shall outline **in detail** the procedures to be followed in the event the insolvency of a clearing member is not established by the CCP. ***These procedures shall be reviewed annually.***

Or. en

**Amendment 873**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**  
**Article 45 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall have procedures in place to be followed where a clearing member does not comply with the requirements laid down in Article 35 within the time limit and according to the procedures established by the CCP. The CCP shall outline the procedures to be followed in the event the insolvency of a clearing member is not established by the CCP.

*Amendment*

1. A CCP shall have procedures in place to be followed where a clearing member does not comply with the requirements laid down in Article 35 within the time limit and according to the procedures established by the CCP. The CCP shall outline the procedures to be followed in the event the insolvency of a clearing member is not established by the CCP. ***The procedures shall be approved by the competent authority following the positive opinion of ESMA***

Or. en

## Amendment 874

Pascal Canfin on behalf of the Verts/ALE Group

### Proposal for a regulation Article 45 – paragraph 3

*Text proposed by the Commission*

3. The CCP shall promptly inform the competent authority. That competent authority shall immediately inform the authority responsible for the supervision of the defaulting clearing member where the CCP considers that the clearing member will not be able to meet its future obligations and when the CCP intends to declare its default.

*Amendment*

3. The CCP shall promptly inform the competent authority. That competent authority shall immediately inform the authority responsible for the supervision of the defaulting clearing member where the CCP considers that the clearing member will not be able to meet its future obligations and when the CCP intends to declare its default. ***The implementation of default procedures shall be carried on only after an approval of the competent authority of the CCP following the positive opinion of ESMA and the positive opinion of the college.***

Or. en

## Amendment 875 Kay Swinburne

### Proposal for a regulation Article 46 – paragraph 1

*Text proposed by the Commission*

1. A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the

*Amendment*

1. A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the

reliability of the methodology adopted. The CCP shall inform the competent authority of the results of the tests performed **and** shall obtain **its** validation **before adopting** any change to the models and parameters.

reliability of the methodology adopted. The CCP shall inform the competent authority of the results of the tests performed. **It** shall obtain **an independent** validation **and subject** any **significant** change to the models and parameters **to review by the competent authority before adopting the change**.

Or. en

#### *Justification*

*CCPs must take responsibility for their own models, subject to an independent experts approval. The competent authority should review the process afterwards.*

### **Amendment 876**

**Pascal Canfin on behalf of the Verts/ALE Group**

#### **Proposal for a regulation Article 46 – paragraph 1**

##### *Text proposed by the Commission*

1. A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. **It shall subject the models to rigorous and frequent stress tests to assess their resilience in** extreme but plausible market conditions and shall perform back tests to assess the reliability of the methodology adopted. The CCP shall inform the competent authority of the results of the tests performed and shall obtain its validation before adopting any change to the models and parameters.

##### *Amendment*

1. A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. **The robustness and plausibility of model outputs shall be tested by stressing the input parameters and any other model assumptions to reflect** extreme but plausible market conditions and **member or client-related events and the CCP** shall perform **regular** back tests to assess the reliability of the methodology adopted. The CCP shall inform the competent authority of the results of the tests performed and shall obtain its validation before adopting any change to the models and parameters.

**Amendment 877**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**

**Article 46 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. Competent authorities shall regularly stress test the exposure of financial undertakings to the default of CCPs as well as other counterparties for non cleared derivative contracts.***

Or. en

**Amendment 878**

**Werner Langen**

**Proposal for a regulation**

**Article 46 – paragraph 4 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

***Powers are delegated to the Commission***  
to ***adopt*** regulatory technical standards  
specifying the following:

***In order to ensure consistent harmonisation of this Article, ESMA, in consultation with EBA, shall develop draft*** regulatory technical standards  
specifying the following:

Or. en

*Justification*

*Procedural amendment.*



**Amendment 879**  
**Werner Langen**

**Proposal for a regulation**  
**Article 46 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

*The* regulatory technical standards referred to in the first subparagraph **shall be adopted** in accordance with Articles [7 to 7d] of Regulation .../... [ESMA Regulation].

*Amendment*

**ESMA, in consultation with EBA, shall submit drafts on those** regulatory technical standards **to the Commission by 30 June 2012.**

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles **10 to 14** of Regulation .../... [ESMA Regulation].

Or. en

*Justification*

*Procedural amendment.*

**Amendment 880**  
**Werner Langen**

**Proposal for a regulation**  
**Article 46 – paragraph 4 – subparagraph 3**

*Text proposed by the Commission*

**ESMA, in consultation with EBA, shall submit drafts on those regulatory technical standards to the Commission by 30 June 2012.**

*Amendment*

**deleted**

Or. en

*Justification*

*Procedural amendment.*

## Amendment 881

Pascal Canfin on behalf of the Verts/ALE Group

### Proposal for a regulation

#### Article 46 – paragraph 4 – subparagraph 3

*Text proposed by the Commission*

ESMA, in consultation with EBA, shall submit drafts on those regulatory technical standards to the Commission by 30 June 2012.

*Amendment*

ESMA, in consultation with EBA, **and the ESCB when the opinion is provided** shall submit drafts on those regulatory technical standards to the Commission by 30 June 2012.

Or. en

## Amendment 882

Kay Swinburne

### Proposal for a regulation

#### Article 47 – paragraph 1

*Text proposed by the Commission*

1. A CCP shall, where available, use central bank money to settle its transactions. Where central bank money is not **accessible**, steps shall be taken to strictly limit credit and liquidity risks.

*Amendment*

1. A CCP shall, where **practicable and** available, use central bank money to settle its transactions. Where central bank money is not **used**, steps shall be taken to strictly limit credit and liquidity risks.

Or. en

*Justification*

*With regards to the use of central bank money in settlement, EMIR should be consistent with existing CPSS/IOSCO and ESCB/CESR recommendations. This provision has not been fully impact assessed and could have profound unintended consequences in the repo markets.*

**Amendment 883**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 47 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall, where available, use central bank money to settle its transactions. Where central bank money is not **accessible**, steps shall be taken to strictly limit credit and liquidity risks.

*Amendment*

1. A CCP shall, where **practical and** available, use central bank money to settle its transactions. Where central bank money is not **used**, steps shall be taken to strictly limit credit and liquidity risks.

Or. en

**Amendment 884**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 47 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall, where available, use central bank money to settle its transactions. Where central bank money is not accessible, steps shall be taken to strictly limit **credit and liquidity risks**.

*Amendment*

1. A CCP shall, where available **and practical**, use central bank money to settle its transactions. Where central bank money is not accessible, steps shall be taken to strictly limit **cash settlement risk**.

Or. en

**Amendment 885**  
**Marianne Thyssen**

**Proposal for a regulation**  
**Article 47 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall, where available, use central bank money to settle its transactions. Where central bank money is not **accessible**, steps shall be taken to

*Amendment*

1. A CCP shall, where available **and practical**, use central bank money to settle its transactions. Where central bank money is not **used**, steps shall be taken to strictly

strictly limit credit and liquidity risks.

limit credit and liquidity risks.

Or. nl

*Justification*

*This clarification is necessary because a strict interpretation of the provision might (i) have a substantial market-structuring effect and (ii) potentially have consequences which run counter to the regulatory intention of limiting market risks by concentrating them outside market infrastructure. The coexistence of central bank money and commercial bank money must therefore be preserved. This formulation accords with that of the principles for financial market infrastructure of CPSS-IOSCO.*

**Amendment 886**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation  
Article 47 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall, ***where available***, use central bank money to settle its transactions. ***Where central bank money is not accessible, steps shall be taken to strictly limit credit and liquidity risks.***

*Amendment*

1. A CCP shall, use central bank money to settle its transactions.

Or. en

**Amendment 887  
Jürgen Klute**

**Proposal for a regulation  
Title 5**

*Text proposed by the Commission*

***[...]***

*Amendment*

***deleted***

**Amendment 888**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 48 – paragraph 1 – subparagraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

***In order not to expose CCPs to additional risks interoperable arrangements shall be restricted to transferable securities and money-market instruments, as defined under Article 4(1) point 18 (a) and (b) and point 19 of Directive 2004/39/EC for the purposes of this Regulation.***

Or. en

*Justification*

*Neither the trading of cash instruments, nor the post trade infrastructure designed to support these activities were identified to be part of the failures that lead to the crisis. These are considered to be mature products and processes where the risks involved are well recognised and appropriately mitigated. This maturity must now be exploited to increase the competitiveness of the EU financial markets through enhanced efficiency and freedom of choice for the user to support economic growth.*

**Amendment 889**  
**Peter Skinner**

**Proposal for a regulation**  
**Article 48 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. In order not to create additional systemic risk, interoperable arrangements shall be restricted to CCPs clearing transferable securities, specifically cash equities as defined in Article 4(1) point 18 (a) of Directive 2004/39/EC. However, by***

***30 September 2014, ESMA should submit a report to the Commission on whether an extension of that scope to other financial instruments would be appropriate.***

Or. en

*Justification*

*Interoperability of clearing is desirable from a competitive perspective and in terms of reduction of concentration risk. However, it should for the moment be limited to cash equities only given the already developed nature of this market and work done to date on ensuring the safety of such interoperability. This amendment identifies the cash equity asset class using the MiFID definition.*

**Amendment 890**

**Olle Schmidt**

**Proposal for a regulation**

**Article 48 – paragraph 2**

*Text proposed by the Commission*

2. When establishing an interoperability arrangement with another CCP for the purpose of providing services to a particular trading venue, the CCP shall have non discriminatory access to the data that it needs for the performance of its functions from that particular trading venue and to the relevant settlement system.

*Amendment*

2. When establishing an interoperability arrangement with another CCP for the purpose of providing services to a particular trading venue, the CCP shall have non discriminatory access to the data that it needs for the performance of its functions from that particular trading venue ***to the extent that the CCP complies with the operational and technical requirements established by the venue and*** to the relevant settlement system.

Or. en

*Justification*

*There is a need for interoperability arrangements and can not see how taking out chapter 5 from the Directive and the implications of way the absence of rules would help to reduce systemic risks.*

**Amendment 891**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 48 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. A CCP shall grant non-discriminatory access to Securities Settlement Systems (SSS) requesting to obtain data feed.***

Or. en

**Amendment 892**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 48 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. Entering into an interoperability arrangement or ***accessing*** a data feed ***or a settlement system*** referred to in paragraphs 1 and 2, shall only be restricted, directly or indirectly, to control any risk arising from that arrangement or access.

3. Entering into an interoperability arrangement, ***accessing*** or ***granting*** a data feed referred to in paragraphs 1, 2 and 3 shall only be restricted, directly or indirectly, to control any risk arising from that arrangement or access.

Or. en

**Amendment 893**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 48 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 48a***  
***CCP access to trade feeds***

**1. A CCP shall have the right to non-discriminatory access to the data feed of any particular trading venue and access to any relevant settlement system that it needs for the performance of its duties**

**2. For the purpose of the reports to the Commission and the Parliament referred to in Article 68, ESMA shall monitor access to CCPs, and the effects on competitiveness of certain practices, including the use of exclusive licensing practices.**

Or. en

### *Justification*

*In the interests of developing a competitive single market for financial services it is vital that central counterparties have fair and non-discriminatory access to trade feeds. This will result in reduced capital and transaction costs through the netting of obligations together with the streamlining of the collateralisation process that will in turn reduce costs, increase efficiency and create a level playing field in European financial services markets.*

### **Amendment 894 Alfredo Pallone**

### **Proposal for a regulation Article 49 a (new)**

*Text proposed by the Commission*

*Amendment*

### **Article 49a**

#### **Provision of margins among CCPs**

**1. A CCP shall segregate the collateral received by CCPs with whom it has entered into an interoperability arrangement.**

**2. Collateral received in the form of cash shall be segregated in accounts with the central bank of issue.**

**3. Collateral received in the form of financial instruments shall be segregated**



*in accounts with operators of securities settlement systems notified under Directive 98/26/EC.*

*4. Collateral segregated under paragraphs 1, 2 and 3 shall be available to the receiving CCP only in case of default of the CCP which has provided the collateral in the context of an interoperability arrangement.*

*5. In case of default of the CCP which has received the collateral in the context of an interoperability arrangement, the collateral segregated under paragraphs 1, 2 and 3 shall be readily returned to the providing CCP.*

Or. en

*Justification*

*The amendment is intended to increase protection of margins in the context of interoperability arrangements.*

**Amendment 895**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 49 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 49a*

*Provision of margins among CCPs*

*1. A CCP shall segregate the collateral received by CCPs with whom it has entered into an interoperability arrangement.*

*2. Collateral received in the form of cash shall be segregated in accounts with the central bank of issue.*

*3. Collateral received in the form of financial instruments shall be segregated*

*in accounts with operators of securities settlement systems notified under Directive 98/26/EC.*

*4. Collateral segregated under paragraphs 1, 2 and 3 shall be available to the receiving CCP only in case of default of the CCP which has provided the collateral in the context of an interoperability arrangement.*

*5. In case of default of the CCP which has received the collateral in the context of an interoperability arrangement, the collateral segregated under paragraphs 1, 2 and 3 shall be readily returned to the providing CCP.*

*6. In case of interoperability among more than two CCPs, the interoperable CCPs may make use of a netting arrangement which calculates their net reciprocal obligations.*

Or. en

#### *Justification*

*The amendment is intended to increase protection of margins in the context of interoperability arrangements.*

**Amendment 896**  
**Sylvie Goulard**

**Proposal for a regulation**  
**Article 49 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 49a*

##### *User demand and transparency*

*1. CCPs that enter into interoperability arrangements shall demonstrate a significant user demand for the interoperability arrangement.*

***2. The clearing members who requested from their CCP the entry into an interoperability arrangement with another CCP shall bear the cost of the link creation.***

***The CCPs to an interoperability arrangement shall communicate the terms and conditions of the interoperability arrangement to their clearing members.***

Or. en

**Amendment 897**  
**Sylvie Goulard**

**Proposal for a regulation**  
**Article 50 – paragraph 2**

*Text proposed by the Commission*

2. The competent authorities shall only grant approval of the interoperability arrangement, where the requirements set out in Article 49 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and that the arrangement does not undermine the effectiveness of supervision.

*Amendment*

2. The competent authorities shall only grant approval of the interoperability arrangement, where:

***(a)*** the requirements set out in Article 49 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and that the arrangement does not undermine the effectiveness of supervision;

***(b)*** ***the CCP requesting the arrangement can demonstrate, to the satisfaction of the competent authorities that there is significant end-user demand for the arrangement and that the costs of the arrangement shall be borne by those users; and***

***(c)*** ***the CCP has the financial capacity,***

*resources and profitability (current and future) to support the interoperability arrangement.*

Or. en

## **Amendment 898**

**Pascal Canfin on behalf of the Verts/ALE Group**

### **Proposal for a regulation Article 50 – paragraph 2**

*Text proposed by the Commission*

2. The competent authorities shall only grant approval of the interoperability arrangement, where the requirements set out in Article 49 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and that the arrangement does not undermine the effectiveness of supervision.

*Amendment*

2. The competent authorities shall only grant approval of the interoperability arrangement, where the *CCPs involved have been authorised to clear under the procedure set out in Article 13, and have continuously fulfilled their role in clearing the derivative contracts under that authorisation in accordance with supervisory requirements for a period of at least 5 years, the requirements* set out in Article 49 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and that the arrangement does not undermine the effectiveness of supervision.

Or. en

## **Amendment 899 Sylvie Goulard**

### **Proposal for a regulation Article 50 – paragraph 3**

*Text proposed by the Commission*

3. Where a competent authority considers

*Amendment*

3. Where a competent authority considers

that the requirements set out in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the other competent authorities and the CCPs involved. It shall also notify ESMA, which shall issue an opinion on the effective validity of the risk considerations as grounds for denial of an interoperability arrangement. ESMA's opinion shall be made available to all the CCPs involved. Where ESMA's assessment differs from the assessment of the relevant competent authority, this authority shall reconsider its position, taking into account the opinion of ESMA.

that the requirements set out in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the other competent authorities and the CCPs involved. It shall also notify ESMA, which shall issue an opinion, ***in consultation with the EBA and the ESCB***, on the effective validity of the risk considerations as grounds for denial of an interoperability arrangement. ESMA's opinion shall be made available to all the CCPs involved. Where ESMA's assessment differs from the assessment of the relevant competent authority, this authority shall reconsider its position, taking into account the opinion of ESMA.

Or. en

**Amendment 900**  
**Sylvie Goulard**

**Proposal for a regulation**  
**Article 50 – paragraph 4**

*Text proposed by the Commission*

4. By 30 June 2012, ESMA shall issue guidelines or recommendations with a view to establishing consistent, efficient and effective assessments of interoperability arrangements, in accordance with the procedure laid down in Article 8 of Regulation .../... [ESMA Regulation]

*Amendment*

4. By 30 June 2012, ESMA, ***after consultation with the EBA and the ESCB***, shall issue guidelines or recommendations with a view to establishing consistent, efficient and effective assessments of interoperability arrangements, in accordance with the procedure laid down in Article 8 of Regulation .../... [ESMA Regulation]

Or. en

**Amendment 901**  
**Werner Langen**

**Proposal for a regulation**  
**Article 52 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

**Powers are delegated to the Commission to adopt** regulatory technical standards specifying the details of the application for registration to ESMA referred to in paragraph 1.

**In order to ensure consistent harmonisation of this Article, ESMA shall develop draft** regulatory technical standards specifying the details of the application for registration to ESMA referred to in paragraph 1. **ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.**

Or. en

*Justification*

*Procedural amendment.*

**Amendment 902**  
**Werner Langen**

**Proposal for a regulation**  
**Article 52 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

**The** regulatory technical standards referred to in the first subparagraph **shall be adopted** in accordance with Articles [7 to 7d] of Regulation .../... [ESMA Regulation].

**Power is delegated to the Commission to adopt the** regulatory technical standards referred to in the first subparagraph in accordance with Articles **10 to 14** of Regulation .../... [ESMA Regulation].

Or. en

*Justification*

*Procedural amendment.*

**Amendment 903**  
**Werner Langen**

**Proposal for a regulation**  
**Article 52 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

*ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.*

*deleted*

Or. en

*Justification*

*Procedural amendment.*

**Amendment 904**  
**Werner Langen**

**Proposal for a regulation**  
**Article 52 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

In order to ensure uniform application of paragraph 1, ***powers are conferred to the Commission to adopt*** implementing standards determining the format of the application for registration to ESMA.

In order to ensure uniform application of paragraph 1, ***ESMA shall develop draft*** implementing ***technical*** standards determining the format of the application for registration to ESMA. ***ESMA shall submit drafts for those standards to the Commission by 30 June 2012.***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 905**  
**Werner Langen**

**Proposal for a regulation**  
**Article 52 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

*The* implementing standards referred to in the first subparagraph **shall be adopted** in accordance with Article 7e of Regulation .../... [ESMA Regulation].

*Amendment*

**Power is conferred on the Commission to adopt the draft** implementing **technical** standards referred to in the first subparagraph in accordance with Article 15 of Regulation .../... [ESMA Regulation].

Or. en

*Justification*

*Procedural amendment.*

**Amendment 906**  
**Werner Langen**

**Proposal for a regulation**  
**Article 52 – paragraph 4 – subparagraph 3**

*Text proposed by the Commission*

**ESMA shall submit drafts for those standards to the Commission by 30 June 2012.**

*Amendment*

**deleted**

Or. en

*Justification*

*Procedural amendment.*



**Amendment 907**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 55**

*Text proposed by the Commission*

*Amendment*

***Fines***

***deleted***

***1. At the request of ESMA, the Commission may by decision impose on a trade repository a fine where, intentionally or negligently, the trade repository has infringed Articles 63(1), 64, 65, 66 and 67 paragraphs 1 and 2 of this Regulation.***

***2. The fines referred to in paragraph 1 shall be dissuasive and proportionate to the nature and seriousness of the breach, the duration of the breach and the economic capacity of the trade repository concerned. The amount of the fine shall not exceed 20 per cent of the annual income or turnover of the trade repository of the preceding business year.***

***3. Notwithstanding paragraph 2, where the trade repository has directly or indirectly gained a quantifiable financial benefit from the breach, the amount of the fine has to be at least equal to that benefit.***

***4. Powers are delegated to the Commission to adopt regulatory technical standards concerning:***

***(a) detailed criteria for establishing the amount of the fine;***

***(b) the procedures for enquiries, associated measures and reporting, as well as rules of procedure for decision-making, including provisions on rights of defence, access to the file, legal representation, confidentiality and temporal provisions and the quantification and collection of the fines.***

***The regulatory technical standards***

*referred to in the first subparagraph shall be adopted in accordance with Articles [7 to 7d] of Regulation .../... [ESMA Regulation].*

*ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012 at the latest.*

Or. en

**Amendment 908**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 55 – paragraph 2**

*Text proposed by the Commission*

2. The fines referred to in paragraph 1 shall be dissuasive and proportionate to the nature and seriousness of the breach, the duration of the breach and the economic capacity of the trade repository concerned.  
*The amount of the fine shall not exceed 20 per cent of the annual income or turnover of the trade repository of the preceding business year.*

*Amendment*

2. The fines referred to in paragraph 1 shall be dissuasive and proportionate to the nature and seriousness of the breach, the duration of the breach and the economic capacity of the trade repository concerned.

Or. en

**Amendment 909**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 55 – paragraph 4 a (new)**

*Text proposed by the Commission*

*4 a. In the event that the Commission decides not to impose a fine, it shall inform ESMA, the European Parliament and the Council, stating its reasons.*

*Where appropriate, the European*

*Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of ESMA, within one month of the notice referred to in the first subparagraph, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties concerned.*

Or. en

**Amendment 910**  
**Werner Langen**

**Proposal for a regulation**  
**Article 55 – paragraph 4 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

*Powers are delegated to the Commission to **adopt** regulatory technical standards concerning:*

*In order to ensure consistent **harmonisation of this Article**, ESMA shall **develop draft** regulatory technical standards concerning:*

Or. en

*Justification*

*Procedural amendment.*

**Amendment 911**  
**Werner Langen**

**Proposal for a regulation**  
**Article 55 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*The regulatory technical standards referred*

*ESMA shall submit drafts for those*

to in the first subparagraph *shall be adopted* in accordance with Articles [7 to 7d] of Regulation .../... [ESMA Regulation].

regulatory technical standards *to the Commission by 30 June 2012 at the latest.*

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles **10** to **14** of Regulation .../... [ESMA Regulation].

Or. en

*Justification*

*Procedural amendment.*

**Amendment 912**  
**Werner Langen**

**Proposal for a regulation**  
**Article 55 – paragraph 4 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

*ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012 at the latest.*

*deleted*

Or. en

*Justification*

*Procedural amendment.*

**Amendment 913**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 55 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 55a***

***Supervisory fees***

***1. ESMA shall charge fees to the trade repositories in accordance with this Regulation and the Regulation on fees referred to in paragraph 2. Those fees shall fully cover ESMA's expenditure relating to the registration and supervision of trade repositories.***

***2. The Commission shall adopt a Regulation on fees. That Regulation shall determine in particular the type of fees and the matters for which fees are due, the amount of the fees and the way in which they are to be paid.***

***3. The amount of a fee charged to a trade repository shall cover all administrative costs incurred by ESMA for its registration and supervision activities and be proportionate to the turnover of the trade repository concerned.***

***4. The Commission shall adopt the Regulation on fees referred to in the first subparagraph by means of a delegated act.***

Or. en

**Amendment 914**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 55 b (new)**

*Text proposed by the Commission*

*Amendment*

***Article 55b***

***Fines***

***1 Where ESMA's Board of Supervisors finds that a trade repository has***

*committed an infringement it shall adopt a decision imposing a fine in accordance with paragraph 2.*

*An infringement by a trade repository shall be considered to have been committed intentionally if ESMA has discovered objective elements which demonstrate that the trade repository or its senior management acted deliberately to commit the infringement.*

*2. The basic amounts of the fines referred to in paragraph 1 shall be included within EUR 2,500 and shall not exceed EUR 10,000.*

*In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover of the preceding business year of the trade repository concerned. The basic amount shall be at the lower end of the limit for trade repositories whose annual turnover is below EUR 1 million, the middle of the limit for the trade repository whose turnover is between EUR 1 and 5 million and the higher end of the limit for the trade repository whose annual turnover is higher than EUR 5 million.*

*4. Notwithstanding paragraphs 2, the amount of the fine shall not exceed 20 % of the annual turnover of the trade repository concerned in the preceding business year but, where the trade repository has directly or indirectly benefitted financially from the infringement, the amount of the fine shall be at least equal to that benefit*

Or. en

**Amendment 915**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 56**

*Text proposed by the Commission*

*Periodic penalty payments*

**1. At the request of ESMA, the Commission may, by decision, impose periodic penalty payments *on any persons employed by or for a trade repository or related to it*, in order to compel *them*:**

(a) to put an end to an infringement;

(b) to supply complete *and correct* information which *ESMA* has been requested *pursuant to Article 61(2)*;

(c) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation *launched by ESMA pursuant to Article 61(2)*;

(d) to submit to an on-site inspection *ordered by ESMA pursuant to Article 61(2)*.

**2. The periodic penalty payments *provided for* shall be effective and proportionate. The amount of the periodic penalty payments shall be imposed for each day of delay. *It shall not exceed 5% of the average daily turnover in the preceding business year and shall be calculated from the date stipulated in the decision.***

*Amendment*

*Periodic penalty payments*

**1. *ESMA's Board of Supervisors shall by decision impose periodic penalty payments in order to compel:***

**(a) *a trade repository*** to put an end to an infringement;

**(b) *a person involved in trade repositories and related third parties*** to supply complete information which has been requested;

**(c) *persons involved in trade repositories and related third parties*** to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation;

**(d) *persons involved in trade repositories and related third parties*** to submit to an on-site inspection.

**2. The periodic penalty payments shall be effective and proportionate. The amount of the periodic penalty payments shall be imposed for each day of delay.**

**3. *Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.***

*4. A periodic penalty payment may be imposed for a period of no more than six months following the notification of ESMA's decision. After 6 months ESMA shall consider the measures set out in Article 58a (1)a.*

Or. en

**Amendment 916**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 56 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2 a. In the event that the Commission decides not to impose a fine, it shall inform ESMA, the European Parliament and the Council, stating its reasons.*

*Where appropriate, the European Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of ESMA, within one month of the notice referred to in the first subparagraph, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties concerned.*

Or. en

**Amendment 917**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 57**



*Text proposed by the Commission*

*Amendment*

*Hearing of the persons concerned*

*Hearing of the persons concerned before supervisory measures, fines and/or penalty payments are imposed*

1. Before taking a decision **on a fine or periodic penalty payment as provided for in Articles 55 and 56, the Commission** shall give the persons **concerned** the opportunity to be heard on the matters to which **the Commission** has taken objection.

1. Before taking any decision **provided for in Article 58a(1), ESMA's Board of Supervisors** shall give the persons **subject to the proceedings** the opportunity to be heard on the matters to which **ESMA** has taken objection. **ESMA's Board of Supervisors** shall base its decisions only on objections on which the **parties** concerned have been able to comment.

**The Commission** shall base its decisions only on objections on which the **persons** concerned have been able to comment.

**The first subparagraph does not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA's Board of Supervisors may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after having taken its decision.**

**2. Before taking any decision imposing a fine and/or periodic penalty payment as provided for in Article 55 and points (a) to (d) of Article 56 (1), ESMA's Board of Supervisors shall give the persons subject to the proceedings the opportunity to be heard on the matters to which ESMA has taken objection. ESMA's Board of Supervisors shall base its decisions only on objections on which the persons concerned have been able to comment.**

2. The rights of defence of the persons concerned shall be fully respected in the proceedings. **Those persons** shall be entitled to have access to **the Commission's** file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to

3. The rights of defence of the persons concerned shall be fully respected in the proceedings. **They** shall be entitled to have access to **ESMA's** file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information **including** internal

confidential information *and* internal documents of *the Commission*.

*preparatory* documents of *ESMA*.

Or. en

**Amendment 918**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 58**

*Text proposed by the Commission*

*Amendment*

*Provisions common to fines and periodic penalty payments*

*deleted*

*1. The Commission shall disclose to the public every fine and periodic penalty payment that has been imposed in accordance with Articles 55 and 56.*

*2. Fines and periodic penalty payments imposed pursuant to Articles 55 and 56 are of an administrative nature.*

Or. en

**Amendment 919**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 58 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 58a*

*Supervisory measures by ESMA*

*1. Where, ESMA's Board of Supervisors finds that a trade repository has committed an infringement, it shall take one or more of the following decisions:*

*(a) withdraw the registration of the trade repository;*

*(b) require the trade repository to bring the infringement to an end and impose fines;*

*(c) issue public notices.*

*2. When taking the decisions referred to in paragraph 1, ESMA's Board of Supervisors shall take into account the nature and seriousness of the infringement, having regard to the following criteria:*

*(a) the duration and frequency of the infringement;*

*(b) whether the infringement has revealed serious or systemic weaknesses in the undertaking's procedures or in the management systems or internal controls;*

*(c) whether financial crime was facilitated, occasioned or otherwise attributable to the infringement;*

*(d) whether the infringement has been committed intentionally or negligently.*

*3. Without undue delay, ESMA's Board of Supervisors shall notify any decision adopted pursuant to paragraph 1, to the trade repository concerned, and shall communicate it to the competent authorities of the Member States, and to the Commission. It shall publicly disclose any such decision on its website within 10 working days from the date when it was adopted.*

Or. en

**Amendment 920**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 59**

*Text proposed by the Commission*

*Amendment*

*Review by the Court of Justice*

*Review by the Court of Justice of the*

### ***European Union***

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ***the Commission*** has imposed a fine or a periodic penalty payment. ***The Court of Justice*** may annul, reduce or increase the fine or periodic penalty payment imposed.

The Court of Justice ***of the European Union*** shall have unlimited jurisdiction to review decisions whereby ***ESMA*** has imposed a fine or a periodic penalty payment. ***It*** may annul, reduce or increase the fine or periodic penalty payment imposed.

Or. en

### **Amendment 921** **Elena Băsescu**

#### **Proposal for a regulation** **Article 60 – paragraph 1 – point c**

##### *Text proposed by the Commission*

(c) the trade repository no longer meets the conditions under which it was registered;

##### *Amendment*

(c) the trade repository no longer meets the conditions under which it was registered, ***and all other possibilities that the trade repository comes again to compliance have been exhausted.***

Or. en

### **Amendment 922**

#### **Pascal Canfin on behalf of the Verts/ALE Group**

#### **Proposal for a regulation** **Article 60 – paragraph 2 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***2 a. ESMA shall take all necessary steps to ensure the orderly substitution of the trade repository from which registration has been withdrawn including the transfer of data to other trade repositories and the redirection of reporting flows to***

**Amendment 923**

**Sharon Bowles**

**Proposal for a regulation**

**Article 63 – paragraph 1**

*Text proposed by the Commission*

1. A trade repository established in a third country may provide its services and activities to entities established in the Union for the purposes of Article 6 only where that trade repository is recognised by ESMA.

*Amendment*

1. A trade repository established in a third country may provide its services and activities to entities established in the Union for the purposes of Article 6 only where that trade repository is recognised by ***the Commission, following a request from*** ESMA.

Or. en

**Amendment 924**

**Sharon Bowles**

**Proposal for a regulation**

**Article 63 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. ESMA shall ***recognise*** a trade repository from a third country, where the following conditions are met:

*Amendment*

2. ESMA shall ***request the recognition of*** a trade repository from a third country, ***only*** where the following conditions are met:

Or. en

**Amendment 925**

**Sharon Bowles**

**Proposal for a regulation**

**Article 63 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) the **Commission** has **adopted a Decision** in accordance with paragraph 3;

*Amendment*

(b) the **trade repository** has **met the criteria set out** in paragraph 3;

Or. en

**Amendment 926**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 63 – paragraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(d a) the relevant authorities of a third country that has entered into a international agreement with the Union as referred to in Article 62 provided that they agree to indemnify the trade repository and the EU authorities for any expenses arising from litigation relating to the information provided by the trade repository.***

Or. en

**Amendment 927**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 63 – paragraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(d a) the third country is subject of a decision by the Commission stating that the standards to prevent money laundering and terrorist financing meet the Financial Action Task Force requirements and are to the same effect as the requirements set out in Directive 2005/60/EC.***

**Amendment 928**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 63 – paragraph 2 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

***(d b) the third country has signed an agreement with the home Member State of the authorised CCP which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements.***

Or. en

**Amendment 929**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 63 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. The Commission may adopt a Decision in accordance with the procedure referred to in Article 69(2), determining that the legal and supervisory arrangements of a third country ensure that trade repositories authorised in that third country comply with legally binding requirements which are equivalent to the requirements set out in this Regulation **and** that these trade repositories are subject to effective supervision and enforcement in that third country on an ongoing basis.***

***3. Powers are delegated to the Commission to adopt regulatory technical standards concerning:***

***(a) the criteria for establishing that the legal and supervisory arrangements of a***

third country ensure that trade repositories authorised in that third country comply with legally binding requirements which are equivalent to the requirements set out in this Regulation;

*(b) the criteria for establishing* that these trade repositories are subject to effective supervision and enforcement in that third country on an ongoing basis.

Or. en

**Amendment 930**  
**Werner Langen**

**Proposal for a regulation**  
**Article 63 – paragraph 3**

*Text proposed by the Commission*

3. The Commission *may* adopt *a Decision* in accordance with *the procedure referred to in* Article 69(2), determining that the legal and supervisory arrangements of a third country ensure that trade repositories authorised in that third country comply with legally binding requirements which are equivalent to the requirements set out in this Regulation and that these trade repositories are subject to effective supervision and enforcement in that third country on an ongoing basis.

*Amendment*

3. The Commission *shall be empowered to* adopt *delegated acts* in accordance with Article 67a (*new*), determining that the legal and supervisory arrangements of a third country ensure that trade repositories authorised in that third country comply with legally binding requirements which are equivalent to the requirements set out in this Regulation and that these trade repositories are subject to effective supervision and enforcement in that third country on an ongoing basis.

Or. en

*Justification*

*Procedural amendment.*



**Amendment 931**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 63 – paragraph 3 – subparagraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

***The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation(EU) No .../2010 [ESMA Regulation].***

***ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012 at the latest.***

Or. en

**Amendment 932**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 63 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3 a. In the event that the Commission decides not to recognise a trade repository, it shall inform ESMA, the European Parliament and the Council, stating its reasons.***

***Where appropriate, the European Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of ESMA, within one month of the notice referred to in the first subparagraph, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties concerned.***

**Amendment 933**  
**Elena Băsescu**

**Proposal for a regulation**  
**Article 64 – paragraph 1**

*Text proposed by the Commission*

1. A trade repository shall have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent the disclosure of confidential information.

*Amendment*

1. A trade repository shall have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent the disclosure of confidential information. ***The internal controls and systems shall be evaluated by an independent entity (such as an independent audit company) and should result in an annual report.***

**Amendment 934**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 64 – paragraph 1**

*Text proposed by the Commission*

1. A trade repository shall have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent ***the*** disclosure of confidential information.

*Amendment*

1. A trade repository shall have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent ***any*** disclosure of confidential information.

**Amendment 935**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 64 – paragraph 3**

*Text proposed by the Commission*

3. A trade repository shall maintain and operate an adequate organisational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities. It shall employ appropriate and proportionate systems, resources and procedures.

*Amendment*

3. A trade repository shall maintain and operate an adequate organisational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities. It shall employ appropriate and proportionate systems, resources and procedures. ***It has to be established under public law.***

Or. en

**Amendment 936**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 64 – paragraph 4**

*Text proposed by the Commission*

4. ***The*** senior management and members of the board of a trade repository shall be of sufficiently good repute and experience ***so as to ensure the sound and prudent management of the trade repository.***

*Amendment*

4. ***In order to ensure the sound and prudent management of the trade repository, the*** senior management and members of the board of a trade repository shall be ***subject to thorough and intrusive checks prior to ensure they are*** of sufficiently good repute, ***expertise*** and experience.

Or. en

**Amendment 937**  
**Elena Băsescu**

**Proposal for a regulation**  
**Article 64 – paragraph 4**

*Text proposed by the Commission*

4. The senior management and members of the board of a trade repository shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository.

*Amendment*

4. The senior management and members of the board of a trade repository shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository. ***At least one third of the members of the board, but not less than two, shall be independent and their remuneration not linked in any way to the performance of the trade repository.***

Or. en

**Amendment 938**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 64 – paragraph 4**

*Text proposed by the Commission*

4. The senior management and members of the board of a trade repository shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository.

*Amendment*

4. The senior management and members of the board of a trade repository shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository. ***At least one third of these members has to be independent, one member is delegated by the competent authority. The appointment of the other members requires the approval of the competent authority.***

Or. en

## Amendment 939

Jürgen Klute

### Proposal for a regulation

#### Article 64 – paragraph 6

*Text proposed by the Commission*

6. A trade repository shall publicly disclose the prices and fees associated with services provided. It shall disclose the prices and fees of single services and functions provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow reporting entities to access specific services separately. The prices and fees charged by a trade repository shall be ***cost-related***.

*Amendment*

6. A trade repository shall publicly disclose the prices and fees associated with services provided. It shall disclose the prices and fees of single services and functions provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow reporting entities to access specific services separately. The prices and fees charged by a trade repository shall be ***cost-covering***.

Or. en

## Amendment 940

Leonardo Domenici, Udo Bullmann

### Proposal for a regulation

#### Article 64 – paragraph 6

*Text proposed by the Commission*

6. A trade repository shall publicly disclose the prices and fees associated with services provided. It shall disclose the prices and fees of single services and functions provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow reporting entities to access specific services separately. The prices and fees charged by a trade repository shall be ***cost-related***.

*Amendment*

6. A trade repository shall publicly disclose the prices and fees associated with services provided. It shall disclose the prices and fees of single services and functions provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow reporting entities to access specific services separately. The prices and fees charged by a trade repository shall ***not be higher than the cost incurred by the trade repository***.

Or. en

**Amendment 941**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 64 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6 a. Within a trade repository a „trading surveillance office“ has to be established. This office regularly controls whether the notifications received correlate with the market data and which examines whether deviations are in fact illegal actions or whether reporting obligations have been violated. ESMA shall be immediately informed about any violation of the reporting obligations.***

Or. en

**Amendment 942**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 66 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. A trade repository shall ensure the confidentiality, integrity and protection of the information received under Article 6.

1. A trade repository shall ensure the confidentiality, integrity and protection of the information received under Article 6.  
***No commercial use may be made of any information without the consent of both counterparties to the derivative contract.***

Or. en

**Amendment 943**

**Pascal Canfin on behalf of the Verts/ALE Group**

**Proposal for a regulation**  
**Article 66 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. A trade repository may only use the data that it receives under this Regulation for commercial purposes if the entity providing the data has provided its written consent.***

Or. en

**Amendment 944**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 67 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. A trade repository shall publish aggregate positions by class of derivatives on the contracts reported to it.

1. A trade repository shall publish ***only*** aggregate positions by class of derivatives on the contracts reported to it

Or. en

**Amendment 945**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 67 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. A trade repository shall publish aggregate positions by class of derivatives on the contracts reported to it.

1. A trade repository shall publish aggregate positions by class of derivatives on the contracts reported to it, ***such reporting utilising international open industry standards where possible.***

Or. en

## Amendment 946

Pascal Canfin on behalf of the Verts/ALE Group

### Proposal for a regulation Article 67 – paragraph 1

*Text proposed by the Commission*

1. A trade repository shall publish aggregate positions by class of derivatives on the contracts reported to it.

*Amendment*

1. A trade repository shall publish aggregate positions by class of derivatives on the contracts reported to it. ***Trade repositories shall ensure that all the competent authorities have direct access to such details of OTC derivative contracts as they require in order to carry out their tasks.***

Or. en

## Amendment 947 Olle Ludvigsson

### Proposal for a regulation Article 67 – paragraph 1

*Text proposed by the Commission*

1. A trade repository shall publish aggregate positions by class of derivatives on the contracts reported to it.

*Amendment*

1. A trade repository shall, ***at regular intervals and in an easily accessible way,*** publish aggregate positions by class of derivatives on the contracts reported to it.

Or. en

## Amendment 948 Sharon Bowles

### Proposal for a regulation Article 67 – paragraph 2 – introductory part



*Text proposed by the Commission*

2. A trade repository shall make the necessary information available to the following entities:

*Amendment*

2. A trade repository shall make the necessary information available **only** to the following entities:

Or. en

**Amendment 949**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 67 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. A trade repository shall make the necessary information available to the following entities:

*Amendment*

2. A trade repository shall make the necessary information available to the following entities, ***provided that access to such information is strictly necessary to enable them to fulfil their respective responsibilities and mandates.***

Or. en

**Amendment 950**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 67 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. A trade repository shall make the ***necessary information available*** to the following entities:

*Amendment*

2. A trade repository shall make ***available the aggregate positions by class of derivatives and the details of the contracts reported to it*** to the following entities:

Or. en

*Justification*

*Amendment to paragraph 2 make clear that, differently from the information to be publicly disclosed, which can only be in aggregate form, the information that can be accessed by relevant authorities can come either in aggregate or in disaggregate form, and therefore both sets of information shall be maintained at the TRs level.*

**Amendment 951**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 67 – paragraph 2 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(c a) the competent authority supervising the venues of executions of the reported contracts;***

Or. en

*Justification*

*The addition of letter (cc) makes clear that the information held in TRs are intended to be used also for market abuse detection purposes, as initially stated in the G20 meeting of 25 September 2009.*

**Amendment 952**  
**Jürgen Klute**

**Proposal for a regulation**  
**Article 67 – paragraph 2 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(d a) the public in an aggregate way every week in a meaning format to allow non participants to be duly informed about concrete figures of volume, positions, prices and value, as well as trends, risks and other relevant information that increases the transparency of the OTC***

*derivatives markets.*

*Powers are delegated to ESMA to set and review the publication format criteria and to decide whether such publication is better issued by the relevant national or European authorities.*

Or. en

*Justification*

*Information about OTC derivatives markets has to become much more publicly available and in a way that makes analysis and risks clear to analysts who are non market participants.*

**Amendment 953**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 67 – paragraph 3**

*Text proposed by the Commission*

3. ESMA shall share the information necessary for the exercise of their duties with other relevant authorities.

*Amendment*

3. ESMA shall share the information necessary for the exercise of their duties with other relevant **competent** authorities.

Or. en

**Amendment 954**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 67 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the details of the information referred to in paragraphs (1) and (2).

*Amendment*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the details of the information referred to in paragraphs (1) and (2) **and when it is necessary for the authorities referred to in paragraph (2) to have**

*access to that information. The regulatory technical standards shall ensure that the information published under paragraph (1) shall not be capable of identifying any party to any contract.*

Or. en

## **Amendment 955**

**Pascal Canfin on behalf of the Verts/ALE Group**

### **Proposal for a regulation**

#### **Article 67 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the details of the information referred to in paragraphs (1) and (2).

*Amendment*

Powers are delegated to the Commission to adopt regulatory technical standards specifying the details of the information referred to in paragraphs (1) and (2) *as well as operational standards required in order to aggregate and compare data across repositories.*

Or. en

## **Amendment 956**

**Werner Langen**

### **Proposal for a regulation**

#### **Article 67 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

*Powers are delegated to the Commission to adopt* regulatory technical standards specifying the details of the information referred to in paragraphs (1) and (2).

*Amendment*

*In order to ensure consistent harmonisation of this Article, ESMA shall develop draft* regulatory technical standards specifying the details of the information referred to in paragraphs (1) and (2). *ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012 at the*

*latest.*

Or. en

*Justification*

*Procedural amendment.*

**Amendment 957**

**Werner Langen**

**Proposal for a regulation**

**Article 67 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

*The* regulatory technical standards referred to in the first subparagraph ***shall be adopted*** in accordance with Articles ***[7 to 7d]*** of Regulation .../... [ESMA Regulation].

*Amendment*

***Power is delegated to the Commission to adopt the*** regulatory technical standards referred to in the first subparagraph in accordance with Articles ***10 to 14*** of Regulation .../... [ESMA Regulation].

Or. en

*Justification*

*Procedural amendment.*

**Amendment 958**

**Werner Langen**

**Proposal for a regulation**

**Article 67 – paragraph 4 – subparagraph 3**

*Text proposed by the Commission*

***ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012 at the latest.***

*Amendment*

***deleted***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 959**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 67 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 67a**

***In order to ensure that they can fulfil their mission, trade repositories shall be adequately organized in order to be in a position to give to ESMA and relevant competent authorities direct and immediate access to the details of derivatives contracts as referred to in article 6.***

Or. en

**Amendment 960**  
**Werner Langen**

**Proposal for a regulation**  
**Article -68 (new) (After Title VIII)**

*Text proposed by the Commission*

*Amendment*

**Article -68**

**Delegated acts**

- 1. The power to adopt delegated acts is conferred to the Commission subject to the conditions laid down in this Article.***
- 2. The delegation of power referred to in Article 23 and Article 63 shall be conferred to the Commission for an indeterminate period of time.***

***3. Before adopting a delegated act, the Commission shall endeavour to consult the ESMA.***

***4. A delegation of power referred to in Article 23 and Article 63 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. The decision to revoke shall take effect on the day following that of its publication in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.***

***5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council***

***6. A delegated act adopted pursuant Article 23 and Article 63 shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of the act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament or the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 961**  
**Alfredo Pallone**

**Proposal for a regulation**  
**Article 68 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

By 31 December **2013** at the latest, the Commission shall review and report on ***the institutional and supervisory arrangements under Title III and in particular the role and responsibilities of ESMA***. The Commission shall submit the report to the European Parliament and the Council, together with any appropriate proposals.

*Amendment*

By 31 December **2013** at the latest, the Commission shall review and ***prepare a general*** report on ***this Regulation*** and on ***regulatory technical standards adopted by the Commission***. The Commission shall submit the report to the European Parliament and the Council, together with any appropriate proposals.

Or. en

*Justification*

*A number of provisions need the issue of regulatory technical standards to be put into operation. Regulatory technical standards would be submitted by ESMA and other relevant authorities by June 2012 and then the Commission has additional 3 months to decide if endorse the draft standards or not. Against this background, it has to be outlined that December 2013 appears to delimit a too narrow period of time to engage in the assessment of the application of the new provisions.*

**Amendment 962**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 68 – paragraph 1**

*Text proposed by the Commission*

By 31 December **2013** at the latest, the Commission shall review and report on ***the institutional and supervisory arrangements under Title III and in particular the role and responsibilities of ESMA***. The Commission shall submit the report to the European Parliament and the Council, together with any appropriate

*Amendment*

By 31 December **2014** at the latest, the Commission shall review and ***prepare a general*** report on ***this Regulation***. The Commission shall submit the report to the European Parliament and the Council, together with any appropriate proposals.



proposals.

*The Commission shall in particular:*

- assess the need for any measures to promote central clearing for those classes of derivative contracts that are subject to a clearing obligation but for which no CCP has yet received authorization;*
- assess in cooperation with the ESCB the need for any measure to facilitate the access of CCPs to central bank liquidity facilities, including the appropriateness of requiring a CCP to be subject to certain authorization requirements under Directive 2006/48/EC, and taking into account any results of ongoing work between central banks at the international level.*

Or. en

**Amendment 963**  
**Jean-Paul Gauzès**

**Proposal for a regulation**  
**Article 68 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*By the same date, the Commission shall, in coordination with ESMA and the relevant sectoral authorities, assess the systemic importance of the transactions of non-financial firms in OTC derivatives.*

*deleted*

Or. en

**Amendment 964**  
**Anni Podimata**

**Proposal for a regulation**  
**Article 68 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 68a***

***The European Securities Markets Authority (ESMA) shall receive adequate additional funding to effectively perform the regulatory and supervisory tasks which are included in this regulation.***

Or. en

**Amendment 965  
Sharon Bowles**

**Proposal for a regulation  
Article 69**

*Text proposed by the Commission*

*Amendment*

***Committee procedure***

***deleted***

***1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC<sup>37</sup>.***

***2. Where reference is made to this paragraph, Article 5 and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.***

***3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.***

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<sup>37</sup>. *OJ L 191, 13.7.2001, p.45.*

Or. en

**Amendment 966**  
**Werner Langen**

**Proposal for a regulation**  
**Article 69 – paragraph 1**

*Text proposed by the Commission*

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC<sup>37</sup>.

*Amendment*

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[1].  
***That committee shall be a committee within the meaning of Regulation (EU) N°182/2011.***

***[1] OJ L 191, 13.7.2001, p.45.***

Or. en

*Justification*

*Procedural amendment.*

**Amendment 967**  
**Werner Langen**

**Proposal for a regulation**  
**Article 69 – paragraph 2**

*Text proposed by the Commission*

2. Where reference is made to this paragraph, Article 5 **and Article 7** of **Decision 1999/468/EC** shall apply, having regard to the provisions of Article 8 thereof.

*Amendment*

2. Where reference is made to this paragraph, Article 5 of **Regulation (EU) N°182/2011** shall apply, having regard to the provisions of Article 8 thereof.

Or. en

*Justification*

*Procedural amendment.*

**Amendment 968**  
**Werner Langen**

**Proposal for a regulation**  
**Article 69 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.** **deleted**

Or. en

*Justification*

*Procedural amendment.*

**Amendment 969**  
**Gunnar Hökmark**

**Proposal for a regulation**  
**Article 69 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3 a. The Commission may adopt a Decision in accordance with the procedure referred to in Article 69(2) determining that the legal and supervisory arrangements of a third country ensure that undertakings established in that third country comply with legally binding requirements which are equivalent to the requirements set out in this Regulation, if those arrangements impose obligations on undertakings established in that country equivalent to those set out in Title II of this Regulation.**

Or. en

## *Justification*

*This wording is linked to previous amendments on intra-group transactions. Entities within a group which are located in a third country could be exempted from clearing requirements subject to that third country being deemed to be subject to equivalent regulatory standards.*

### **Amendment 970**

**Alfredo Pallone**

#### **Proposal for a regulation**

##### **Article 70**

*Text proposed by the Commission*

*Amendment*

***In Article 9(1), the following subparagraph is added:***

***deleted***

***“Where a system operator has provided collateral security to another system operator in connection with an interoperable system, the rights of the providing system operator to that collateral security shall not be affected by insolvency proceedings against the receiving system operator.”***

Or. en

### **Amendment 971**

**Alfredo Pallone**

#### **Proposal for a regulation**

##### **Article 70 – paragraph - 1 (new)**

*Text proposed by the Commission*

*Amendment*

[Directive 98/26/EC]

***-1. Article 9(1) is modified as follows:***

***1. “The rights of a system operator or of a participant to collateral security provided [...] in connection with a system or any interoperable system, and the rights of central banks of the Member States or the [...] European Central Bank to collateral security provided to***

them, shall not be affected by insolvency proceedings against:

*(a) a participant (in the system concerned or in an interoperable system);*

*(b) the system operator of an interoperable system which is not a participant;*

*(c) a counterparty to central banks of the Member States or the [...] European Central Bank; or*

*(d) any third party which provided the collateral security.”*

*1a. For the sake of paragraph 1, a client, within the meaning of the present Regulation, is to be considered as a participant, within the meaning of Directive 98/26/EC.*

Or. en

**Amendment 972**  
**Kay Swinburne**

**Proposal for a regulation**  
**Article 70 – paragraph 1**

*Text proposed by the Commission*

"Where a system operator has provided collateral security to another system operator in connection with an interoperable system, the rights of the providing system operator to that collateral security shall not be affected by insolvency proceedings against the receiving system operator."

*Amendment*

"Where a system operator has provided collateral security to another system operator in connection with an interoperable system, the rights of the providing system operator to that collateral security shall not be affected by insolvency proceedings against the receiving system operator.

*Where a client in the meaning of the Regulation .../... has provided collateral security to the participant with whom the client has a contractual relationship in connection with the system executing client's transfer orders, the rights of the providing client to that collateral security*

*shall not be affected by insolvency proceedings against the receiving participant."*

Or. en

*Justification*

*Links in with the amendments to article 37, clarifying segregation issues*

**Amendment 973**  
**Sharon Bowles**

**Proposal for a regulation**  
**Article 70 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 70a*

*Maintenance of website by ESMA*

*1. ESMA shall maintain a website which provides the following information:*

*(a) those contracts eligible for the clearing obligation under Article 4 of this Regulation;*

*(b) penalties imposed for breaches of Articles 3 to 8 of this Regulation;*

*(c) CCPs authorised to offer services or activities in the Union that are a legal person established in the Union, and the services or activities which they are authorised to provide or perform, including the classes of financial instruments covered by their authorisation;*

*(d) penalties imposed for breaches of Title IV and Title IV of this Regulation;*

*(e) CCPs authorised to offer services or activities in the Union established in a third country, and the services or activities which they are authorised to provide or*

*perform, including the classes of financial instruments covered by their authorisation;*

*(f) trade repositories authorised to offer services or activities in the Union;*

*(g) penalties and fines imposed in accordance with Article 55 and Article 56 of this Regulation*

*2. For the purposes of paragraph 1, points (b), (c) and (d) of this Article, Member States' competent authorities shall maintain websites, which shall be linked to by the ESMA website;*

*3. All websites referred to in this Article shall be publicly accessible and regularly updated, and provide information in a clear format.*

Or. en

**Amendment 974**  
**Sirpa Pietikäinen**

**Proposal for a regulation**  
**Article 71 – paragraph 1**

*Text proposed by the Commission*

1. A CCP that has been authorised in its Member State of establishment to provide services before the date of entry into force of this Regulation shall seek authorisation for the purposes of this Regulation by [**2 years** after entry into force] at the latest.

*Amendment*

1. A CCP that has been authorised in its Member State of establishment to provide services before the date of entry into force of this Regulation shall seek authorisation for the purposes of this Regulation by [**3 years** after entry into force] at the latest.

Or. en

*Justification*

*CCPs that operate today have been assessed by supervisors to be in compliance with the international standards that are in place (CPSS-IOSCO, ESCB-CESR) and they also stood firm during the crisis. For some CCPs this regulation necessitates significant changes to their operational and organisational features. A sufficient transitional period should be allowed, in*



*order to not cause unnecessary disturbance to the markets the CCP serve.*

**Amendment 975**  
**Leonardo Domenici**

**Proposal for a regulation**  
**Article 71 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 71a***

***Staff and resource of ESA (ESMA)***

***By 15 September 2011, ESA (ESMA) shall assess the staffing and resources needs arising from the assumptions of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.***

Or. en