



2017/0090(COD)

5.3.2018

AMENDMENTS

33 - 277

Draft report
Werner Langen
(PE616.810v01-00)

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories

Proposal for a regulation
(COM(2017)0208 – C8-0147/2017 – 2017/0090(COD))

Amendment 33

Miguel Viegas

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) A simplification of certain areas covered by Regulation (EU) No 648/2012, and a more proportionate approach to those areas, is in line with the Commission's Regulatory Fitness and Performance (REFIT) programme which emphasises the need for cost reduction and simplification so that Union policies achieve their objectives in the most efficient way, and aims in particular at reducing regulatory and administrative burdens.

Amendment

(2) A simplification of certain areas covered by Regulation (EU) No 648/2012, and a more proportionate approach to those areas, is in line with the Commission's Regulatory Fitness and Performance (REFIT) programme which emphasises the need for cost reduction and simplification so that Union policies achieve their objectives in the most efficient way, and aims in particular at reducing regulatory and administrative burdens. ***It is still necessary to remember the importance of financial derivative products in the creation of speculative bubbles, taking into account that derivative products have again exceeded in value the levels before the 2008 crisis: in 2014 they were worth 10 times more than global GDP.***

Or. pt

Amendment 34

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) A simplification of certain areas covered by Regulation (EU) No 648/2012, and a more proportionate approach to those areas, is in line with the Commission's Regulatory Fitness and Performance (REFIT) programme which emphasises the need for cost reduction and simplification so that Union policies achieve their objectives in the most efficient way, and aims in particular at reducing regulatory

Amendment

(2) A simplification of certain areas covered by Regulation (EU) No 648/2012, and a more proportionate approach to those areas, is in line with the Commission's Regulatory Fitness and Performance (REFIT) programme which emphasises the need for cost reduction and simplification so that Union policies achieve their objectives in the most efficient way, and aims in particular at reducing regulatory and administrative burdens ***without***

and administrative burdens.

prejudice to the overarching objective of preserving financial stability and reducing systemic risks.

Or. en

Amendment 35

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Regulation (EU) No 648/2012 should cover all financial counterparties that may ***present and important*** systemic ***risk*** for the financial system. The definition of financial counterparties should therefore be amended.

Amendment

(5) Regulation (EU) No 648/2012 should cover all financial counterparties that may ***carry*** systemic ***risks*** for the financial system. The definition of financial counterparties should therefore be amended.

Or. en

Amendment 36

Jakob von Weizsäcker

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Financial counterparties with a volume of activity in OTC derivatives markets that is too low to present an important systemic risk for the financial system and is too low for central clearing to be economically viable should be exempted from the clearing obligation while remaining subject to the requirement to exchange collateral to mitigate any systemic risk. The excess of the clearing threshold for at least one class of OTC derivative by a financial counterparty should however trigger the clearing

Amendment

(6) Financial counterparties with a volume of activity in OTC derivatives markets that is too low to present an important systemic risk for the financial system and is too low for central clearing to be economically viable should be exempted from the clearing obligation while remaining subject to the requirement to exchange collateral to mitigate any systemic risk. The excess of the clearing threshold for at least one class of OTC derivative by a financial counterparty should however trigger the clearing

obligation for all classes of OTC derivatives given the interconnectedness of financial counterparties and the possible systemic risk to the financial system that may arise if those derivative contracts are not centrally cleared.

obligation for all classes of OTC derivatives given the interconnectedness of financial counterparties and the possible systemic risk to the financial system that may arise if those derivative contracts are not centrally cleared. ***Financial counterparties that do not exceed the threshold should remain subject to all risk-mitigation techniques for derivative contracts not cleared by a CCP.***

Or. en

Amendment 37

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) ***Financial*** counterparties with a volume of activity in OTC derivatives markets that is too low to present an important systemic risk for the financial system and ***is*** too low for central clearing to be economically viable should be exempted from the clearing obligation while remaining subject to the requirement to exchange collateral to mitigate any systemic risk. The excess of the clearing threshold for at least one class of OTC derivative by a financial counterparty should however trigger the clearing obligation for all classes of OTC derivatives given the interconnectedness of financial counterparties and the possible systemic risk to the financial system that may arise if those derivative contracts are not centrally cleared.

Amendment

(6) ***Small financial*** counterparties with a volume of activity in OTC derivatives markets that is too low to present an important systemic risk for the financial system and ***may be*** too low for central clearing to be economically viable should be exempted from the clearing obligation while remaining subject to the requirement to exchange collateral to mitigate any systemic risk. The excess of the clearing threshold for at least one class of OTC derivative by a financial counterparty should however trigger the clearing obligation for all classes of OTC derivatives given the interconnectedness of financial counterparties and the possible systemic risk to the financial system that may arise if those derivative contracts are not centrally cleared.

Or. en

Amendment 38

Kay Swinburne

Proposal for a regulation
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Those financial counterparties that do not meet thresholds pursuant to Article 10 (4)(b) and which use derivatives for risk reduction and hedging purposes only, therefore not posing a significant risk within the Union financial system, are considered to be small financial counterparties, including inter alia smaller retail banks, pension funds, real estate funds and employee share purchase plans.

Or. en

Amendment 39
Markus Ferber

Proposal for a regulation
Recital 7

Text proposed by the Commission

Amendment

(7) Non-financial counterparties are less interconnected than financial counterparties. They are also often active in only one class of OTC derivative. Their activity therefore poses less of a systemic risk to the financial system than the activity of financial counterparties. The scope of the clearing obligation for non-financial counterparties should therefore be narrowed, so that those non-financial counterparties are subject to the clearing obligation only with regard to the asset class or asset classes that exceed the clearing threshold, ***while retaining their requirement to exchange collateral when any of the clearing thresholds is exceeded.***

(7) Non-financial counterparties are less interconnected than financial counterparties. They are also often active in only one class of OTC derivative. Their activity therefore poses less of a systemic risk to the financial system than the activity of financial counterparties. The scope of the clearing obligation for non-financial counterparties should therefore be narrowed, so that those non-financial counterparties are subject to the clearing obligation only with regard to the asset class or asset classes that exceed the clearing threshold.

Or. en

Amendment 40
Jakob von Weizsäcker

Proposal for a regulation
Recital 7

Text proposed by the Commission

(7) Non-financial counterparties are less interconnected than financial counterparties. They are also often active in only one class of OTC derivative. Their activity therefore **poses** less of a systemic risk to the financial system than the activity of financial counterparties. The scope of the clearing obligation for non-financial counterparties should therefore be narrowed, so that those non-financial counterparties are subject to the clearing obligation only with regard to the asset class or asset classes that exceed the clearing threshold, while retaining their requirement to exchange collateral when any of the clearing thresholds is exceeded.

Amendment

(7) Non-financial counterparties are less interconnected than financial counterparties. They are also often active in only one class of OTC derivative. Their activity **could** therefore **pose** less of a systemic risk to the financial system than the activity of financial counterparties. The scope of the clearing obligation for non-financial counterparties should therefore be narrowed, so that those non-financial counterparties are subject to the clearing obligation only with regard to the asset class or asset classes that exceed the clearing threshold, while retaining their requirement to exchange collateral when any of the clearing thresholds is exceeded.

Or. en

Amendment 41
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) ***The requirement to clear certain OTC derivative contracts concluded before the clearing obligation takes effect creates legal uncertainty and operational complications for limited benefits. In particular, the requirement creates additional costs and efforts for the counterparties to those contracts and may also affect the smooth functioning of the***

Amendment

deleted

market without resulting in a significant improvement of the uniform and coherent application of Regulation (EU) No 648/2012 or of the establishment of a level playing field for market participants. That requirement should therefore be removed.

Or. en

Amendment 42

Kay Swinburne, Werner Langen, Markus Ferber

Proposal for a regulation

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Ensuring that the clearing obligation reduces systemic risk requires a process of identification of classes of derivatives that should be subject to that obligation. That process should take into account the fact that not all CCP-cleared OTC derivative contracts can be considered suitable for mandatory CCP clearing. OTC derivatives which are concluded as part of a risk reduction service, such as portfolio compression and other non price forming post - trade risk reduction services that reduce non-market risks in derivatives portfolios without changing the market risk of the portfolios in order to reduce the risk in OTC derivatives not cleared by a CCP, should not be subject to the clearing obligation.

Or. en

Amendment 43

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 9

(9) Counterparties with a limited volume of activity in the OTC derivatives markets face difficulties in accessing central clearing, be it as a client of a clearing member or through indirect clearing arrangements. The requirement for clearing members to facilitate indirect clearing services on reasonable commercial terms is therefore not efficient. Clearing members and clients of clearing members that provide clearing services directly to other counterparties or indirectly by allowing their own clients to provide those services to other counterparties should therefore be explicitly required to do so under fair, reasonable and non-discriminatory commercial terms.

(9) Counterparties with a limited volume of activity in the OTC derivatives markets face difficulties in accessing central clearing, be it as a client of a clearing member or through indirect clearing arrangements. The requirement for clearing members to facilitate indirect clearing services on reasonable commercial terms is therefore not efficient. Clearing members and clients of clearing members that provide clearing services directly to other counterparties or indirectly by allowing their own clients to provide those services to other counterparties should therefore be explicitly required to do so under fair, reasonable, **transparent** and non-discriminatory commercial terms.

Or. en

Amendment 44

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 10

(10) It should be possible to suspend the clearing obligation *in certain situations*. ***First, that suspension should be possible where the criteria on the basis of which a specific class of OTC derivative has been made subject to the clearing obligation are no longer met. That could be the case where a class of OTC derivative becomes unsuitable for mandatory central clearing or where there has been a material change to one of those criteria in respect of a particular class of OTC derivative. A suspension of the clearing obligation should also be possible where a CCP ceases to offer a clearing service for a specific class of OTC derivative or for a***

(10) It should be possible to suspend the clearing obligation ***for new transactions related to*** a specific class of OTC derivative ***whenever relevant competent authorities and ESMA are notified that all CCPs will cease to clear such*** specific class ***within a year***.

specific type of counterparty and other CCPs cannot step in fast enough to take over those clearing services. Finally, the suspension of a clearing obligation should also be possible where that is deemed necessary to avoid a serious threat to financial stability in the Union.

Or. en

Amendment 45

Anne Sander, Alain Lamassoure

Proposal for a regulation

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Where a class of OTC derivatives is no longer considered to be eligible for clearing and the clearing obligation for that class has been subsequently suspended, the trading obligation under Regulation (EU) No 600/2014 for counterparties to trade derivatives subject to the clearing obligation on trading venues should also be suspended.

Or. en

Amendment 46

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 12

Text proposed by the Commission

Amendment

(12) Intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. Those transactions therefore do

deleted

not significantly contribute to systemic risk and interconnectedness, yet the obligation to report those transactions imposes important costs and burdens on non-financial counterparties. Intragroup transactions where at least one of the counterparties is a non-financial counterparty should therefore be exempted from the reporting obligation.

Or. en

Amendment 47

Jakob von Weizsäcker

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. Those transactions therefore do not significantly contribute to systemic risk and interconnectedness, *yet the obligation to report those transactions imposes important costs and burdens on non-financial counterparties*. Intragroup transactions where *at least one* of the counterparties *is a* non-financial *counterparty* should therefore be exempted from the reporting obligation.

Amendment

(12) Intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. Those transactions therefore do not significantly contribute to systemic risk and interconnectedness. Intragroup transactions where *both* of the counterparties *are* non-financial *counterparties* should therefore be exempted from the reporting obligation.

Or. en

Amendment 48

Markus Ferber

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Intragroup **transactions** involving non-financial counterparties **represent** a relatively small fraction of all OTC derivative transactions and **are** used primarily for internal hedging within groups. Those transactions therefore do not significantly contribute to systemic risk and interconnectedness, yet the obligation to report those transactions imposes **important** costs and burdens on non-financial counterparties. Intragroup transactions where at least one of the counterparties is a non-financial counterparty should therefore be exempted from the reporting obligation.

Amendment

(12) **Every** intragroup **transaction** involving non-financial counterparties **represents** a relatively small fraction of all OTC derivative transactions and **is** used primarily for internal hedging within groups. Those transactions therefore do not significantly contribute to systemic risk and interconnectedness, yet the obligation to report those transactions imposes **significant** costs and burdens on non-financial counterparties. Intragroup transactions where at least one of the counterparties is a non-financial counterparty should therefore be exempted from the reporting obligation. ***This exemption should apply irrespective of the place of establishment of a non-financial counterparty.***

Or. en

Justification

The intragroup exemption only makes sense if it can applied on a global level.

Amendment 49
Brian Hayes

Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) Intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. Those transactions therefore do not significantly contribute to systemic risk and interconnectedness, yet the obligation to report those transactions imposes important costs and burdens on non-financial counterparties. ***Intragroup*** transactions where at least one of the

Amendment

(12) Intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. Those transactions therefore do not significantly contribute to systemic risk and interconnectedness, yet the obligation to report those transactions imposes important costs and burdens on non-financial counterparties. ***All transactions between affiliates within the group*** where

counterparties is a non-financial counterparty should therefore be exempted from the reporting obligation.

at least one of the counterparties is a non-financial counterparty should therefore be exempted from the reporting obligation, ***regardless of the place of establishment of a non-financial counterparty.***

Or. en

Amendment 50
Anne Sander, Alain Lamassoure

Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) Intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. Those transactions therefore do not significantly contribute to systemic risk and interconnectedness, yet the obligation to report those transactions imposes important costs and burdens on non-financial counterparties. Intragroup transactions where ***at least one of*** the counterparties ***is a*** non-financial ***counterparty*** should therefore be exempted from the reporting obligation.

Amendment

(12) Intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. Those transactions therefore do not significantly contribute to systemic risk and interconnectedness, yet the obligation to report those transactions imposes important costs and burdens on non-financial counterparties. Intragroup transactions where ***both*** the counterparties ***are*** non-financial ***counterparties*** should therefore be exempted from the reporting obligation.

Or. en

Amendment 51
Petr Ježek

Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) Intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC

Amendment

(12) Intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC

derivative transactions and are used primarily for internal hedging within groups. Those transactions therefore do not significantly contribute to systemic risk and interconnectedness, yet the obligation to report those transactions imposes important costs and burdens on non-financial counterparties. Intragroup transactions where at least one of the counterparties is a non-financial counterparty should therefore be exempted from the reporting obligation.

derivative transactions and are used primarily for internal hedging within groups. Those transactions therefore do not significantly contribute to systemic risk and interconnectedness, yet the obligation to report those transactions imposes important costs and burdens on non-financial counterparties. Intragroup transactions where at least one of the counterparties is a non-financial counterparty should therefore be exempted from the reporting obligation, ***regardless of the place of establishment of a non-financial counterparty.***

Or. en

Amendment 52
Jakob von Weizsäcker

Proposal for a regulation
Recital 13

Text proposed by the Commission

Amendment

(13) The requirement to report exchange-traded derivative contracts ('ETDs') imposes a significant burden on counterparties because of the high volume of ETDs that are concluded on a daily basis. Moreover, since Regulation (EU) No 600/2014 of the European Parliament and of the Council²² requires every ETD to be cleared by a CCP, CCPs already hold the vast majority of the details of those contracts. To reduce the burden of reporting ETDs, the responsibility, including any legal liability, for reporting ETDs on behalf of both counterparties should fall on the CCP as well as for ensuring the accuracy of the details reported.

deleted

²² ***Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial***

Amendment 53

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) The requirement to report exchange-traded derivative contracts ('ETDs') imposes a significant burden on counterparties because of the high volume of ETDs that are concluded on a daily basis. Moreover, since Regulation (EU) No 600/2014 of the European Parliament and of the Council²² requires every ETD to be cleared by a CCP, CCPs already hold the vast majority of the details of those contracts. To reduce the burden of reporting ETDs, the responsibility, including any legal liability, for reporting ETDs on behalf of both counterparties should fall on the CCP as well as for ensuring the accuracy of the details reported.

Amendment

(13) The requirement to report exchange-traded derivative contracts ('ETDs') imposes a significant burden on counterparties because of the high volume of ETDs that are concluded on a daily basis. Moreover, since Regulation (EU) No 600/2014 of the European Parliament and of the Council²² requires every ETD to be cleared by a CCP, CCPs already hold the vast majority of the details of those contracts. To reduce the burden of reporting ETDs, the responsibility, including any legal liability, for reporting ETDs on behalf of both counterparties should fall on the CCP as well as for ensuring the accuracy of the details reported. ***In order for CCPs to be able to perform their new reporting tasks and since all information required under this Regulation might not be automatically available to CCPs, CCPs, their members and their clients should establish adequate arrangements in order to ensure timely and accurate transmission of the relevant information from the counterparties subject to the reporting obligation to the CCPs. Where and as long as such arrangements are non-existent or not operational, the responsibility, including legal liability, for reporting ETDs should remain with the counterparty itself.***

²² Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 12.6.2014, p. 84).

²² Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 12.6.2014, p. 84).

Or. en

Amendment 54

Kay Swinburne

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) The requirement to report exchange-traded derivative contracts ('ETDs') imposes a significant burden on counterparties because of the high volume of ETDs that are concluded on a daily basis. *Moreover, since Regulation (EU) No 600/2014 of the European Parliament and of the Council²² requires every ETD to be cleared by a CCP, CCPs already hold the vast majority of the details of those contracts. To reduce the burden of reporting ETDs, the responsibility, including any legal liability, for reporting ETDs on behalf of both counterparties should fall on the CCP as well as for ensuring the accuracy of the details reported.*

Amendment

(13) The requirement to report exchange-traded derivative contracts ('ETDs') imposes a significant burden on counterparties because of the high volume of ETDs that are concluded on a daily basis. *The European Commission public consultation on fitness check on supervisory reporting, which was published on 1 December 2017, aims to gather evidence on the cost of compliance with existing supervisory reporting requirements at Union level, as well as on the consistency, coherence, effectiveness, efficiency, and EU added value of those requirements. This consultation provides an opportunity for authorities to assess ETD reporting holistically alongside all existing and future regulatory reporting regimes, allows authorities to take into account the new reporting environment following the implementation of Regulation (EU) No 600/2014²² and provides the possibility to make proposals to effectively reduce burden on market participants who are required to report ETD transactions. The Commission should take those findings into consideration in order to propose future changes to the reporting requirements*

under Article 9(1) in relation to ETD reporting.

²² Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 12.6.2014, p. 84).

²² Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 12.6.2014, p. 84).

Or. en

Amendment 55

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) The requirement to report exchange-traded derivative contracts ('ETDs') imposes a significant burden on counterparties because of the high volume of ETDs that are concluded on a daily basis. Moreover, since Regulation (EU) No 600/2014 of the European Parliament and of the Council²² requires every ETD to be cleared by a CCP, CCPs already hold the vast majority of the details of those contracts. To reduce the burden of reporting ETDs, the responsibility, including any legal liability, for reporting ETDs on behalf of both counterparties should fall on the CCP as well as for ensuring the accuracy of the details reported.

²² Regulation (EU) No 600/2014 of the

Amendment

(13) The requirement to report exchange-traded derivative contracts ('ETDs') imposes a significant burden on counterparties because of the high volume of ETDs that are concluded on a daily basis. Moreover, since Regulation (EU) No 600/2014 of the European Parliament and of the Council²² requires every ETD to be cleared by a CCP, CCPs already hold the vast majority of the details of those contracts. To reduce the burden of reporting ETDs, the responsibility, including any legal liability, for reporting ETDs on behalf of both counterparties should fall on the CCP as well as for ensuring the accuracy of the details reported. ***To ensure that the CCP has the data needed to fulfil its reporting obligation, the financial counterparty should provide and update as appropriate the details relating to ETDs transactions that the CCP cannot be reasonably expected to possess.***

²² Regulation (EU) No 600/2014 of the

European Parliament and of the Council of 15 May 201 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 12.6.2014, p. 84).

European Parliament and of the Council of 15 May 201~~4~~ on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 12.6.2014, p. 84).

Or. en

Amendment 56

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Shifting the responsibility for reporting details of derivatives which are not OTC derivatives from counterparties to CCPs implies that counterparties might enjoy less freedom of choice concerning the trade repository to which they have to report. It is therefore appropriate to require CCPs, members and clients to consult each other regarding the choice of trade repositories to which reporting should be made.

Or. en

Amendment 57

Markus Ferber

Proposal for a regulation

Recital 14

Text proposed by the Commission

Amendment

(14) To reduce the burden of reporting for ***small*** non-financial counterparties, the financial counterparty should be responsible, and legally liable, for reporting ***on behalf of both itself and the*** non-financial counterparty that is not subject to the clearing obligation ***with regard to OTC derivative contracts***

(14) To reduce the burden of reporting for non-financial counterparties ***not subject to the clearing obligation***, the financial counterparty should be ***solely*** responsible, and legally liable, for reporting ***a single data set with regard to OTC derivative contracts entered into with a*** non-financial counterparty that is not subject to the

entered into by that non-financial counterparty as well as for ensuring the accuracy of the details reported.

clearing obligation as well as for ensuring the accuracy of the details reported.
So as to enable financial counterparties to carry out the reporting obligation conferred on them with respect to transactions with non-financial counterparties, those non-financial counterparties are to provide that information related to the OTC derivative transaction to the financial counterparty that the latter cannot be expected to possess in reasonable terms. Notwithstanding the above, non-financial counterparties should be able to actively opt in favour of independently reporting their OTC derivatives contracts. Doing so would require appropriate notifications to be made to the financial counterparty. For such cases, the liability for reporting and for the content, accuracy, and timeliness of the data reported remains with the non-financial counterparty.

Or. en

Amendment 58
Brian Hayes

Proposal for a regulation
Recital 14

Text proposed by the Commission

(14) To reduce the burden of reporting for *small* non-financial counterparties, the financial counterparty should be responsible, and legally liable, for reporting *on behalf of both* itself and the non-financial counterparty that is not subject to the clearing obligation *with regard to OTC derivative contracts entered into by that non-financial counterparty* as well as for ensuring the accuracy of the details reported.

Amendment

(14) To reduce the burden of reporting for non-financial counterparties *not subject to the clearing obligation*, the financial counterparty should be responsible, and legally liable, for reporting *with regard to OTC derivative contracts entered into by* itself and the non-financial counterparty that is not subject to the clearing obligation, as well as for ensuring the accuracy of the details reported. *To ensure that the financial counterparty has the data necessary to fulfil its reporting obligation, the non-financial counterparty should provide the details relating to the*

OTC derivative transactions that the financial counterparty cannot be reasonably expected to possess. However, it should be possible for non-financial counterparties to choose to report their OTC derivatives contracts on their own, in which case they should inform the financial counterparty accordingly. In such cases, the non-financial counterparty should remain responsible and legally liable for reporting that data and for ensuring its accuracy.

Or. en

Amendment 59
Kay Swinburne

Proposal for a regulation
Recital 14

Text proposed by the Commission

(14) To reduce the burden of reporting for small non-financial counterparties, the financial counterparty should be responsible, and legally liable, for reporting on behalf of both itself and the non-financial counterparty that is not subject to the clearing obligation with regard to OTC derivative contracts entered into by that non-financial counterparty as well as for ensuring the accuracy of the details reported.

Amendment

(14) To reduce the burden of reporting for small non-financial counterparties ***not subject to the clearing exemption***, the financial counterparty should be responsible, and legally liable, for reporting on behalf of both itself and the non-financial counterparty that is not subject to the clearing obligation with regard to OTC derivative contracts entered into by that non-financial counterparty as well as for ensuring the accuracy of the details reported. ***However, it should be possible for non-financial counterparties to choose to report their derivative contracts themselves, in which case they should inform the financial counterparty accordingly. In such cases, the non-financial counterparty should remain responsible and legally liable for reporting that data and for ensuring its accuracy.***

Or. en

Amendment 60

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) To reduce the burden of reporting for small non-financial counterparties, the financial counterparty should be responsible, and legally liable, for reporting on behalf of both itself and the non-financial counterparty that is not subject to the clearing obligation with regard to OTC derivative contracts entered into by that non-financial counterparty as well as for ensuring the accuracy of the details reported.

Amendment

(14) To reduce the burden of reporting for small non-financial counterparties, the financial counterparty should be responsible, and legally liable, for reporting on behalf of both itself and the non-financial counterparty that is not subject to the clearing obligation with regard to OTC derivative contracts entered into by that non-financial counterparty as well as for ensuring the accuracy of the details reported. ***To ensure that the financial counterparty has the data needed to fulfil its reporting obligation, the non-financial counterparty should provide and update as appropriate the details relating to the OTC derivative transactions that the financial counterparty cannot be reasonably expected to possess.***

Or. en

Amendment 61

Philippe Lamberts

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) To avoid inconsistencies across the Union in the application of the risk mitigation techniques, supervisors should approve risk-management procedures requiring the timely, accurate and appropriately segregated exchange of

Amendment

(16) To avoid inconsistencies across the Union in the application of the risk mitigation techniques, supervisors should approve risk-management procedures requiring the timely, accurate and appropriately segregated exchange of

collateral of counterparties, or any significant change to those procedures, before they are applied.

collateral of counterparties, or any significant change to those procedures, before they are applied. *A notification procedure and a methodological framework should also be established in order to avoid regulatory arbitrage and to ensure an effective and consistent monitoring of whether the non-cleared OTC contracts do not achieve an economically equivalent effect to contracts or a portfolio of contracts subject to the clearing obligation.*

Or. en

Amendment 62
Petr Ježek, Thierry Cornillet

Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Post trade risk reduction services can serve to reduce counterparty exposures as well as to reduce operational and counterparty risks from a build-up of market participants' gross outstanding positions. In order to ensure that these benefits may be fully realised, it is appropriate to exempt certain post trade risk reduction services from the clearing obligation, which would also align the provisions under this Regulation with those under Regulation (EU) No 600/2014^{1a}.

^{1a} Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 12.6.2014, p. 84).

Or. en

Amendment 63
Anne Sander, Alain Lamassoure

Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) In order to avoid international regulatory divergence and bearing in mind the particular nature of such derivatives' trades, the mandatory exchange of variation margins on physically settled foreign exchange forward and physically settled foreign exchange swap derivatives should only apply to transactions between the most systemic counterparties, credit institutions and investment firms.

Or. en

Amendment 64
Petr Ježek

Proposal for a regulation
Recital 16 b (new)

Text proposed by the Commission

Amendment

(16b) In order to avoid international regulatory divergence and limit the build-up of systemic risk, and bearing in mind the particular nature of such derivatives' trades, the mandatory exchange of variation margins on physically settled foreign exchange forwards and physically settled foreign exchange swaps should only apply to transactions between the most systemic counterparties

Or. en

Justification

We agree with the intention of the rapporteur's amendment, but suggest alternative wording in order to maintain a general reference to FX forwards and swaps.

Amendment 65

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) To increase transparency and predictability of the initial margins and to restrain CCPs from modifying their initial margin models in ways that could appear procyclical, CCPs should provide their clearing members with tools to simulate their initial margin requirements and with a detailed overview of the initial margin models they use. This is consistent with the international standards published by the Committee on Payments and Market Infrastructures and the Board of the International Organization of Securities Commissions, and in particular with the disclosure framework published in December 2012²³ and the public quantitative disclosure standards for central counterparties published in 2015²⁴, relevant for fostering an accurate understanding of the risks and costs involved in any participation in a CCP by clearing members and enhancing transparency of CCPs towards market participants.

²³ <http://www.bis.org/cpmi/publ/d106.pdf>

²⁴ <http://www.bis.org/cpmi/publ/d125.pdf>

Amendment

(17) To increase transparency and predictability of the initial margins and to restrain CCPs from modifying their initial margin models in ways that could appear procyclical, CCPs should provide their clearing members with tools to simulate their initial margin requirements and with a detailed overview of the initial margin models they use. ***In the same perspective, provisions aiming at avoiding procyclicality should be reinforced.*** This is consistent with the international standards published by the Committee on Payments and Market Infrastructures and the Board of the International Organization of Securities Commissions, and in particular with the disclosure framework published in December 2012²³ and the public quantitative disclosure standards for central counterparties published in 2015²⁴, relevant for fostering an accurate understanding of the risks and costs involved in any participation in a CCP by clearing members and enhancing transparency of CCPs towards market participants.

²³ <http://www.bis.org/cpmi/publ/d106.pdf>

²⁴ <http://www.bis.org/cpmi/publ/d125.pdf>

Or. en

Amendment 66

Jakob von Weizsäcker, Jonás Fernández

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) The fines ESMA can impose on trade repositories under its direct supervision should be effective, proportionate and dissuasive enough to ensure the effectiveness of ESMA's supervisory powers and to increase the transparency of OTC derivatives positions and exposures. The amounts of fines initially provided for in Regulation (EU) No 648/2012 have revealed insufficiently dissuasive in view of the current turnover of the trade repositories, which could potentially limit the effectiveness of ESMA's supervisory powers under that Regulation vis-à-vis trade repositories. The upper limit of the basic amounts of fines should therefore be increased.

Amendment

(19) The fines ESMA can impose on trade repositories under its direct supervision should be effective, proportionate and dissuasive enough to ensure the effectiveness of ESMA's supervisory powers and to increase the transparency of OTC derivatives positions and exposures. The amounts of fines initially provided for in Regulation (EU) No 648/2012 have revealed insufficiently dissuasive in view of the current turnover of the trade repositories, which could potentially limit the effectiveness of ESMA's supervisory powers under that Regulation vis-à-vis trade repositories. The upper limit of the basic amounts of fines should therefore be increased.

Furthermore, the timespans for taking into account aggravating and mitigating factors have been ineffective and need to be changed.

Or. en

Amendment 67

Kay Swinburne

Proposal for a regulation

Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) In order to reduce the administrative burden and increase the matching of trades, ESMA should introduce a common Union standard for reporting to trade repositories. As CCPs

and other financial counterparties are taking on delegated reporting duties, a single format would increase efficiencies for all participants.

Or. en

Amendment 68

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) Regulation (EU) No 648/2012 establishes that the clearing obligation should not apply to pension scheme arrangements (PSAs) until a suitable technical solution is developed by CCPs for the transfer of non-cash collateral as variation margins. As no viable solution facilitating PSAs to centrally clear has been developed so far, that temporary derogation should be extended to apply for a further three years. Central clearing should however remain the ultimate aim considering that current regulatory and market developments enable market participants to develop suitable technical solutions within that time period. With the assistance of ESMA, EBA, the European Insurance and Occupational Pensions Authority ('EIOPA') and ESRB, the Commission should monitor the progress made by CCPs, clearing members and PSAs towards viable solutions facilitating the participation of PSAs in central clearing and prepare a report on that progress. That report should also cover the solutions and the related costs for PSAs, thereby taking into account regulatory and market developments such as changes to the type of financial counterparty that is subject to the clearing obligation. ***In order to cater for developments not foreseen at***

Amendment

(24) Regulation (EU) No 648/2012 establishes that the clearing obligation should not apply to pension scheme arrangements (PSAs) until a suitable technical solution is developed by CCPs for the transfer of non-cash collateral as variation margins. As no viable solution facilitating PSAs to centrally clear has been developed so far, that temporary derogation should be extended to apply for a further three years. Central clearing should however remain the ultimate aim considering that current regulatory and market developments enable market participants to develop suitable technical solutions within that time period. With the assistance of ESMA, EBA, the European Insurance and Occupational Pensions Authority ('EIOPA') and ESRB, the Commission should monitor the progress made by CCPs, clearing members and PSAs towards viable solutions facilitating the participation of PSAs in central clearing and prepare a report on that progress. That report should also cover the solutions and the related costs for PSAs, thereby taking into account regulatory and market developments such as changes to the type of financial counterparty that is subject to the clearing obligation.

the time of adoption of this regulation, the Commission should be empowered to extend that derogation for additional two years, after having carefully assessed the need for such an extension.

Or. en

Amendment 69

Jakob von Weizsäcker, Jonás Fernández

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) Regulation (EU) No 648/2012 establishes that the clearing obligation should not apply to pension scheme arrangements (PSAs) until a suitable technical solution is developed by CCPs for the transfer of non-cash collateral as variation margins. As no viable solution facilitating PSAs to centrally clear has been developed so far, that temporary derogation should be extended to apply for a further three years. Central clearing ***should however remain the ultimate aim*** considering that current regulatory and market developments enable market participants to develop suitable technical solutions ***within that time period***. With the assistance of ESMA, EBA, the European Insurance and Occupational Pensions Authority ('EIOPA') and ESRB, the Commission should monitor the progress made by CCPs, clearing members and PSAs towards viable solutions facilitating the participation of PSAs in central clearing and prepare a report on that progress. That report should also cover the solutions and the related costs for PSAs, thereby taking into account regulatory and market developments such as changes to the type of financial counterparty that is subject to the clearing obligation. ***In order to cater for developments not foreseen at***

Amendment

(24) Regulation (EU) No 648/2012 establishes that the clearing obligation should not apply to pension scheme arrangements (PSAs) until a suitable technical solution is developed by CCPs for the transfer of non-cash collateral as variation margins. As no viable solution facilitating PSAs to centrally clear has been developed so far, that temporary derogation should be extended to apply for a further three years. ***Within that timeframe, the introduction of central clearing is reasonably possible*** considering that current regulatory and market developments enable market participants to develop suitable technical solutions. ***No further extensions are to be foreseen since the financial stability benefits of central clearing for PSAs are well documented and any adverse incentive to further delay implementation should be avoided.*** With the assistance of ESMA, EBA, the European Insurance and Occupational Pensions Authority ('EIOPA'), ***ECB*** and ESRB, the Commission should monitor ***and promote*** the progress made by CCPs, clearing members and PSAs towards viable solutions facilitating the participation of PSAs in central clearing and prepare a report on that progress ***every 6 months until the clearing exemption expires***. That

the time of adoption of this regulation, the Commission should be empowered to extend that derogation for additional two years, after having carefully assessed the need for such an extension.

report should also cover the solutions, *possibly including liquidity transformation of secure collateral via the ECB* and the related costs *and benefits* for PSAs, thereby taking into account regulatory and market developments such as changes to the type of financial counterparty that is subject to the clearing obligation.

Or. en

Amendment 70
Esther de Lange

Proposal for a regulation
Recital 24

Text proposed by the Commission

(24) Regulation (EU) No 648/2012 establishes that the clearing obligation should not apply to pension scheme arrangements (PSAs) until a suitable technical solution is developed by CCPs for the transfer of non-cash collateral as variation margins. As no viable solution facilitating PSAs to centrally clear has been developed so far, that temporary derogation should be extended to apply for a further three years. Central clearing should however remain the ultimate aim considering that current regulatory and market developments enable market participants to develop suitable technical solutions within that time period. With the assistance of ESMA, EBA, the European Insurance and Occupational Pensions Authority ('EIOPA') and ESRB, the Commission should monitor the progress made by CCPs, clearing members and PSAs towards viable solutions facilitating the participation of PSAs in central clearing and prepare a report on that progress. That report should also cover the solutions and the related costs for PSAs, thereby taking into account regulatory and

Amendment

(24) Regulation (EU) No 648/2012 establishes that the clearing obligation should not apply to pension scheme arrangements (PSAs) until a suitable technical solution is developed by CCPs for the transfer of non-cash collateral as variation margins. As no viable solution facilitating PSAs to centrally clear has been developed so far, that temporary derogation should be extended to apply for a further three years. Central clearing should however remain the ultimate aim considering that current regulatory and market developments enable market participants to develop suitable technical solutions within that time period. With the assistance of ESMA, EBA, the European Insurance and Occupational Pensions Authority ('EIOPA') and ESRB, the Commission should monitor the progress made by CCPs, clearing members and PSAs towards viable solutions facilitating the participation of PSAs in central clearing and prepare a report on that progress. That report should also cover the solutions and the related costs for PSAs, thereby taking into account regulatory and

market developments such as changes to the type of financial counterparty that is subject to the clearing obligation. ***In order to cater for developments not foreseen at the time of adoption of this regulation,*** the Commission should be empowered to extend that derogation ***for additional two years, after having carefully assessed the need for such an*** extension.

market developments such as changes to the type of financial counterparty that is subject to the clearing obligation. The Commission should be empowered to extend that derogation ***if no viable solutions have been reached and the adverse effect of central clearing of derivative contracts on the retirement benefits of future pensioners remains unchanged. This extension should be accompanied by a legislative proposal establishing rules for the equal treatment of high-quality government bonds collateral compared to cash collateral posted as variation margins.***

Or. en

Amendment 71

Caroline Nagtegaal, Morten Løkkegaard, Petr Ježek, Wolf Klinz

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) Regulation (EU) No 648/2012 establishes that the clearing obligation should not apply to pension scheme arrangements (PSAs) until a suitable technical solution is developed by CCPs for the transfer of non-cash collateral as variation margins. As no viable solution facilitating PSAs to centrally clear has been developed so far, that temporary derogation should be extended to apply for a further three years. Central clearing should however remain the ultimate aim considering that current regulatory and market developments enable market participants to develop suitable technical solutions within that time period. With the assistance of ESMA, EBA, the European Insurance and Occupational Pensions Authority ('EIOPA') and ESRB, the Commission should monitor the progress made by CCPs, clearing members and

Amendment

(24) Regulation (EU) No 648/2012 establishes that the clearing obligation should not apply to pension scheme arrangements (PSAs) until a suitable technical solution is developed by CCPs for the transfer of non-cash collateral as variation margins. As no viable solution facilitating PSAs to centrally clear has been developed so far, that temporary derogation should be extended to apply for a further three years. Central clearing should however remain the ultimate aim considering that current regulatory and market developments enable market participants to develop suitable technical solutions within that time period. With the assistance of ESMA, EBA, the European Insurance and Occupational Pensions Authority ('EIOPA') and ESRB, the Commission should monitor the progress made by CCPs, clearing members and

PSAs towards viable solutions facilitating the participation of PSAs in central clearing and prepare a report on that progress. That report should also cover the solutions and the related costs for PSAs, thereby taking into account regulatory and market developments such as changes to the type of financial counterparty that is subject to the clearing obligation. ***In order to cater for developments not foreseen at the time of adoption of this regulation,*** the Commission should be empowered to extend that derogation for additional two years, after ***having carefully assessed the need for such an extension.***

PSAs towards viable solutions facilitating the participation of PSAs in central clearing and prepare a report on that progress. That report should also cover the solutions and the related costs for PSAs, thereby taking into account regulatory and market developments such as changes to the type of financial counterparty that is subject to the clearing obligation. The Commission should be empowered to extend that derogation for additional two years, ***if it considers that a solution is within reach of the stakeholders. The exemption should be continuous from the date of entry into force of Regulation (EU) No 648/2012 and should also apply retrospectively to all OTC derivative contracts executed after 16 August 2018 and before the date of entry into force of this Regulation, if later.***

Or. en

Amendment 72

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying the conditions under which commercial terms relating to the provision of clearing services are considered to be fair, reasonable and non-discriminatory, ***and in respect of the extension of the period in which the clearing obligation should not apply to PSAs.***

Amendment

(25) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying the conditions under which commercial terms relating to the provision of clearing services are considered to be fair, reasonable, ***transparent,*** and non-discriminatory.

Or. en

Amendment 73

Jakob von Weizsäcker, Jonás Fernández

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying the conditions under which commercial terms relating to the provision of clearing services are considered to be fair, reasonable and non-discriminatory, ***and in respect of the extension of the period in which the clearing obligation should not apply to PSAs.***

Amendment

(25) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying the conditions under which commercial terms relating to the provision of clearing services are considered to be fair, reasonable and non-discriminatory.

Or. en

Amendment 74

Kay Swinburne

Proposal for a regulation

Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) In order to address any issues that have arisen for financial counterparties or non-financial counterparties where the clearing obligation would no longer apply to them within the same year of initial assessment, ESMA should, by ... [date of entry into force + 12 months] submit a report to the Commission assessing whether the methodology used to calculate an aggregate month-end average position is problematic.

Or. en

Amendment 75

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) Since the objectives of this Regulation, namely to ensure the proportionality of rules that lead to unnecessary administrative burdens and compliance costs without **putting** financial stability **at risk** and to increase the transparency of OTC derivatives positions and exposures, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

Amendment

(29) Since the objectives of this Regulation, namely to ensure the proportionality of rules that lead to unnecessary administrative burdens and compliance costs without ***prejudice to the overarching objective of preserving financial stability and reducing systemic risks*** and to increase the transparency of OTC derivatives positions and exposures, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

Or. en

Amendment 76

Markus Ferber

Proposal for a regulation

Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) The clearing obligation for derivatives under Regulation (EU) No 648/2012 and the trading obligation for derivatives under Regulation (EU) No

600/2014 should be closely aligned. Therefore, the changes made to the clearing obligation for derivatives in this regulation, in particular regarding the scope of entities subject to the clearing obligation as well as the suspension mechanism, should also be made to the trading obligation for derivatives as outlined in Regulation (EU) No 600/2014.

Or. en

Amendment 77

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point -1 (new)

Regulation (EU) No 648/2012

Article 1 – paragraph 4

Present text

4. This Regulation shall not apply to:
- (a) *the members of the ESCB and other Member States' bodies performing similar functions and other Union* public bodies charged with or intervening in the management of the public debt;
 - (b) the Bank for International Settlements.
 - (c) *the central banks and public bodies charged with or intervening in the management of the public debt in the following countries:*
 - (i) *Japan;*
 - (ii) *United States of America;*
 - (iii) *Australia;*
 - (iv) *Canada;*
 - (v) *Hong Kong;*
 - (vi) *Mexico;*
 - (vii) *Singapore;*

Amendment

(-1) In Article 1, paragraph 4 is replaced by the following:

- "4. This Regulation shall not apply to:
- (a) *central banks* and other public bodies charged with or intervening in the management of the public debt; ;
 - (b) the Bank for International Settlements.
 - (c) *multilateral development banks, as listed in Article 117(2) of Regulation (EU) No 575/2013.*

(viii) *Switzerland.*

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0648>)

Amendment 78

Petr Ježek, Caroline Nagtegaal

Proposal for a regulation

Article 1 – paragraph 1 – point -1 (new)

Regulation (EU) No 648/2012

Article 1 – paragraph 4

Present text

4. This Regulation shall not apply to:

(a) *the members of the ESCB and other* Member States' bodies performing similar functions and other *Union* public bodies charged with or intervening in the management of the public debt;

(b) the Bank for International Settlements.

(c) *the central banks and public bodies charged with or intervening in the management of the public debt in the following countries:*

(i) *Japan;*

(ii) *United States of America;*

(iii) *Australia;*

(iv) *Canada;*

(v) *Hong Kong;*

(vi) *Mexico;*

(vii) *Singapore;*

(viii) *Switzerland.*

Amendment

(-1) In Article 1, paragraph 4 is replaced by the following:

"4. This Regulation shall not apply to:

(a) *central banks and* Member States' bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

(b) the Bank for International Settlements;

(c) *multilateral development banks, as listed in Article 117(2) of Regulation (EU) No 575/2013.*"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Justification

Exempting third country Central Banks, debt management offices and multilateral development banks is important to ensure that EU firms are not put at a disadvantage on a global level by facing additional requirements, and is in line with BCBS-IOSCO recommendations and the CFTC's 2012 Cross-Border Rule.

Amendment 79

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point -1 a (new)

Regulation (EU) No 648/2012

Article 1 – paragraph 5 – point a

Text proposed by the Commission

Amendment

(-1a) In Article 1, paragraph 5, point a is deleted;

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0648>)

Amendment 80

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 2 – point 8

Text proposed by the Commission

Amendment

(1) In Article 2, point (8) is replaced by the following:

‘(8) “financial counterparty” means an investment firm authorised in accordance with Directive 2014/65/EC of the European Parliament and of the Council³¹, a credit institution authorised in accordance with Regulation (EU) No 575/2013, an insurance of reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council³², a UCITS authorised

(1) In Article 2, point (8) is replaced by the following:

‘(8) “financial counterparty” means an investment firm authorised in accordance with Directive 2014/65/EC of the European Parliament and of the Council³¹, a credit institution authorised in accordance with Regulation (EU) No 575/2013, an insurance of reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council³², a UCITS authorised

in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, an ***AIF as defined in Article 4(1)(a) of directive 2011/61/EU, a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council³³ and a securitisation special purpose entity as defined in Article 4(1)(66) of Regulation (EU) No 575/2013 of the European Parliament and of the Council³⁴ ;***'.

³¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 12.6.2014, p. 349).

³² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

³³ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257 28.8.2014, p. 1).

³⁴ ***Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (OJ L 176, 27.6.2013, p. 1).***

in accordance with Directive 2009/65/EC, ***except if this UCITS is related to an employee share purchase plan***, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, an ***alternative investment fund (AIF) within the meaning of Article 4(1)(a) of Directive 2011/61/EU which is either established in the Union or managed by an alternative investment fund manager (AIFM) authorised or registered under that Directive, except if this AIF is related to an employee share purchase plan***, and a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council³³;’.

³¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 12.6.2014, p. 349).

³² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

³³ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257 28.8.2014, p. 1).

Amendment 81**Brian Hayes****Proposal for a regulation****Article 1 – paragraph 1 – point 1**

Regulation (EU) No 648/2012

Article 2 – point 8

Text proposed by the Commission

(1) In Article 2, point (8) is replaced by the following:

‘(8) “financial counterparty” means an investment firm authorised in accordance with Directive 2014/65/EC of the European Parliament and of the Council³¹, a credit institution authorised in accordance with Regulation (EU) No 575/2013, an insurance of reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council³², a UCITS authorised in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, an AIF as defined in Article 4(1)(a) of directive 2011/61/EU, a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council³³ **and a securitisation special purpose entity as defined in Article 4(1)(66) of Regulation (EU) No 575/2013 of the European Parliament and of the Council³⁴**;’.

³¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 12.6.2014, p. 349).

³² Directive 2009/138/EC of the European

Amendment

(1) In Article 2, point (8) is replaced by the following:

‘(8) “financial counterparty” means an investment firm authorised in accordance with Directive 2014/65/EC of the European Parliament and of the Council³¹, a credit institution authorised in accordance with Regulation (EU) No 575/2013, an insurance of reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council³², a UCITS authorised in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, an AIF as defined in Article 4(1)(a) of directive 2011/61/EU **and** a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council³³;’.

³¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 12.6.2014, p. 349).

³² Directive 2009/138/EC of the European

Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

³³ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257 28.8.2014, p. 1).

³⁴ *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (OJ L 176, 27.6.2013, p. 1).*

Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

³³ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257 28.8.2014, p. 1).

Or. en

Justification

Contrary to the goals of the recently agreed securitisation regulation, the proposed reclassification would impact the securitisation market negatively and potentially increase risks to investors and the financial sector.

Amendment 82

Ramon Tremosa i Balcells

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 2 – point 8

Text proposed by the Commission

(1) In Article 2, point (8) is replaced by the following:

‘(8) “financial counterparty” means an investment firm authorised in accordance with Directive 2014/65/EC of the European Parliament and of the Council³¹, a credit institution authorised in accordance with Regulation (EU) No 575/2013, an

Amendment

(1) In Article 2, point (8) is replaced by the following:

‘(8) “financial counterparty” means an investment firm authorised in accordance with Directive 2014/65/EC of the European Parliament and of the Council³¹, a credit institution authorised in accordance with Regulation (EU) No 575/2013, an

insurance of reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council³², a UCITS authorised in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, an AIF as defined in Article 4(1)(a) of directive 2011/61/EU, a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council³³ **and a securitisation special purpose entity as defined in Article 4(1)(66) of Regulation (EU) No 575/2013 of the European Parliament and of the Council³⁴,**.

³¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 12.6.2014, p. 349).

³² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

³³ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257 28.8.2014, p. 1).

³⁴ **Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (OJ L 176, 27.6.2013, p. 1).**

insurance of reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council³², a UCITS authorised in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, an AIF as defined in Article 4(1)(a) of directive 2011/61/EU, a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council³³,

³¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 12.6.2014, p. 349).

³² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

³³ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257 28.8.2014, p. 1).

Or. en

Amendment 83

Petr Ježek

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 2 – point 8

Text proposed by the Commission

(1) In Article 2, point (8) is replaced by the following:

‘(8) “financial counterparty” means an investment firm authorised in accordance with Directive 2014/65/EC of the European Parliament and of the Council³¹, a credit institution authorised in accordance with Regulation (EU) No 575/2013, an insurance of reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council³², a UCITS authorised in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, an AIF as defined in Article 4(1)(a) of directive 2011/61/EU, a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council³³ **and a securitisation special purpose entity as defined in Article 4(1)(66) of Regulation (EU) No 575/2013 of the European Parliament and of the Council³⁴,**’.

³¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 12.6.2014, p. 349).

³² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and

Amendment

(1) In Article 2, point (8) is replaced by the following:

‘(8) “financial counterparty” means an investment firm authorised in accordance with Directive 2014/65/EC of the European Parliament and of the Council³¹, a credit institution authorised in accordance with Regulation (EU) No 575/2013, an insurance of reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council³², a UCITS authorised in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, an AIF as defined in Article 4(1)(a) of directive 2011/61/EU, **and** a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council³³,’.

³¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 12.6.2014, p. 349).

³² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and

pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

³³ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257 28.8.2014, p. 1).

³⁴ ***Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (OJ L 176, 27.6.2013, p. 1).***

pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

³³ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257 28.8.2014, p. 1).

Or. en

Justification

SSPEs carry out different functions to financial counterparties and bringing them within the scope of the FC definition could be detrimental to their business and run contrary to the aims and achievements of the Capital Markets Union and the agreed STS regulation.

Amendment 84 Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 1 a (new)

Regulation (EU) No 648/2012

Article 2 – point 8 a (new)

Text proposed by the Commission

Amendment

(1a) In Article 2, after point 8 the following point is inserted:

‘(8a) “foreign exchange swaps” means physically settled OTC derivative contracts (or combinations of contracts entered into at the same time and having the same effect) that solely involve an exchange of two different currencies on a specific date at a fixed rate that is agreed on the trade date of the contract or

contracts covering the exchange, and a reverse exchange of the two currencies at a later date and at a fixed rate that is also agreed on the trade date of the contract or contracts covering the exchange;’.

Or. en

Amendment 85

Petr Ježek, Thierry Cornillet

Proposal for a regulation

Article 1 – paragraph 1 – point 1 a (new)

Regulation (EU) No 648/2012

Article 2 – point 8 a (new)

Text proposed by the Commission

Amendment

(1a) In Article 2, after point 8 the following point is inserted:

‘(8a) “portfolio compression” means portfolio compression as defined in Article 2(1) of Regulation (EU) 600/2014;’.

Or. en

Amendment 86

Kay Swinburne, Werner Langen, Markus Ferber

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point -a (new)

Regulation (EU) No 648/2012

Article 4 – paragraph 1 – introductory part

Present text

Amendment

1. *Counterparties* shall clear all OTC derivative contracts pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation in

(-a) In Article 4, paragraph 1 the introductory parts is replaced by the following:

1. With the exception of OTC derivative contracts which directly result from post-trade risk reduction services, including portfolio compression, counterparties

accordance with Article 5(2), if those contracts fulfil both of the following conditions:

shall clear all OTC derivative contracts pertaining to a class of OTC derivatives that have been declared subject to the clearing obligation in accordance with Article 5(2), if those contracts fulfil both of the following conditions:

Or. en

Amendment 87

Petr Ježek, Thierry Cornillet

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point -a (new)

Regulation (EU) No 648/2012

Article 4 – paragraph 1 – introductory part

Present text

1. *Counterparties* shall clear all OTC derivative contracts pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation in accordance with Article 5(2), if those contracts fulfil both of the following conditions:

Amendment

(-a) In Article 4, paragraph 1 the introductory parts is replaced by the following:

"1. With the exception of derivative contracts which are the result of portfolio compression for the purposes of Article 11 (1b), counterparties shall clear all OTC derivative contracts pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation in accordance with Article 5(2), if those contracts fulfil both of the following conditions:"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Justification

There should be an exemption from the central clearing obligation for derivative trades stemming from portfolio compression, which is exempted from transparency rules and trading obligations under MIFIR. This amendment would bring EMIR provisions in line with MIFIR.

Amendment 88

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point b

Regulation (EU) No 648/2012

Article 4 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) in paragraph 1, point (b) is replaced by the following: **deleted**

‘(b) they are entered into or novated on, or after, the date from which the clearing obligation takes effect.’

Or. en

Amendment 89

Petr Ježek, Caroline Nagtegaal

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point b

Regulation (EU) No 648/2012

Article 4 – paragraph 1 – point b

Text proposed by the Commission

Amendment

‘(b) they are entered into or novated on, or after, the date from which the clearing obligation takes effect.’;

‘(b) they are entered into or novated either:

(i) on, or after the date from which the clearing obligation takes effect; or

(ii) on, or after, the date from which both counterparties meet the criteria set out in paragraph (a).’;

Or. en

Justification

This amendment clarifies that the clearing obligation applies only to contracts entered into after a counterparty becomes an FC or an NFC+, which may occur with proposed or future changes to the definition of financial counterparties.

Amendment 90

Kay Swinburne, Werner Langen, Markus Ferber

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point b a (new)

Regulation (EU) No 648/2012

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(ba) the following paragraph 1a is inserted:

‘1a. ESMA shall develop draft regulatory technical standards to specify the types of OTC derivatives contracts for each type of post-trade risk reduction service that should be exempt from the clearing obligation, taking into account in particular the extent to which they mitigate risks, in particular counter party credit risk and operational risk.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months following entry into force of this amending Regulation].

The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) 1095/2010.’

Or. en

Amendment 91

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 648/2012

Article 4 – paragraph 3a – subparagraph 1

Text proposed by the Commission

Amendment

Clearing members and clients which provide clearing services, whether directly

Clearing members and clients which provide clearing services, whether directly

or indirectly, shall provide those services under fair, reasonable **and** non-discriminatory commercial terms.

or indirectly, shall provide those services under fair, reasonable, non-discriminatory **and transparent** commercial terms.

Clearing members and clients shall take all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest, in particular between different units or services of the same entity, in order to prevent those conflicts from adversely affecting the fair, reasonable, non-discriminatory and transparent provision of clearing services.

Or. en

Justification

Conflicts of interest within an entity can be obstacles to the decision of a firm to decide to provide clearing services.

Amendment 92 Philippe Lamberts

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 648/2012

Article 4 – paragraph 3a – subparagraph 1

Text proposed by the Commission

Clearing members and clients which provide clearing services, whether directly or indirectly, shall provide those services under fair, reasonable **and** non-discriminatory commercial terms.

Amendment

Clearing members and clients which provide clearing services, whether directly or indirectly, shall provide those services under fair, reasonable, non-discriminatory **and transparent** commercial terms.

Clearing members and clients which provide clearing services shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients.

Or. en

Amendment 93
Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 648/2012

Article 4 – paragraph 3a – subparagraph 1

Text proposed by the Commission

Clearing members and clients which provide clearing services, whether directly or indirectly, shall provide those services under fair, reasonable and non-discriminatory commercial terms.

Amendment

Clearing members and clients which provide clearing services, whether directly or indirectly, shall provide those services under fair, reasonable and non-discriminatory commercial terms. ***In doing so, clearing members shall take all reasonable steps designed to prevent conflicts of interest, including prohibiting any trading business from directly or indirectly interfering with, or attempting to influence, decisions of the clearing unit personnel with respect to its clearing offering, including whether to provide clearing services to a particular customer and the associated commercial terms.***

Or. en

Amendment 94
Jonás Fernández

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 648/2012

Article 4 – paragraph 3a – subparagraph 1

Text proposed by the Commission

Clearing members and clients which provide clearing services, whether directly or indirectly, shall provide those services under fair, reasonable and non-discriminatory commercial terms.

Amendment

Clearing members and clients which provide clearing services, whether directly or indirectly, shall provide those services under fair, reasonable and non-discriminatory commercial terms. ***In doing so, clearing members shall take all reasonable steps to prevent conflict of interests, namely, prohibiting any trading business from directly or indirectly***

interfering with, or attempting to influence, decisions of the clearing unit personnel with respect to its clearing offering, including whether to provide clearing services to a particular customer and the associated commercial terms.

Or. en

Amendment 95

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 648/2012

Article 4 – paragraph 3a – subparagraph 1

Text proposed by the Commission

Clearing members and clients which provide clearing services, whether directly or indirectly, shall provide those services under fair, reasonable *and* non-discriminatory commercial terms.

Amendment

Clearing members and clients which provide clearing services, whether directly or indirectly, shall provide those services under fair, reasonable, non-discriminatory *and transparent* commercial terms.

Or. en

Amendment 96

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 648/2012

Article 4 – paragraph 3a – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Clearing members or clients shall be permitted to control the risks connected to the clearing services offered.

Or. en

Amendment 97
Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 648/2012

Article 4 – paragraph 3a – subparagraph 2

Text proposed by the Commission

The Commission shall be empowered to adopt a delegated act in accordance with Article 82 to specify the conditions under which commercial terms referred to in the first subparagraph are considered to be fair, reasonable and non-discriminatory.;

Amendment

ESMA shall develop draft regulatory technical standards further specifying the conditions under which commercial terms referred to in the first subparagraph are considered to be fair, reasonable and non-discriminatory , including among others the following elements:

(a) fairness and transparency requirements with respect to fees, prices, discount policies and other general contractual terms and conditions without prejudice to the confidentiality requirements applicable under relevant legislation;

(b) factors to be used to assess the reasonableness of commercial terms ;

(c) requirements to ensure that any differences in prices charged are proportionate to costs, risks and benefits,

(d) risk control criteria for the clearing member or client connected to the clearing services offered.

ESMA shall submit those draft implementing technical standards to the Commission by ... [12 months following the entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Or. en

Justification

Specification in level 1 of some key elements of the FRAND principle.

Amendment 98

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 648/2012

Article 4 – paragraph 3a – subparagraph 2

Text proposed by the Commission

The Commission shall be empowered to adopt a delegated act in accordance with Article 82 to specify the conditions under which commercial terms referred to in the first subparagraph are considered to be fair, reasonable **and** non-discriminatory.;

Amendment

The Commission shall be empowered to adopt a delegated act in accordance with Article 82 to specify the conditions under which commercial terms referred to in the first subparagraph are considered to be fair, reasonable, non-discriminatory **and transparent, and to specify the steps that clearing members and clients providing clearing services shall take to identify and prevent, conflicts of interest when providing clearing services and establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the clearing members.**

Or. en

Amendment 99

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – Title

Text proposed by the Commission

Financial counterparties **subject to** a

Amendment

Financial counterparties **exempt from** a

clearing obligation

clearing obligation

Or. en

Amendment 100

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 1

Text proposed by the Commission

A financial counterparty taking positions in OTC derivative contracts shall calculate, ***annually, its aggregate month-end average position for the months March, April and May*** in accordance with paragraph 3.

Amendment

A financial counterparty taking positions in OTC derivative contracts shall calculate ***its rolling average position over 30 working days*** in accordance with paragraph 3. ***If the positions of the financial counterparty do not exceed the clearing threshold referred to in paragraph 2, the financial counterparty shall no longer be subject to the clearing obligation set out in Article 4, provided that it immediately notifies ESMA and the relevant competent authority thereof.***

Or. en

Amendment 101

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 1

Text proposed by the Commission

A financial counterparty taking positions in OTC derivative contracts ***shall*** calculate, annually, its aggregate month-end average position for the months March, April and May in accordance with paragraph 3.

Amendment

A financial counterparty taking positions in OTC derivative contracts ***may*** calculate, annually, its aggregate month-end average position for the months March, April and May in accordance with paragraph 3, ***in order to demonstrate that it does not***

exceed the clearing threshold specified pursuant to Article 10 (4)(b).

Or. en

Amendment 102

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 1

Text proposed by the Commission

A financial counterparty taking positions in OTC derivative contracts *shall* calculate, annually, *its aggregate* month-end *average position for the* months *March, April and May* in accordance with paragraph 3.

Amendment

A financial counterparty taking positions in OTC derivative contracts *may* calculate, annually, *the average of the three highest* month-end *averages positions within the precedent 12* months in accordance with paragraph 3.

Or. en

Amendment 103

Jakob von Weizsäcker

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 1

Text proposed by the Commission

A financial counterparty taking positions in OTC derivative contracts shall calculate, *annually*, its aggregate month-end average position for the months *March, April and May* in accordance with paragraph 3.

Amendment

A financial counterparty taking positions in OTC derivative contracts shall calculate, *on an annual basis*, its aggregate month-end average position for the *previous 12* months in accordance with paragraph 3.

Or. en

Amendment 104
Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Where the result of that calculation exceeds the clearing thresholds specified pursuant to Article 10(4)(b), the financial counterparty shall:

deleted

(a) immediately notify ESMA and the relevant competent authority thereof;

(b) be subject to the clearing obligation referred to in Article 4 for future OTC derivative contracts, irrespective of the asset class or asset classes for which the clearing threshold has been exceeded;

(c) clear the contracts referred to in point (b) within four months of becoming subject to the clearing obligation.

Or. en

Amendment 105
Jakob von Weizsäcker

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

Where the result of that calculation exceeds the clearing thresholds specified pursuant to **Article 10(4)(b)**, the financial counterparty shall:

Where the result of that calculation exceeds the clearing thresholds ***or where a financial counterparty can reasonably expect it to exceed the clearing thresholds*** specified pursuant to **paragraph 3a**, the financial counterparty shall:

Or. en

Amendment 106
Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Where the result of that calculation ***exceeds*** the clearing thresholds specified pursuant to Article 10(4)(b), the financial counterparty shall:

Amendment

Where the result of that calculation ***means that*** the clearing thresholds specified pursuant to Article 10(4)(b) ***have not been reached***, the financial counterparty shall:

Or. en

Amendment 107

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Where the result of that calculation ***exceeds*** the clearing thresholds specified pursuant to Article 10(4)(b), the financial counterparty shall:

Amendment

Where the result of that calculation ***does not exceed*** the clearing thresholds specified pursuant to Article 10(4)(b), the financial counterparty shall:

Or. en

Amendment 108

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) ***immediately*** notify ESMA and the relevant competent authority thereof;

(a) notify ESMA and the relevant competent authority thereof;

Or. en

Amendment 109
Philippe Lamberts

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) be subject to the clearing obligation referred to in Article 4 for future OTC derivative contracts, ***irrespective of the asset class or asset classes for which the clearing threshold has been exceeded;***

(b) ***not*** be subject to the clearing obligation referred to in Article 4 for future OTC derivative contracts ;

Or. en

Amendment 110
Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) be ***subject to*** the clearing obligation referred to in Article 4 for future OTC derivative contracts, irrespective of the asset class or asset classes for which the clearing threshold has been exceeded;

(b) be ***exempt from*** the clearing obligation referred to in Article 4 ***and from requirements set out in paragraph 3 of Article 11*** for future OTC derivative contracts, irrespective of the asset class or asset classes for which the clearing threshold has ***not*** been exceeded;

Or. en

Amendment 111

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) *clear the contracts referred to in point (b) within four months of becoming subject to the clearing obligation.* *deleted*

Or. en

Amendment 112

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) *clear the contracts referred to in point (b) within four months of becoming subject to the clearing obligation.* *deleted*

Or. en

Amendment 113

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. A financial counterparty that wishes to rely on the exemption referred to in paragraph 1 shall calculate, annually, its rolling average position over 30 working days.

In calculating its positions referred to in paragraph 1, the financial counterparty shall include all OTC derivative contracts entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.

Or. en

Amendment 114

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 2

Text proposed by the Commission

2. A financial *counterparty that has become subject to the clearing obligation in accordance with paragraph 1 and subsequently demonstrates to the relevant competent authority that its aggregate month-end average position for the months March, April and May of a given year no longer exceeds the clearing threshold* referred to in paragraph 1, shall *no longer* be subject to the clearing obligation *set out* in Article 4.

Amendment

2. Financial *counterparties which do not proceed to the calculation* referred to in paragraph 1 *or which exceed the threshold referred to therein* shall be subject to the clearing obligation *referred to* in Article 4 *for future OTC derivatives irrespective of the asset class or asset classes for which the clearing threshold has been exceeded and shall immediately notify ESMA and the relevant competent authority.*

Or. en

Amendment 115

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 2

Text proposed by the Commission

2. A financial counterparty that **has become subject** to the clearing obligation in accordance with paragraph 1 **and** subsequently demonstrates to the relevant competent authority that its aggregate month-end average position for the months March, April and May of a given year **no longer** exceeds the clearing threshold referred to in paragraph 1, shall no longer **be subject to** the clearing **obligation** set out in Article 4.

Amendment

2. A financial counterparty that **benefits from the exemption** to the clearing obligation in accordance with paragraph 1, **who** subsequently demonstrates to the relevant competent authority that its aggregate month-end average position for the months March, April and May of a given year **now** exceeds the clearing threshold referred to in paragraph 1, shall no longer **benefit from the clearing exemption or from the exemption to the requirements** set out in **paragraph 3 of Article 11 for future contracts**.

Or. en

Amendment 116

Jakob von Weizsäcker

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 2

Text proposed by the Commission

2. A financial counterparty that has become subject to the clearing obligation in accordance with paragraph 1 and subsequently demonstrates to the relevant competent authority that its aggregate month-end average position for the months **March, April and May of a given year** no longer exceeds the clearing threshold referred to in paragraph 1, shall no longer be subject to the clearing obligation set out in Article 4.

Amendment

2. A financial counterparty that has become subject to the clearing obligation in accordance with paragraph 1 and subsequently demonstrates to the relevant competent authority that its aggregate month-end average position for the **previous 12** months no longer exceeds the clearing threshold referred to in paragraph 1, shall no longer be subject to the clearing obligation set out in Article 4.

Or. en

Amendment 117

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where a previously exempt financial counterparty is now subject to the clearing obligation in accordance with paragraph 1, it shall clear the contracts referred to in point (b) within four months of becoming subject to the clearing obligation.

Or. en

Amendment 118

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 3

Text proposed by the Commission

Amendment

3. In calculating the positions referred to in paragraph 1, the financial counterparty shall include all OTC derivative contracts entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.;

3. In calculating the positions referred to in paragraph 1, the financial counterparty shall include all OTC derivative contracts entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.

Where the result of that calculation exceeds the clearing thresholds specified pursuant to Article 10(4)(b), the financial counterparty shall:

(a) immediately notify ESMA and the relevant competent authority thereof;

(b) be subject to the clearing obligation referred to in Article 4 for future OTC derivative contracts, irrespective of the asset class or asset classes for which the clearing threshold has been exceeded;

(c) clear the contracts referred to in point (b) within four months of becoming subject to the clearing obligation;

(d) notify its counterparties of the change in status of the financial counterparty before entering into any new OTC derivative contracts subject to the clearing obligation.

Or. en

Amendment 119

Jakob von Weizsäcker, Jonás Fernández

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 648/2012

Article 4a – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards, after consulting the ESRB and other relevant authorities, specifying the values of the clearing thresholds, in order to ensure broad participation in central clearing.

After conducting an open public consultation, ESMA shall submit those draft regulatory technical standards to the Commission by ... [six months following the date of entry into force of this amending 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 (EU) No 1095/2010.

After consulting the ESRB and other relevant authorities, ESMA shall periodically review the thresholds, and, where necessary, propose regulatory technical standards to amend them.

Each Member State shall designate an authority responsible for ensuring that the obligation under paragraph 1 is met.

Or. en

Amendment 120

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 3 a (new)

Regulation (EU) No 648/2012

Article 5 – paragraph 1 – subparagraph 1

Present text

Where a competent authority authorises a CCP to clear a class of OTC derivatives under Article 14 or 15, it shall immediately notify ESMA of that authorisation.

Amendment

(3a) In Article 5 (1), subparagraph 1 is amended as follows:

*"Where a competent authority authorises a CCP to clear a class of OTC derivatives under Article 14 or 15, **or where a class of derivatives which a CCP intends to clear falls under an existing authorisation granted in accordance with Article 14 or 15,** it shall immediately notify ESMA of that authorisation **or of the additional class which the CCP intends to clear.**"*

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=EN>)

Amendment 121

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 3 b (new)

Regulation (EU) No 648/2012

Article 5 – paragraph 2 – point b

Present text

(b) the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies; and

Amendment

(3b) In Article 5 (2), point b is amended as follows:

"(b) the date or dates from which the clearing obligation takes effect, including any phase in **which shall not exceed two years** and the categories of counterparties to which the obligation applies; and"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=EN>)

Amendment 122

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 4

Regulation (EU) No 648/2012

Article 5 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(4) In Article 5(2), point (c) is deleted; deleted

Or. en

Justification

Article 5, paragraph 2, point c shall remain.

Amendment 123

Petr Ježek

Proposal for a regulation

Article 1 – paragraph 1 – point 4 a (new)

Regulation (EU) No 648/2012

Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(4a) In Article 5 after paragraph 2, the

following paragraph is inserted:

2a. *In the draft regulatory technical standards referred to in paragraph 2, ESMA may submit to the Commission for endorsement an exemption from the clearing obligation for a period of three years following the entry into force of those regulatory technical standards for intragroup transactions with a counterparty established in a third country jurisdiction for which the Commission has not yet adopted an implementing act as referred to in Article 13(2) in respect of that third country, or for which the Commission has adopted an implementing act confirming partial equivalence which does not cover those OTC derivatives which will become subject to the clearing obligation or that otherwise does not address certain types of counterparty.*

Or. en

Justification

For intragroup transactions where there is no equivalence decision related to the third country jurisdiction, it should be possible for ESMA to recommend a derogation for those transactions where it deems that there is little to no contribution to systemic risk and interconnectedness.

Amendment 124

Petr Ježek

Proposal for a regulation

Article 1 – paragraph 1 – point 4 b (new)

Regulation (EU) No 648/2012

Article 5 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

(4b) *In Article 5 after paragraph 2, the following paragraph is inserted:*

2b. *By [2 years following the date of entry into force of the regulatory technical standards referred to in*

paragraph 2a (new)], ESMA shall carry out a public consultation in order to assess whether an absence of a clearing obligation for intragroup transactions for which no implementing act on equivalence exists is detrimental to the financial stability of the Union; If ESMA determines that the benefits of an absence of the clearing obligation for these transactions significantly outweighs the impact on financial stability, ESMA may submit to the Commission for endorsement draft regulatory technical standards extending the three-year period referred to in paragraph 2a once by three years and once by two years.

Or. en

Justification

For intragroup transactions where there is no equivalence decision related to the third country jurisdiction, it should be possible for ESMA to recommend a derogation for those transactions where it deems that there is little to no contribution to systemic risk and interconnectedness.

Amendment 125

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 4 a (new)

Regulation (EU) No 648/2012

Article 5 – paragraph 4 – subparagraph 1 – introductory part

Present text

4. With the overarching aim of reducing systemic risk, the draft regulatory technical standards for the part referred to in paragraph 2(a) shall take into consideration the following criteria:

Amendment

(4 a) In Article 5 (4), subparagraph 1, introductory part is amended as follows:

"4. With the overarching aim of reducing systemic risk **at both the Union and national levels**, the draft regulatory technical standards for the part referred to in paragraph 2(a) shall take into consideration the following criteria:"

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=EN>)

Justification

This proposed amendment - inspired by the ESRB - aims at ensuring that the evaluation of systemic risk for mandatory clearing purposes is conducted by ESMA both at the EU and national levels. Some risks may indeed seem small from an aggregated perspective, but can be concentrated in individual financial institutions that are systemically important at domestic or global level.

Amendment 126

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 4 a (new)

Regulation (EU) No 648/2012

Article 6 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(4a) In Article 6, paragraph 2, after point d the following point is inserted:

(da) within each class of OTC derivatives referred to in point (d), the details of the contract types for which relevant CCPs have been authorised to clear and the date at which those CCPs have become authorized to clear those contracts;

Or. en

Justification

Detailed information on the specific contracts covered by the clearing obligation will bring certainty and transparency to markets.

Amendment 127

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 648/2012

Article 6 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(5) ***In Article 6(2), point (e) is deleted;*** ***deleted***

Or. en

Amendment 128

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

In circumstances other than those referred to in Article 6a(1), ESMA may request that the Commission suspend the clearing obligation referred to in Article 4(1) for a specific class of OTC derivative or ***for*** a specific type of counterparty where one of the following conditions is met:

ESMA may request that the Commission suspend the clearing obligation referred to in Article 4(1) for ***any new transactions related to*** a specific class of OTC derivative or a specific type of counterparty where one of the following conditions is met:

Or. en

Amendment 129

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

In circumstances other than those referred to in Article 6a(1), ESMA may ***request that the Commission*** suspend the clearing obligation referred to in Article 4(1) for a specific class of OTC derivative or for a specific type of counterparty where one of

In circumstances other than those referred to in Article 6a(1), ESMA may ***temporarily*** suspend the clearing obligation referred to in Article 4(1) for a specific class of OTC derivative or for a specific type of counterparty where one of the following

the following conditions is met:

conditions is met:

Or. en

Amendment 130

Markus Ferber

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 1 – introductory part

Text proposed by the Commission

In circumstances other than those referred to in Article 6a(1), ESMA may request that the Commission suspend the clearing obligation referred to in Article 4(1) for a specific class of OTC derivative or for a specific type of counterparty where one of the following conditions is met:

Amendment

In circumstances other than those referred to in Article 6a(1), ESMA may request that the Commission **temporarily** suspend the clearing obligation referred to in Article 4(1) for a specific class of OTC derivative or for a specific type of counterparty where one of the following conditions is met:

Or. en

Justification

Suspending the clearing obligation should only be a means of last resort. Any ad-hoc suspension of the clearing obligation should therefore be limited in terms of duration.

Amendment 131

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 1 – point a

Text proposed by the Commission

(a) the class of OTC derivative is no longer suitable for central clearing on the basis of the criteria referred to in the first subparagraph of paragraph 4 and in paragraph 5 of Article 5;

Amendment

deleted

Amendment 132

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 1 – point b

Text proposed by the Commission

(b) a CCP **is likely to** cease clearing that specific class of OTC derivative and no other CCP is able to clear that specific class of OTC derivative without interruption;

Amendment

(b) a CCP **notifies to the relevant competent authority and ESMA that within a year it will** cease clearing that specific class of OTC derivative and no other CCP is able to clear that specific class of OTC derivative without interruption;

Or. en

Amendment 133

Markus Ferber

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) a CCP is likely to cease clearing that specific class of OTC derivative and no other CCP is able to clear that specific class of OTC derivative **without interruption;**

Amendment

(b) a CCP is likely to cease clearing that specific class of OTC derivative and no other CCP is able to clear that specific class of OTC derivative **at short notice;**

Or. en

Amendment 134

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the suspension of the clearing obligation for a specific class of OTC derivative or for a specific type of counterparty is necessary to avoid or address a serious threat to financial stability in the Union and that suspension is proportionate to that aim.

deleted

Or. en

Amendment 135

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) 648/2012

Article 6b – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

For the purposes of point (c) of the first subparagraph, ESMA shall *consult the ESRB prior to the request referred to therein*.

Before suspending the clearing obligation, ESMA shall notify the Commission of the proposed suspension, providing reasons and submitting evidence that at least one of the conditions laid down in the first subparagraph is fulfilled.

For the purposes of point (c) of the first subparagraph, ESMA shall *also notify the ESCB before suspending the clearing obligation*.

Or. en

Amendment 136

Markus Ferber

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 1 – subparagraph 3

Text proposed by the Commission

Where ESMA requests that the Commission suspend the clearing obligation referred to in Article 4(1), it shall provide reasons and submit evidence that at least one of the conditions laid down in the first subparagraph is fulfilled.

Amendment

Where ESMA requests that the Commission ***temporarily*** suspend the clearing obligation referred to in Article 4(1), it shall provide reasons and submit evidence that at least one of the conditions laid down in the first subparagraph is fulfilled. ***The Commission shall inform the European Parliament and the Council of its decision and provide detailed reasoning explaining it.***

Or. en

Justification

Suspending the clearing obligation should only be a means of last resort. Any ad-hoc suspension of the clearing obligation should therefore be limited in terms of duration. In any case, the European Parliament and the Council should be duly informed about the reasoning for the decision.

Amendment 137

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 1 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Where the request for a suspension of the clearing obligation originates from a competent authority, ESMA shall, within 48 hours of the request based on reasons and evidence provided by the competent authority make a request to the Commission or reject the requested suspension. Where ESMA rejects the request made by the competent authority,

it shall provide reasons in writing.

Or. en

Amendment 138

Petr Ježek, Caroline Nagtegaal

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Under the conditions laid down in paragraph 1, competent authorities may request that ESMA submits a suspension request to the Commission. Where competent authorities request that ESMA submits a suspension request, they shall provide reasons and submit evidence that at least one of the conditions laid down in the first subparagraph of paragraph 1 is fulfilled.

ESMA shall, within 48 hours of the request referred to in the first subparagraph and based on the reasons and evidence provided by the competent authority, either request that the Commission suspend the clearing obligation referred to in Article 4(1), or reject the request. Where ESMA rejects the request, it shall provide reasons in writing to the competent authority concerned and maintain a record of the request.

Or. en

Justification

The purpose of the amendment is to give competent authorities a mechanism by which to report to ESMA threats to stability which may justify a suspension, and which they may notice in their role as CCP supervisors.

Amendment 139
Anne Sander, Alain Lamassoure

Proposal for a regulation
Article 1 – paragraph 1 – point 6
Regulation (EU) No 648/2012
Article 6b – paragraph 2

Text proposed by the Commission

2. *The request* referred to in paragraph 1 shall not be made public.

Amendment

2. *ESMA's decision to suspend the clearing obligation shall be published on its website and in the public register set out in Article 6.*

Or. en

Amendment 140
Petr Ježek, Caroline Nagtegaal

Proposal for a regulation
Article 1 – paragraph 1 – point 6
Regulation (EU) No 648/2012
Article 6b – paragraph 2

Text proposed by the Commission

2. The *request* referred to in paragraph 1 shall not be made public.

Amendment

2. The *requests* referred to in paragraph 1 *and paragraph 1a* shall not be made public.

Or. en

Amendment 141
Anne Sander, Alain Lamassoure

Proposal for a regulation
Article 1 – paragraph 1 – point 6
Regulation (EU) No 648/2012
Article 6b – paragraph 3

Text proposed by the Commission

3. *The Commission* shall, *within 48 hours* of the *request* referred to in

Amendment

3. *A suspension* shall *be valid for an initial period not exceeding four months*

paragraph 1 *and based on the reasons and evidence provided by ESMA, either suspend the clearing obligation for the specific class of OTC derivative or for the specific type of counterparty referred to in paragraph 1, or reject the requested suspension.*

from the date of the publication of the suspension notice on ESMA's website. ESMA may extend the suspension referred to in paragraph 1 for an additional period of four months, with the total period of the suspension not exceeding 12 months. An extension of the suspension shall be published on ESMA's website and in the public register referred to in Article 6 at least one month prior to expiry of the suspension.

Or. en

Amendment 142

Kay Swinburne

Proposal for a regulation
Article 1 – paragraph 1 – point 6
Regulation (EU) No 648/2012
Article 6b – paragraph 3

Text proposed by the Commission

3. The Commission shall, within 48 hours of the request referred to in paragraph 1 and based on the reasons and evidence provided by ESMA, either suspend the clearing obligation for the specific class of OTC derivative or for the specific type of counterparty referred to in paragraph 1, or reject the requested suspension.

Amendment

3. The Commission shall, within 48 hours of the request referred to in paragraph 1 and based on the reasons and evidence provided by ESMA, either suspend the clearing obligation for the specific class of OTC derivative or for the specific type of counterparty referred to in paragraph 1, or reject the requested suspension.

An implementing act shall be adopted in accordance with the procedure referred to in Article 8 of Regulation (EU) No 182/2011.

Where the Commission suspends the clearing obligation, the implementing act may, for counterparties who do not have arrangements in place for meeting the requirements for OTC derivative contracts not cleared by a CCP, specify temporary exemptions from the requirement in Article 11(3) for OTC derivative contracts not cleared by a CCP as set out in Article

11(3). When granting such exemptions, the implementing act must align the duration of the exemptions and cite the types of counterparty to be subject to these exemptions.

The clearing obligation referred to in Article 4(1) shall not apply to those OTC derivative contracts that are the subject of the suspension period under Article 6a(3) and that are entered into or novated during the suspension period or any extension period. The clearing obligation shall not apply to these contracts during the suspension period or at or after the expiration of the suspension period.

Or. en

Amendment 143

Petr Ježek, Caroline Nagtegaal

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 3

Text proposed by the Commission

3. The Commission shall, within 48 hours of the request referred to in paragraph 1 and based on the reasons and evidence provided by ESMA, either suspend the clearing obligation for the specific class of OTC derivative or for the specific type of counterparty referred to in paragraph 1, or reject the requested suspension.

Amendment

3. The Commission shall, within 48 hours of the request referred to in paragraph 1 and based on the reasons and evidence provided by ESMA, either suspend the clearing obligation for the specific class of OTC derivative or for the specific type of counterparty referred to in paragraph 1, or reject the requested suspension. ***Where the Commission rejects the request made by ESMA, it shall provide reasons in writing and maintain a record of the request.***

Or. en

Justification

The purpose of the amendment is to ensure that the Commission provides ESMA with written

reasoning for the rejection of the request for suspension of the clearing obligation.

Amendment 144

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 4

Text proposed by the Commission

4. *The Commission's decision to suspend the clearing obligation shall be communicated to ESMA and shall be published in the Official Journal of the European Union, on the Commission's website and in the public register referred to in Article 6.*

Amendment

4. *Where the suspension is not renewed by the end of the initial period or by the end of any subsequent renewal period, it shall automatically expire. the suspension of the trading obligation shall also expire with the expiration of the suspension of clearing obligation.*

Or. en

Amendment 145

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 5

Text proposed by the Commission

5. *A suspension of the clearing obligation pursuant to this Article shall be valid for a period of three months from the date of the publication of that suspension in the Official Journal of the European Union.*

Amendment

5. *Counterparties affected by the suspension shall not be required to comply with Article 4(1) in relation to OTC derivative contracts concluded during the period of the suspension or with Article 11(3) for the duration of the suspension.*

Or. en

Amendment 146

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 5

Text proposed by the Commission

5. A suspension of the clearing obligation pursuant to this Article shall be valid for a period of three months from the date of the publication of that suspension in the Official Journal of the European Union.

Amendment

5. A suspension of the clearing obligation pursuant to this Article **and those referenced in paragraph 3 above**, shall be valid for a period of three months from the date of the publication of that suspension in the Official Journal of the European Union.

Or. en

Amendment 147

Jakob von Weizsäcker

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 5

Text proposed by the Commission

5. A suspension of the clearing obligation pursuant to this Article shall be valid for a period **of three months** from the date of the publication of that suspension in the Official Journal of the European Union.

Amendment

5. A suspension of the clearing obligation pursuant to this Article shall be valid for a period **not exceeding one month** from the date of the publication of that suspension in the *Official Journal of the European Union*.

Or. en

Amendment 148

Jakob von Weizsäcker

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 6 – subparagraph 1

Text proposed by the Commission

The Commission, after consulting ESMA, may extend the suspension referred to in paragraph 5 for **additional** periods of **three** months, **with the total** period of the suspension **not exceeding twelve months**. An extension of the suspension shall be published in accordance with Article 4.

Amendment

The Commission, after consulting ESMA **and the ESRB**, may extend the suspension referred to in paragraph 5 for **one or more** periods of **one month not cumulatively exceeding six months from the end of the initial suspension** period **where the grounds for** the suspension **continue to apply**. An extension of the suspension shall be published in accordance with Article 4.

Or. en

Amendment 149

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 6 – subparagraph 1

Text proposed by the Commission

The Commission, after consulting ESMA, may extend the suspension referred to in paragraph 5 for additional periods of three months, with the total period of the suspension not exceeding **twelve** months. An extension of the suspension shall be published in accordance with Article 4.

Amendment

The Commission, after consulting **the European Parliament, the Council and** ESMA, may extend the suspension referred to in paragraph 5 for additional periods of three months, with the total period of the suspension not exceeding **six** months. An extension of the suspension shall be published in accordance with Article 4.

Or. en

Amendment 150

Markus Ferber

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 6 – subparagraph 1

Text proposed by the Commission

The Commission, after consulting ESMA, may extend the suspension referred to in paragraph 5 for additional periods of **three months**, with the total period of the suspension not exceeding **twelve** months. An extension of the suspension shall be published in accordance with Article 4.

Amendment

The Commission, after consulting ESMA, may extend the suspension referred to in paragraph 5 for additional periods of **one month**, with the total period of the suspension not exceeding **six** months. An extension of the suspension shall be published in accordance with Article 4.

Or. en

Justification

Suspending the clearing obligation should only be a means of last resort. Any ad-hoc suspension of the clearing obligation should therefore be limited in terms of duration.

Amendment 151

Kay Swinburne, Markus Ferber, Werner Langen

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 648/2012

Article 6b – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. The implementing act suspending the clearing obligation for specific classes of OTC derivatives referred to in paragraph 3 shall also trigger a suspension of the trading obligation laid down in Article 28(1) and (2) of Regulation (EU) No 600/2014 for the same classes of OTC derivatives subject to this suspension of the clearing obligation. The suspension of that trading obligation shall be extended in line with any extension of the clearing obligation suspension under paragraph 6. When the clearing obligation suspension expires, this shall also trigger the expiry of the trading obligation suspension.

Or. en

Amendment 152
Jakob von Weizsäcker

Proposal for a regulation
Article 1 – paragraph 1 – point 6
Regulation (EU) No 648/2012
Article 6b – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Where the suspension is not renewed by the end of the initial period or by the end of any subsequent renewal period it shall automatically expire.

Or. en

Amendment 153
Kay Swinburne

Proposal for a regulation
Article 1 – paragraph 1 – point 6 a (new)
Regulation (EU) No 648/2012
Article 6 c (new)

Text proposed by the Commission

Amendment

(6a) The following Article 6c is inserted:

Article 6c

Permanent removal of the clearing obligation and the trading obligation in situations other than resolution

The Commission may, where it deems a permanent exemption is warranted to ensure global alignment, and after consulting the European Parliament, the Council and ESMA, take steps to enact a permanent exemption from the clearing obligation referred to in Article 4 (1).

Where a decision has been taken to permanently suspend the clearing obligation, the corresponding trading obligation laid down in Article 28(1) and (2) of Regulation (EU) No 600/2014 for the same classes of OTC derivatives

subject to this suspension of the clearing obligation, shall be assessed by the Commission.

Or. en

Amendment 154

Jakob von Weizsäcker, Jonás Fernández

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point a

Regulation (EU) No 648/2012

Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported in accordance with paragraph 1a to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract.

Amendment

Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported in accordance with paragraph 1a to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract. ***In reporting the designation of counterparties and other entities, the reporting counterparties shall use a legal entity identifier established to identify counterparties and other entities that are legal persons. The legal entity identifier used shall comply with international standards, in particular those established by the Financial Stability Board.***

Or. en

Amendment 155

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point a

Regulation (EU) No 648/2012

Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported in accordance with paragraph 1a to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract.

Amendment

Financial counterparties, ***non-financial counterparties that meet the conditions referred to in the second subparagraph of Article 10(1)*** and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported in accordance with paragraph 1a to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract.

Or. en

Amendment 156

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point a

Regulation (EU) No 648/2012

Article 9 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) were entered into before 12 February 2014 and remain outstanding on that date;

deleted

Or. en

Amendment 157

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point a

Regulation (EU) No 648/2012

Article 9 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

The reporting obligation shall not apply to intragroup transactions referred to in Article 3 where one of the counterparties is a non-financial counterparty.;

deleted

Or. en

Amendment 158

Jakob von Weizsäcker

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point a

Regulation (EU) No 648/2012

Article 9 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

The reporting obligation shall not apply to intragroup transactions referred to in Article 3 where ***one*** of the counterparties ***is a non-financial counterparty.;***

The reporting obligation shall not apply to intragroup transactions referred to in Article 3 where ***both*** of the counterparties ***are non-financial counterparties.;***

Or. en

Amendment 159

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point a

Regulation (EU) No 648/2012

Article 9 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

The reporting obligation shall not apply to intragroup transactions referred to in Article 3 where ***one*** of the counterparties ***is a non-financial counterparty.;***

The reporting obligation shall not apply to intragroup transactions referred to in Article 3 where ***both*** of the counterparties ***are non-financial counterparties and to transactions between a non-financial counterparty and a third country entity which is part of the same group, provided that the third country entity would be***

*qualified as a non-financial counterparty
if it were established in the Union.*

Or. en

Amendment 160

Werner Langen, Danuta Maria Hübner, Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point a

Regulation (EU) No 648/2012

article 9 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The reporting obligation shall not apply to intragroup transactions referred to in Article 3 where one of the counterparties is a non-financial counterparty.;

Amendment

The reporting obligation shall not apply to intragroup transactions referred to in Article 3 where:

(a) one of the counterparties is a non-financial counterparty; or

(b) one of the counterparties is established in a third country and would be a non-financial counterparty if it were established in the Union.

Or. en

Justification

This amendment aims to clarify in the main text the intention expressed by the rapporteur in recital 12 (amendment 3 of the report), which is to exempt from the reporting obligation transactions within the same group where at least one of the counterparties is a NFC or would be a NFC if it were established in the Union.

Amendment 161

Brian Hayes

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point a

Regulation (EU) No 648/2012

Article 9 – paragraph 1 – subparagraph 3

The reporting obligation shall not apply to ***intragroup transactions referred to in Article 3*** where one of the counterparties is a non-financial counterparty.;

Notwithstanding anything to the contrary in Article 3, the reporting obligation shall not apply to ***OTC derivative contracts within the same group*** where ***at least*** one of the counterparties is a non-financial counterparty ***or would be qualified as a non-financial counterparty if it were established in the Union, provided that:***

(a) both counterparties are included in the same consolidation on a full basis;

(b) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures; and,

(c) the parent undertaking is not a financial counterparty.

Or. en

Justification

This makes clear that notwithstanding the restrictiveness of the definitions of "intragroup transaction" and "non-financial counterparty", all transactions between affiliates within a group with at least one non-financial counterparty – including those with third country affiliates that are part of the same group and would be classified as a non-financial counterparty if they were established in the Union.

Amendment 162

Markus Ferber

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point a

Regulation (EU) No 648/2012

Article 9 – paragraph 1 – subparagraph 3

The reporting obligation shall not apply to ***intragroup*** transactions ***referred to in Article 3 where*** one of the counterparties is a non-financial counterparty.;

The reporting obligation ***for OTC derivatives transactions*** shall not apply to transactions ***within the same group, as long as*** one of the counterparties is a non-financial counterparty, ***or would be qualified as such if it were legally resident within the EU, provided that:***

(a) both counterparties to the intragroup transaction are included in the same consolidation on a full basis; and
(b) are subject to appropriate centralised risk evaluation, measurement and control procedures.

Or. en

Justification

This amendment clarifies that transactions between affiliated entities of the same group are not subject to the reporting obligation so long as one of the counterparties is a non-financial counterparty, or would be classified as such if established in the EU.

Amendment 163
Thierry Cornillet

Proposal for a regulation

Article premier – paragraph 1 – point 7 – point a

Regulation (EU) No 648/2012

Article 9 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The reporting obligation shall not apply to ***intragroup transactions referred to in Article 3 where*** one of the counterparties is a non-financial counterparty.”;

Amendment

Notwithstanding any provision to the contrary in Article 3, the reporting obligation shall not apply to ***transactions between counterparties from the same group, where at least*** one of the counterparties is a non-financial counterparty ***and provided that both counterparties are in the same consolidation on a full basis and are subject to appropriate centralised risk evaluation, measurement and control procedures.***”

Or. fr

Justification

The obligation exemption for intragroup transaction declarations (Article 3) is limited to counterparties in the EU or in a third country for which equivalence has been established in an implementing act. This is harmful for companies which carry out a significant part of their activities abroad, outside the EU, but have centralised management of their cash in an entity in the EU. Therefore the exemption should be extended to all intragroup transactions,

regardless of the country of establishment of the subsidiaries concerned.

Amendment 164
Thierry Cornillet

Proposal for a regulation

Article premier – paragraph 1 – point 7 – point b

Regulation (EU) No 648/2012

Article 9 – paragraph 1a – subparagraph 1

Text proposed by the Commission

The details of derivative contracts *referred to in paragraph 1* shall be reported as follows:

(a) CCPs shall be responsible for reporting on behalf of both counterparties the details of derivative contracts that are not OTC derivative contracts as well as for

Amendment

The details of **OTC** derivative contracts ***concluded between a financial counterparty and a non-financial counterparty not subject to the conditions referred to in the second subparagraph of Article 10(1)*** shall be reported ***in the following ways***:

(-a) financial counterparties shall be solely responsible and only they can be held legally liable for declaring a single set of data and ensuring its accuracy;

(-aa) notwithstanding point (i), non-financial counterparties not subject to the conditions laid down in the second subparagraph of Article 10 may choose to report the details of OTC derivative contracts with a financial counterparty to a trade repository. A non-financial counterparty that chooses to declare the details of OTC derivative contracts in accordance with point (ii) shall inform the financial counterparties of its decision before the conclusion of any OTC derivative contract. A non-financial counterparty that chooses to report the details of OTC derivative contracts is solely responsible, and only that counterparty can be held legally liable, for reporting a single set of data and ensuring its accuracy;

(a) CCPs shall be responsible for reporting on behalf of both counterparties the details of derivative contracts that are not OTC derivative contracts as well as for

ensuring the accuracy of the details reported;

(b) financial counterparties shall be responsible for reporting on behalf of both counterparties the details of OTC derivative contracts concluded with a non-financial counterparty that is not subject to the conditions referred to in the second subparagraph of Article 10(1) as well as for ensuring the accuracy of the details reported;

(c) the management company of a UCITS shall be responsible for reporting the details of OTC derivative contracts to which that UCITS is a counterparty as well as for ensuring the accuracy of the details reported;

(d) the manager of an AIF shall be responsible for reporting the details of OTC derivative contracts to which that AIF is a counterparty as well as for ensuring the accuracy of the details reported;

(e) counterparties and CCPs shall ensure that the details of their derivative contracts are reported accurately and without duplication.

ensuring the accuracy of the details reported;

(b) financial counterparties shall be responsible for reporting on behalf of both counterparties the details of OTC derivative contracts concluded with a non-financial counterparty that is not subject to the conditions referred to in the second subparagraph of Article 10(1) as well as for ensuring the accuracy of the details reported;

(c) the management company of a UCITS shall be responsible for reporting the details of OTC derivative contracts to which that UCITS is a counterparty as well as for ensuring the accuracy of the details reported;

(d) the manager of an AIF shall be responsible for reporting the details of OTC derivative contracts to which that AIF is a counterparty as well as for ensuring the accuracy of the details reported;

(e) counterparties and CCPs shall ensure that the details of their derivative contracts are reported accurately and without duplication.

Or. fr

Justification

The single reporting mechanism makes it possible to improve the quality of information given and alleviate the burden on non-financial counterparties not subject to the clearing obligation, which do not always have the resources for reporting. The amendment enables those who do have the resources to carry out the reporting themselves – instead of having the counterparties do it – by stating their intention to do so before they conclude a derivative contract and to assume responsibility for the reports and their accuracy.

Amendment 165

Jakob von Weizsäcker

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point b

Regulation (EU) No 648/2012

Article 9 – paragraph 1a – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) *CCPs shall be responsible for reporting on behalf of both counterparties the details of derivative contracts that are not OTC derivative contracts as well as for ensuring the accuracy of the details reported;* *deleted*

Or. en

Amendment 166

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point b

Regulation (EU) No 648/2012

Article 9 – paragraph 1a – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) *CCPs shall be responsible for reporting on behalf of both counterparties the details of derivative contracts that are not OTC derivative contracts as well as for ensuring the accuracy of the details reported;* *deleted*

Or. en

Amendment 167

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point b

Regulation (EU) No 648/2012

Article 9 – paragraph 1a – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) CCPs shall be responsible for reporting on behalf of both counterparties the details of derivative contracts that are not OTC derivative contracts as well as for ensuring the accuracy of the details

(a) CCPs shall be responsible *and legally liable* for reporting on behalf of both counterparties the details of derivative contracts that are not OTC derivative contracts as well as for ensuring the

reported;

accuracy of the details reported.

In establishing the relevant reporting arrangements for the purposes of point (a), CCPs shall consult their members and members shall consult their clients regarding the choice of the trade repository to which the reporting shall be made.

For the purposes of point (a), CCPs, their members and their clients shall establish adequate arrangements in order to ensure the timely and accurate transmission of the information required under this Regulation from the counterparties subject to the reporting obligation to the CCPs.

Where and as long as a counterparty has not become party to such an arrangement, this counterparty shall report by itself the details of derivative contracts that are not OTC derivative contracts that it has entered into. The responsibility and legal liability for reporting and for ensuring the accuracy of the details of the contracts shall in this case remain with the counterparty.

Or. en

Justification

CCPs might not possess all the information necessary to carry out the reporting. Arrangements should therefore be established for this information to be passed on and the ultimate goal is that all CCPs have available all required information. However, in cases where the necessary arrangements do not yet exist, counterparties have to keep reporting by themselves. For the justification of the second subparagraph, see amendment creating recital 13 a.

Amendment 168 **Markus Ferber**

Proposal for a regulation
Article 1 – paragraph 1 – point 7 – point b
Regulation (EU) No 648/2012
Article 9 – paragraph 1a – subparagraph 1 – point b

(b) ***financial counterparties shall be responsible for reporting on behalf of both counterparties*** the details of OTC derivative contracts concluded ***with*** a non-financial counterparty that ***is not subject to*** the conditions referred to in the second subparagraph of Article 10(1) ***as well as for ensuring*** the accuracy of the details reported;

(b) the details of OTC derivative contracts concluded ***between a financial counterparty and*** a non-financial counterparty that ***does not meet*** the conditions referred to in the second subparagraph of Article 10(1) ***shall as a rule be reported by financial counterparties who shall be solely responsible and legally liable for reporting a single data set. They shall also be responsible and legally liable for*** the accuracy of the ***submitted reports***.

Notwithstanding point (b), non-financial counterparties that do not meet the conditions of the second subparagraph of Article 10 (1) can opt out from this principle rule in favour of reporting the details of their OTC derivatives transactions by themselves. Should non-financial counterparties opt out from the principle rule of point (b) they shall submit an ex-ante notification to the financial counterparty with which they are contracting. When non-financial counterparties opt out from the principle rule of point (b) the responsibility and legal liability for reporting and for ensuring the correctness of the data reported rests with such non-financial counterparties.

Or. en

Justification

This amendment clarifies that the financial counterparties are responsible and legally liable for reporting in a single data set, and for the content and accuracy of the reported data, for OTC derivatives concluded with non-financial counterparties below the clearing thresholds. Additionally, this amendment recognises that there are several types of non-financial counterparties and some non-financial counterparties may seek to perform the reporting themselves.

Amendment 169
Brian Hayes

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point b

Regulation (EU) No 648/2012

Article 9 – paragraph 1a – subparagraph 1 – point b

Text proposed by the Commission

(b) ***financial counterparties shall be responsible for reporting on behalf of both counterparties*** the details of ***OTC*** derivative contracts concluded ***with*** a non-financial counterparty that ***is not subject to*** the conditions referred to in the second subparagraph of Article 10(1) as well as for ensuring the accuracy of the details reported;

Amendment

(b) the details of ***[OTC]*** derivative contracts concluded ***between a financial counterparty and*** a non-financial counterparty that ***does not meet*** the conditions referred to in the second subparagraph of Article 10(1) ***shall be reported as follows:***

(i) financial counterparties shall be solely responsible and legally liable for reporting a single data set, as well as for ensuring the accuracy of the details reported;

(ii) notwithstanding point (i), non-financial counterparties that do not meet the conditions referred to in the second subparagraph of Article 10(1) may elect to report the details of their OTC derivative contracts with financial counterparties to a trade repository;

(iii) where the non-financial counterparty elects to report the details of their OTC derivatives contracts as described in point (ii), they shall inform the financial counterparties with which they have concluded OTC derivatives contracts of their decision beforehand. The responsibility and legal liability for reporting and for ensuring the accuracy of those details shall in this case remain with the non-financial counterparty;

Or. en

Justification

This amendment clarifies that the financial counterparties are responsible and legally liable for reporting in a single data set, and for the content and accuracy of the reported data, for OTC derivatives concluded with non-financial counterparties below the clearing thresholds. Additionally, this amendment recognizes that there are several types of non-financial

counterparties and some non-financial counterparties may seek to perform the reporting themselves.

Amendment 170

Jakob von Weizsäcker, Jonás Fernández

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point b

Regulation (EU) No 648/2012

Article 9 – paragraph 1a – subparagraph 1 – point b

Text proposed by the Commission

(b) financial *counterparties* shall be responsible for reporting on behalf of both counterparties the details of *OTC* derivative contracts *concluded with a non-financial counterparty that is not subject to the conditions referred to in the second subparagraph of Article 10(1) as well as for ensuring the accuracy of the details reported;*

Amendment

(b) *Where a financial counterparty or CCP concludes a derivative contract with a non-financial counterparty which on its balance sheet dates does not exceed the limits of at least two of the three criteria defined in Article 3(3) of Directive 2013/34/EU, the financial counterparty or CCP shall be responsible for reporting on behalf of both counterparties.*

Counterparties not required to report the details of their derivative contracts shall ensure that the CCP or reporting counterparties receive all details necessary for them to comply with the reporting obligation and which the CCP or reporting counterparties cannot reasonably be expected to possess.

Or. en

Amendment 171

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point b

Regulation (EU) No 648/2012

Article 9 – paragraph 1a – subparagraph 1 – point b

Text proposed by the Commission

(b) financial counterparties shall be responsible for reporting *on behalf of both*

Amendment

(b) financial counterparties *and non-financial counterparties that meet the*

counterparties the details of OTC derivative contracts concluded with a non-financial counterparty that is not subject to the conditions referred to in the second subparagraph of Article 10(1) as well as for ensuring the accuracy of the details reported;

conditions referred to in the second subparagraph of Article 10(1) shall be responsible for reporting the details of OTC derivative contracts concluded with a non-financial counterparty that is not subject to the conditions referred to in the second subparagraph of Article 10(1) as well as for ensuring the accuracy of the details reported;

Or. en

Amendment 172

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point b

Regulation (EU) No 648/2012

Article 9 – paragraph 1a – subparagraph 1 – point e

Text proposed by the Commission

(e) counterparties and CCPs shall ensure that the details of their derivative contracts are reported accurately and without duplication.

Amendment

(e) **financial** counterparties, **non-financial counterparties that meet the conditions referred to in the second subparagraph of Article 10(1)** and CCPs shall ensure that the details of their derivative contracts are reported accurately and without duplication.

Or. en

Amendment 173

Brian Hayes

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point b

Regulation (EU) No 648/2012

Article 9 – paragraph 1a – subparagraph 1 – point e

Text proposed by the Commission

(e) counterparties and CCPs shall ensure that the details of their derivative contracts are reported **accurately and**

Amendment

(e) counterparties and CCPs **that report OTC derivatives contracts to a trade repository** shall ensure that the

without duplication.

details of their derivative contracts are reported without duplication.

Or. en

Justification

To make clear that only the counterparties and CCPs that report data to a trade repository have the obligation to make sure the OTC derivatives contracts are reported without duplication.

Amendment 174

Werner Langen, Danuta Maria Hübner, Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point b

Regulation (EU) No 648/2012

Article 9 – paragraph 1a – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

For the purpose of point (b), to ensure that the financial counterparty has all data needed to fulfil the reporting obligation set out in that point, the non-financial counterparty shall provide to the financial counterparty the details, which the financial counterparty cannot be reasonably expected to possess, relating to the OTC derivative contracts concluded between them.

Or. en

Justification

This amendment aims to clarify in the main text the intention expressed by the rapporteur in recital 14 (amendment 5 of the report).

Amendment 175

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point c

Text proposed by the Commission

Amendment

To ensure uniform conditions of application of paragraphs 1 and 3, ESMA shall develop draft implementing technical standards specifying:

To ensure uniform conditions of application of paragraphs 1 and 3, ESMA shall, ***in close cooperation with the ESCB***, develop draft implementing technical standards specifying:

Or. en

Amendment 176

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 7 – point c

Regulation (EU) No 648/2012

Article 9 – paragraph 6 – subparagraph 3

Text proposed by the Commission

Amendment

ESMA shall submit those draft implementing technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].

ESMA shall submit those draft implementing technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].

Or. en

Justification

9 months is a short timeframe, and 12 months is the usual standard

Amendment 177

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 648/2012

Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

A non-financial counterparty taking positions in OTC derivative contracts ***shall*** calculate, annually, its ***aggregate*** month-end ***average position for the*** months ***March, April and May*** in accordance with paragraph 3.

A non-financial counterparty taking positions in OTC derivative contracts ***may*** calculate, annually, its ***average of the three highest*** month-end ***averages positions within the precedent 12*** months in accordance with paragraph 3.

Or. en

Amendment 178

Werner Langen, Danuta Maria Hübner, Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 648/2012

Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

A non-financial counterparty taking positions in OTC derivative contracts ***shall*** calculate, annually, its aggregate month-end average position for the months March, April and May in accordance with paragraph 3.

A non-financial counterparty taking positions in OTC derivative contracts ***may*** calculate, annually, its aggregate month-end average position for the months March, April and May in accordance with paragraph 3.

Or. en

Justification

In the same logic as amendment 11, the mandatory check by all NFCs of their position (above or below the threshold) would be replaced by a voluntary check by those NFCs that would reasonably expect to fall below the threshold in order to reduce bureaucracy and cost. NFCs which do not make the calculation or exceed the threshold fixed in this Regulation remain subject to the principle, i.e. the clearing obligation.

Amendment 179

Jakob von Weizsäcker

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 648/2012

Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

A non-financial counterparty taking positions in OTC derivative contracts shall calculate, ***annually***, its aggregate month-end average position for the months ***March, April and May*** in accordance with paragraph 3.

A non-financial counterparty taking positions in OTC derivative contracts shall calculate, ***on an annual basis***, its aggregate month-end average position for the ***previous 12*** months in accordance with paragraph 3.

Or. en

Amendment 180

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 648/2012

Article 10 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

Where the result of that calculation ***exceeds*** the clearing thresholds specified pursuant to paragraph 4(b), that non-financial counterparty shall:

Where the result of that calculation ***does not exceed*** the clearing thresholds specified pursuant to paragraph 4(b), that non-financial counterparty shall:

Or. en

Amendment 181

Jakob von Weizsäcker

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 648/2012

Article 10 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

Where the result of that calculation exceeds the clearing thresholds specified pursuant to paragraph 4(b), that non-financial counterparty shall:

Where the result of that calculation exceeds ***the clearing thresholds or where a non-financial counterparty can reasonably expect it to exceed*** the clearing thresholds specified pursuant to paragraph

4(b), that non-financial counterparty shall:

Or. en

Amendment 182

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 648/2012

Article 10 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

(b) be subject to the clearing obligation referred to in Article 4 for future OTC derivative contracts in the asset class or asset classes for which the clearing threshold has been exceeded;

Amendment

(b) **not** be subject to the clearing obligation referred to in Article 4 for future OTC derivative contracts in the asset class or asset classes for which the clearing threshold has been exceeded;

Or. en

Amendment 183

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 648/2012

Article 10 – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission

(c) **clear the contracts referred to in point (b) within four months of becoming subject to the clearing obligation.**

Amendment

deleted

Or. en

Amendment 184

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 648/2012

Article 10 – paragraph 2

Text proposed by the Commission

2. A non-financial **counterparty that has become subject to the clearing obligation in accordance with the second subparagraph of paragraph 1 and subsequently demonstrates to the authority designated in accordance with paragraph 5 that its aggregate month-end average position for the months March, April and May of a given year no longer exceeds the clearing** threshold referred to in paragraph 1 shall **no longer** be subject to the clearing obligation **set out** in Article 4.;

Amendment

2. Non-financial **counterparties which do not proceed to the calculation referred to in paragraph 1 or which exceed the** threshold referred to **therein** shall be subject to the clearing obligation **referred to in Article 4 for future OTC derivatives for the asset class or asset classes for which the clearing threshold has been exceeded or for which the calculation has not been made and shall immediately notify ESMA and the relevant competent authority.**

Or. en

Amendment 185

Jakob von Weizsäcker

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 648/2012

Article 10 – paragraph 2

Text proposed by the Commission

2. A non-financial counterparty that has become subject to the clearing obligation in accordance with the second subparagraph of paragraph 1 and subsequently demonstrates to the authority designated in accordance with paragraph 5 that its aggregate month-end average position for the months **March, April and May of a given year** no longer exceeds the clearing threshold referred to in paragraph 1 shall no longer be subject to the clearing obligation set out in Article 4.;

Amendment

2. A non-financial counterparty that has become subject to the clearing obligation in accordance with the second subparagraph of paragraph 1 and subsequently demonstrates to the authority designated in accordance with paragraph 5 that its aggregate month-end average position for the **previous 12** months no longer exceeds the clearing threshold referred to in paragraph 1 shall no longer be subject to the clearing obligation set out in Article 4.;

Amendment 186

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8 a (new)

Regulation (EU) No 648/2012

Article 10 – paragraph 3

Present text

3. In calculating the positions referred to in paragraph 1, the non-financial counterparty shall include all the OTC derivative contracts entered into by the non-financial counterparty or by other non-financial entities within the group to which the non-financial counterparty belongs, which are not objectively measurable as reducing risks directly relating to the commercial activity *or treasury financing activity* of the non-financial counterparty or of that group.

Amendment

(8a) In Article 10, paragraph 3 is replaced by the following:

"3. In calculating the positions referred to in paragraph 1, the non-financial counterparty shall include all the OTC derivative contracts entered into by the non-financial counterparty or by other non-financial entities within the group to which the non-financial counterparty belongs, which are not objectively measurable as reducing risks directly relating to the commercial activity of the non-financial counterparty or of that group."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Amendment 187

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8 b (new)

Regulation (EU) No 648/2012

Article 10 – paragraph 4

Present text

Amendment

(8b) In Article 10, paragraph 4 is replaced by the following:

4. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards, after consulting the ESRB and other relevant authorities, specifying:

(a) criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity ***or treasury financing activity*** referred to in paragraph 3; and

(b) values of the clearing thresholds, which are determined taking into account the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives.

After conducting an open public consultation, ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 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.

After consulting the ESRB and other relevant authorities, ESMA shall periodically review the thresholds and, where necessary, propose regulatory technical standards to amend them.

"4. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards, after consulting the ESRB and other relevant authorities, specifying:

(a) criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity referred to in paragraph 3; and

(b) values of the clearing thresholds, which are determined taking into account the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives. ***The clearing thresholds shall be calibrated on a yearly basis in order to increase the clearing rate of derivative contracts subject to the clearing obligation up to 90% by the first of January 2021.***

ESMA may develop distinct clearing thresholds for financial and non-financial counterparties taking due account of the different types of exposures that these two categories need to compute.

After conducting an open public consultation, ESMA shall submit those draft regulatory technical standards to the Commission by 30 September 2012 ***and shall update those draft regulatory technical standards on a yearly basis.***

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

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Amendment 188

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8 c (new)

Regulation (EU) No 648/2012

Article 11 – paragraph 1 – introductory part

Present text

1. Financial counterparties and non-financial counterparties that enter into an OTC derivative contract not cleared by a CCP, shall ensure, exercising due diligence, that ***appropriate*** procedures and arrangements ***are*** in place to measure, monitor and mitigate operational risk and counterparty credit risk, ***including*** at least:

Amendment

(8c) In Article 11, the introductory part of paragraph 1 is replaced by the following:

"1. Financial counterparties and non-financial counterparties that enter into an OTC derivative contract not cleared by a CCP, shall ensure, exercising due diligence, that ***the*** procedures and arrangements in place to measure, monitor and mitigate operational risk and counterparty credit risk ***are at least equivalent to those of a CCP and include*** at least:"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Amendment 189

Markus Ferber

Proposal for a regulation

Article 1 – paragraph 1 – point 8 a (new)

Regulation (EU) No 648/2012

Article 11 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

(8a) In Article 11, paragraph 1 subparagraph 1 a is inserted:

These requirements shall not apply to intragroup transactions referred to in Article 3 where one of the counterparties is a non-financial counterparty which is

not subject to the clearing obligation in accordance with the second subparagraph of Article 10(1).”

Or. en

Justification

It is appropriate to exempt intragroup transactions from small NFCs below the clearing threshold from the risk mitigation requirements of article 11 paragraph 1 (timely confirmation, portfolio reconciliation and portfolio compression). These obligations can be particularly burdensome for small NFCs without delivering any added value from a regulatory and risk management perspective. Also, this ensures regulatory consistency with the exemption of intragroup transactions from reporting.

Amendment 190

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8 d (new)

Regulation (EU) No 648/2012

Article 11 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(8d) In Article 11, after paragraph 4 the following paragraph is inserted following:

4a. Financial counterparties and non-financial counterparties shall establish clearly framed procedures for limiting the procyclicality effects that can arise from their bilateral clearing arrangements. Those counterparties shall ensure in particular that anti-procyclicality measures are included in their bilateral initial margin models.

Or. en

Amendment 191

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 1 – paragraph 1 – point 8 a (new)
Regulation (EU) No 648/2012
Article 11 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(8a) In Article 11, after paragraph 4 the following paragraph is inserted following:

"4a. The requirement laid down in paragraph 3 shall not apply to any non-centrally cleared OTC derivatives which are:

(i) physically settled FX forwards and FX swaps;

(ii) single-stock equity options or index options '"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0648>)

Amendment 192
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 1 – paragraph 1 – point 8 e (new)
Regulation (EU) No 648/2012
Article 11 – paragraph 13

Present text

Amendment

13. ESMA shall regularly monitor the activity in derivatives not eligible for clearing in order to identify cases where a particular class of derivatives may pose systemic risk and to prevent regulatory arbitrage between cleared and non-cleared derivative transactions. In particular, ESMA shall, after consulting the ESRB, take action in accordance with Article 5(3) or review the regulatory technical standards on margin requirements laid

(8e) In Article 11, paragraph 13 is replaced by the following:

"13. *Relevant competent authorities and* ESMA shall regularly monitor the activity in derivatives not eligible for clearing in order to identify cases where a particular class of derivatives may pose systemic risk **at EU and/or national levels and to prevent regulatory arbitrage between cleared and non-cleared derivative transactions. In particular, ESMA shall, after consulting the ESRB, take action in accordance with Article 5(3) or review the**

down in paragraph 14 of this Article and in Article 41.

regulatory technical standards on margin requirements laid down in paragraph 14 of this Article and in Article 41."

For the purposes of regulatory arbitrage prevention, financial counterparties and non-financial counterparties referred to in Article 10 entering into an OTC derivative contracts not cleared by a CCP shall notify competent authorities on a yearly basis to what extent the non-cleared OTC contracts that are entered into by these counterparties do not achieve an economically equivalent effect to contracts or a portfolio of contracts subject to the clearing obligation referred to in Article 4.

Whenever the relevant competent authorities assess on the basis of the notification referred to in the previous subparagraph that the economic effects of the non-cleared OTC contracts can be achieved by cleared OTC contracts, they shall take a decision requesting the counterparties to clear the relevant OTC contracts within a specified timeline. Competent authorities shall notify ESMA of such decision within one week.

If the relevant competent authorities for the counterparties referred to in the second subparagraph differ and if these competent authorities fail to reach a positive decision within 30 calendar days of receipt of the application for exemption, ESMA may assist those authorities in reaching agreement in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

ESMA shall monitor at least once a year the way competent authorities have implemented the assessment referred to in the second subparagraph. Where ESMA determines that the assessment is not in line with the methodology for assessing whether contracts achieve the same economic effect it shall take action in accordance with its powers under Article 17 of Regulation (EU) No 1095/2010."

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Amendment 193

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8 f (new)

Regulation (EU) No 648/2012

Article 11 – paragraph 13 a (new)

Text proposed by the Commission

Amendment

(8f) In Article 11, after paragraph 13 the following paragraph is inserted following:

13a. Relevant competent authorities and ESMA shall regularly monitor bilateral initial margin models, in order to verify that they include measures to limit procyclicality. Whenever the relevant competent authorities and ESMA assess that an initial margin model is not properly set in a way that specifically limits procyclical effects, they shall request the relevant counterparties to make the required adjustments.

Or. en

Amendment 194

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8 g (new)

Regulation (EU) No 648/2012

Article 11 – paragraph 14 – point e

Present text

Amendment

(8g) In Article 11, point e of paragraph 14 is replaced by the following:

(e) the contracts that are considered to have a direct, substantial and foreseeable effect within the Union or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation as referred to in paragraph 12;

"(e) the contracts that are considered to have a direct, substantial and foreseeable effect within the Union or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation as referred to in paragraph 12 *or regulatory arbitrage as referred to in paragraph 13 as well as the details of the notification requirement referred to in paragraph 13.*"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Amendment 195

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point a

Regulation (EU) No 648/2012

Article 11 – paragraph 15 – point a

Text proposed by the Commission

(a) the risk-management procedures, including the levels and type of collateral and segregation arrangements referred to in paragraph 3, as well as related supervisory procedures to ensure initial and ongoing validation of those risk-management procedures;;

Amendment

(a) the risk-management procedures, including the levels and type of collateral and segregation arrangements referred to in paragraph 3, as well as related supervisory procedures to ensure initial and ongoing validation of those risk-management procedures *and the methodology for assessing whether cleared and non-cleared OTC contracts achieve an economically equivalent effect;*

Or. en

Amendment 196

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 11 – paragraph 15 – subparagraph 2 – first sentence

Text proposed by the Commission

Amendment

The ESAs shall submit those common draft regulatory technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].;

The ESAs shall submit those common draft regulatory technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].;

Or. en

Amendment 197

Petr Ježek

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 11 – paragraph 15 – subparagraph 2 – first sentence

Text proposed by the Commission

Amendment

The ESAs shall submit those common draft regulatory technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].;

The ESAs shall submit those common draft regulatory technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].;

Or. en

Amendment 198

Petr Ježek

Proposal for a regulation

Article 1 – paragraph 1 – point 9 a (new)

Regulation (EU) No 648/2012

Article 11 – paragraph 15 a (new)

Text proposed by the Commission

Amendment

(9a) In Article 11, after paragraph 4 the following paragraph is inserted:

15a. By ... [two years following the entry into force of the regulatory technical standards referred to in Article 11(15)], the ESAs shall carry out a public consultation in order to assess the impact

on financial stability within the Union of applying the obligations referred to in Article 36(2) of Commission Delegated Regulation 2016/2251 to intragroup transactions for which no implementing act on equivalence exists. If the ESAs determine that the benefits of an absence of the clearing obligation for these transactions significantly outweigh the impact on financial stability, the ESAs may submit to the Commission for endorsement draft regulatory technical standards extending the three-year period referred to in Article 36(2) of Commission Delegated Regulation 2016/2251 once by three years and once by two years.

Or. en

Justification

For intragroup transactions where there is no equivalence decision related to the third country jurisdiction, it should be possible for ESMA to recommend a derogation for those transactions where it deems that there is little to no contribution to systemic risk and interconnectedness.

Amendment 199

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 9 a (new)

Regulation (EU) No 648/2012

Article 15 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(9a) In Article 15, the following paragraph 1a is inserted:

1a. For the purpose of paragraph 1, extension of business to new activities or services shall require an extension of authorisation where one of the following conditions is met:

(a) the new service or activity exposes the CCP to new or increased risks

(b) the new service is provided or the new activity takes place in respect of a class of financial instruments with a different risk profile or with material differences from the products already cleared by the CCP

(c) the new service is provided or the new activity takes place in respect of a class of financial instruments which were not specified in the CCP's authorisation decision

Or. en

Justification

Takes into account the opinion ESMA/2016/1574 of 15 November 2016 and introduces clearer criteria to frame the very important assessment of when a CCP should apply for extension of authorisation.

Amendment 200

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 9 a (new)

Regulation (EU) No 648/2012

Article 15 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

(9a) In Article 15, the following paragraph 1b is inserted:

1b. In order to ensure uniform conditions of application of paragraph 1, ESMA, in close cooperation with the ESCB, shall develop draft regulatory technical standards establishing a list of indicators further defining the conditions referred to in paragraph 1a.

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date 12 months after the entry into force of this 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

Justification

Takes into account the opinion ESMA/2016/1574 of 15 November 2016 and introduces clearer criteria to frame the very important assessment of when a CCP should apply for extension of authorisation.

Amendment 201

Jakob von Weizsäcker, Jonás Fernández, Philippe Lamberts

Proposal for a regulation

Article 1 – paragraph 1 – point 9 a (new)

Regulation (EU) No 648/2012

Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(9a) In Article 16, the following paragraph 1a is inserted:

1a. Where deemed necessary by the resolution authority of the CCP, in order to remove impediments to resolvability in accordance with Article 17 of Regulation (EU) [on CCP recovery and resolution], the resolution authority may require higher capital requirements.

Amendment 202

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 38 – paragraph 7

Text proposed by the Commission

Amendment

7. A CCP shall *provide its clearing members with* information on the *initial*

7. A CCP shall *publicly disclose the parameters and* information on the *models*

margin models it uses. That information shall meet all of the following conditions:

- (a) it clearly explains the design of the initial margin model and how it operates;*
- (b) it clearly describes the key assumptions and limitations of the initial margin model and the circumstances under which those assumptions are no longer valid*
- (c) it is documented.;*

used in the calculation of its margin requirements, including:

- (a) the confidence interval;*
 - (b) the look-back period;*
 - (c) the liquidation period;*
 - (ca) the key assumptions and limitations of its models and the circumstances under which those assumptions are no longer valid;*
 - (cb) information on the models used for margin calculation, including the quantitative methodology, the approach for any adjustments or add-ons made to these models and their formulae;*
 - (cc) the parameters and methodology used in the computation of margin offsets under Article 27 of the regulatory technical standards No 153/2013;*
- The parameters and information to be disclosed shall be sufficiently detailed to allow the replication of margin calculations and anticipation of big-stepped margin revisions.*

Or. en

Amendment 203

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 10 a (new)

Regulation (EU) No 648/2012

Article 38 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

(10a) In Article 38, the following

paragraph 7a is inserted:

7a. A CCP shall publicly disclose the anti-procyclicality margin measures adopted in accordance with Article 28 of the Regulatory Technical Standards No 153/2013 as well as the methodology and parameters used when applying them, including:

(a) The percentage of buffer on top of margin requirements which has been collected and the conditions for exhaustion and replenishment, when a CCP chooses to apply a margin buffer at least equal to 25% of the calculated margin;

(b) Its approach in deriving stress observations and incorporating the observations into the calculation of margin requirements, when a CCP chooses to assign at least 25% weight to stressed observations in the look back period;

(c) Its approach in computing the 10-year margin floor, when a CCP chooses to apply a margin floor;

Or. en

Amendment 204

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 10 b (new)

Regulation (EU) No 648/2012

Article 38 – paragraph 7 b (new)

Text proposed by the Commission

Amendment

(10b) *In Article 38, the following paragraph 7b is inserted:*

7b. *Taking into account the experience acquired in the application of guidelines, ESMA shall develop draft regulatory technical standards for further*

specifying the requirements referred to in paragraphs 7 and 7 a.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 December 2020.

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

Or. en

Amendment 205

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 10 c (new)

Regulation (EU) No 648/2012

Article 38 – paragraph 7 c (new)

Text proposed by the Commission

Amendment

(10c) In Article 38, the following paragraph 7c is inserted:

7c. Taking into account international developments and standards agreed upon at Union or global level, ESMA shall develop draft regulatory technical standards for further specifying quantitative and qualitative information to be publically disclosed by a CCP, including on transaction volumes and values, on its financial conditions, on its financial resources to withstand potential losses and on its performance.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 December 2020.

Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down

Or. en

Amendment 206

Jörg Meuthen

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 648/2012

Article 39 – paragraph 11

Text proposed by the Commission

11. Where the requirement referred to in paragraph 9 is satisfied, the assets and positions recorded in those accounts *shall* not be considered part of the insolvency estate of the CCP or the clearing member.;

Amendment

11. Where the requirement referred to in paragraph 9 is satisfied, the assets and positions recorded in those accounts *may* not be considered part of the insolvency estate of the CCP or the clearing member *without prejudice to the applicable Member State's insolvency law.*;

Or. en

Amendment 207

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 648/2012

Article 39 – paragraph 11

Text proposed by the Commission

11. *Where the requirement referred to in paragraph 9 is satisfied, the assets and positions recorded in those accounts shall not be considered part of the insolvency estate of the CCP or the clearing member.;*

Amendment

11. *Member States' national insolvency laws shall not prevent a CCP from acting in accordance with Article 48(5) to (7) with regard to the assets and positions recorded in accounts referred to in paragraphs 2, 3, 4 and 5 of this Article.*

Or. en

Justification

Replaced by an alternative proposal. Bankruptcy remoteness of clients and members assets might lead to uncertainties about the ownership of collateral used. It should therefore be made clearer that this new provision is intended first and foremost to facilitate the default management and protect clients in case of the default of the member responsible for their access to clearing.

Amendment 208

Jakob von Weizsäcker, Jonás Fernández

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 648/2012

Article 39 – paragraph 11

Text proposed by the Commission

11. *Where the requirement referred to in paragraph 9 is satisfied*, the assets and positions recorded in *those* accounts *shall not be considered part of the insolvency estate of the CCP or the clearing member.*;

Amendment

11. *Member States' national insolvency laws shall not prevent a CCP from acting in accordance with Article 48 (5) to (7) with regard to the assets and positions recorded in accounts referred to in paragraphs 2, 3, 4 and 5 of this Article.*

Or. en

Amendment 209

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 648/2012

Article 39 – paragraph 11

Text proposed by the Commission

11. *Where the requirement referred to in paragraph 9 is satisfied*, the assets and positions recorded in *those* accounts *shall not be considered part of the insolvency estate of the CCP or the clearing member.*;

Amendment

11. *Member States' national insolvency laws shall not prevent a CCP from acting in accordance with Article 48(5) to (7) with regard to the assets and positions recorded in accounts referred to in paragraphs 2, 3, 4 and 5 of this Article.*

Amendment 210

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 648/2012

Article 39 – paragraph 11

Text proposed by the Commission

11. Where the requirement referred to in paragraph 9 is satisfied, the assets and positions recorded in those accounts shall not be considered part of the insolvency estate of the **CCP or the** clearing member.;

Amendment

11. Where the requirement referred to in paragraph 9 is satisfied, the assets and positions recorded in those accounts shall not be considered part of the insolvency estate of the **defaulting** clearing member.;

Or. en

Amendment 211

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 11 a (new)

Regulation (EU) No 648/2012

Article 41 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(11a) In Article 41, the following paragraph 4a is inserted:

4a. Taking into account the experience acquired in the application of the guidelines on anti-procyclicality margin measures for central counterparties, ESMA shall develop draft regulatory technical standards for specifying requirements for a CCP to:

(a) develop a policy for the review of its anti-procyclicality measures;

(b) implement anti-procyclicality margin measures in a manner that a procyclical

adjustment addresses all the risk factors used in the calculation of margin requirements, including price shifts, fx shifts, implied volatility shifts, maturity spreads and portfolio margin offsets, as applicable;

(c) develop and maintain documented policies and procedures setting out the circumstances under which the buffer can be exhausted as well as the conditions for its replenishment, when a CCP chooses to apply a margin buffer at least equal to 25% of the calculated margin;

(d) apply standard methodologies for the selection of historical stressed observations as well as for the application of the weighting schemes that can be used in the margin calculation, when a CCP chooses to assign at least 25% weight to stressed observations in the look back period;

(e) avoid using modelling procedures to vary the effectiveness of using a 10 year historical look back period, when a CCP chooses to apply a margin floor;

(f) review the length or composition of the historical look back period if the number of stressed observations falls below a pre-specified level, when a CCP chooses to apply a margin floor;

ESMA shall submit those draft regulatory technical standards to the Commission by 1 December 2020.

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

Or. en

Justification

The purpose of this proposed new paragraph is to ensure that binding guidance on the operationalisation of the anti-procyclicality measures will be introduced in the near future.

The specific requirements listed in this paragraph stem from the recommendations issued by the ESRB (“Revision of the European Market Infrastructure Regulation”, April 2017) and the draft guidelines issued by ESMA (“Consultation Paper: Draft Guidelines on Anti-Procyclicality Margin Measures for Central Counterparties”, January 2018).

Amendment 212

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 11 a (new)

Regulation (EU) No 648/2012

Article 49 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(11a) In Article 49, the following paragraph 4a is inserted:

4a. In order to ensure uniform conditions of application of this article, ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards establishing a list of indicators to be considered by CCPs, ESMA and national competent authorities when assessing whether a change to the models and parameters referred to in paragraph 1 is significant and requires a validation from ESMA and the competent authority.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months following the entry into force of this amending 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 (EU) No 1095/2010.

Or. en

Justification

Takes into account the opinion ESMA/2016/1574 of 15 November 2016 and introduces clearer criteria to frame the very important assessment of when a change to a model requires validation by ESMA and the NCA.

Amendment 213

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 11 b (new)

Regulation (EU) No 648/2012

Article 55 – paragraph 4

Present text

4. A registered trade repository shall comply at all times with the conditions for registration. A trade repository shall, without undue delay, notify ESMA of any material changes to the conditions for registration.

Amendment

(11b) In Article 55, paragraph 4 is replaced by the following:

"4. A registered trade repository shall comply at all times with the conditions for registration. A trade repository shall, without undue delay, notify ESMA ***of periodic information and*** of any material changes to the conditions for registration ***as stipulated on the basis of regulatory technical standards referred to in paragraph 3 of Article 56.***

ESMA shall have the right to oppose a material change to the conditions of registration which is notified by the trade repository"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Amendment 214

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 12 – point b

Regulation (EU) No 648/2012

Article 56 – paragraph 3 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].

Amendment 215

Petr Ježek

Proposal for a regulation

Article 1 – paragraph 1 – point 12 – point b

Regulation (EU) No 648/2012

Article 56 – paragraph 3 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].

Or. en

Amendment 216

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 12 – point c

Regulation (EU) No 648/2012

Article 56 – paragraph 4 – subparagraph 3

Text proposed by the Commission

ESMA shall submit those draft implementing technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].

Amendment

ESMA shall submit those draft implementing technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].

Or. en

Justification

9 months is a short timeframe, and 12 months is the usual standard

Amendment 217

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 12 a (new)

Regulation (EU) No 648/2012

Article 62 – paragraph 5

Text proposed by the Commission

Amendment

(12a) In Article 62, paragraph 5 is deleted.

Or. en

Justification

This requirement for ex ante judicial authorisation penalised ESMA when carrying out investigations with respect to third country national competent authorities and with respect to the Commission in its antitrust investigations.

Amendment 218

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 12 b (new)

Regulation (EU) No 648/2012

Article 63 – paragraph 1

Present text

Amendment

(12b) In Article 63, paragraph 1 is replaced by the following:

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises or **land** of the legal persons referred to in Article 61(1). Where the proper conduct and efficiency of the inspection so require, ESMA may carry out the on-site inspection without prior announcement.

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises or **property** of the legal persons referred to in Article 61(1). Where the proper conduct and efficiency of the inspection so require, ESMA may carry out the on-site inspection without prior announcement.

Or. en

Justification

The word "land" is a legacy of antitrust regulation and does not suit the situation of TRs.

Amendment 219

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 12 c (new)

Regulation (EU) No 648/2012

Article 63 – paragraph 2

Present text

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises or **land** of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 62(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

Amendment

(12c) In Article 63, paragraph 2 is replaced by the following:

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises or **property** of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 62(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

Or. en

Justification

The word "land" is a legacy of antitrust regulation and does not suit the situation of TRs.

Amendment 220

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 12 d (new)

Regulation (EU) No 648/2012

Article 63 – paragraph 8

Text proposed by the Commission

Amendment

(12d) In Article 63, paragraph 8 is deleted

Or. en

Justification

This requirement for ex ante judicial authorisation penalised ESMA when carrying out

investigations with respect to third country national competent authorities and with respect to the Commission in its antitrust investigations.

Amendment 221

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 12 a (new)

Regulation (EU) No 648/2012

Article 63 – paragraph 8

Present text

8. If *the on-site inspection provided for in* paragraph *1 or* the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

Amendment

(12a) Article 63, paragraph 8 is replaced by the following:

"8. If the assistance provided for in paragraph 7 requires *a national competent authority to apply for an* authorisation by a judicial authority according to *a* national law, such authorisation shall *similarly* be applied for *by ESMA*. Such authorisation may also be applied for as a precautionary measure."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Amendment 222

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 12 b (new)

Regulation (EU) No 648/2012

Article 63 – paragraph 9

Present text

9. Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall verify that ESMA's

Amendment

(12b) Article 63, paragraph 9 is replaced by the following:

"9. Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall verify that ESMA's

decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations. ***Such a request for detailed explanations may in particular relate to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place, as well as to the seriousness of the suspected infringement and the nature of the involvement of the person who is subjected to the coercive measures.*** However, the national judicial authority may not review the necessity for the inspection or demand to be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1095/2010.

decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask ESMA for detailed explanations. However, the national judicial authority may not review the necessity for the inspection or demand to be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1095/2010."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Amendment 223

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 12 e (new)

Regulation (EU) No 648/2012

Article 64 – paragraph 4

Present text

4. When submitting the file with his findings to ESMA, the investigation officer shall notify that fact to the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in

Amendment

(12e) In Article 64, paragraph 4 is amended as follows:

4. When submitting the file with his findings to ESMA, the investigation officer shall notify that fact to the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the 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 *affecting third parties*.

the protection of their business secrets. The right of access to the file shall not extend to confidential information *or ESMA's internal preparatory documents*.

Or. en

Justification

Alignment with Article 67(2) as it refers to the same file.

Amendment 224

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 12 f (new)

Regulation (EU) No 648/2012

Article 64 – paragraph 8

Present text

8. ESMA shall refer matters for criminal prosecution to the *relevant national* authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Amendment

(12f) In Article 64, paragraph 8 is replaced by the following:

8. ESMA shall refer matters for criminal prosecution *to the appropriate* authorities *for investigation and possible criminal prosecution* where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts *that it knows to be* liable to constitute criminal offences *under the applicable law*. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where *it is aware that* a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Or. en

Justification

ESMA might not know about or be able to assess all third country criminal law frameworks.

Amendment 225
Danuta Maria Hübner

Proposal for a regulation

Article 1 – paragraph 1 – point 12 g (new)

Regulation (EU) No 648/2012

Article 65 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

(12g) In Article 65(1), the second subparagraph is deleted.

Or. en

Justification

This definition has limited ESMA's application of the notion of intentionality in the past.

Amendment 226
Jörg Meuthen

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) No 648/2012

Article 65 – paragraph 2

Text proposed by the Commission

Amendment

(13) Article 65(2) is amended as follows:

deleted

(a) in point (a), “EUR 20 000” is replaced by “EUR 200 000”;

(b) in point (b), “EUR 10 000” is replaced by “EUR 100 000”;

(c) the following point (c) is added:

‘(c) for the infringements referred to in Section IV of Annex I, the amount of the fines shall be at least EUR 5 000 and shall not exceed EUR 10 000.’

Or. en

Amendment 227

Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 13 a (new)

Regulation (EU) No 648/2012

Article 67 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

(13a) In Article 67, after paragraph 1 the following subparagraph is inserted:

The first subparagraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system or significant and imminent damage to the integrity, transparency, efficiency and orderly functioning of financial markets, including the stability or the accuracy of data reported to trade repository. In such a case, ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Amendment 228

Danuta Maria Hübner

Proposal for a regulation

Article 1 – paragraph 1 – point 13 a (new)

Regulation (EU) No 648/2012

Article 67 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(13a) In Article 67, the following paragraph 1a is added:

1a. The first paragraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall

give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

Or. en

Justification

Alignment with Article 25 CRAR. Increases the effectiveness of ESMA's procedure.

Amendment 229

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 14 a (new)

Regulation (EU) No 648/2012

Article 73 – paragraph 1

Present text

1. Where, in accordance with Article 64(5), ESMA finds that a trade repository has committed one of the infringements listed in Annex I, it shall take one or more of the following decisions:

- (a) requiring the trade repository to bring the infringement to an end;
- (b) imposing fines under Article 65;
- (c) issuing public notices;
- (d) as a last resort, withdrawing the registration of the trade repository.

Amendment

(14a) Article 73, paragraph 1 is replaced by the following:

"1. Where, in accordance with Article 64(5), ESMA finds that a trade repository has committed one of the infringements listed in Annex I, it shall take one or more of the following decisions:

- (a) requiring the trade repository to bring the infringement to an end;
- (b) imposing fines under Article 65;
- (c) issuing public notices;
- (d) as a last resort, withdrawing the registration of the trade repository;

(da) requiring the temporary cessation of any practice that is contrary to this Regulation;

(db) adopting any measures to ensure that a trade repository continues to comply with legal requirements under this Regulation;

(dc) imposing a temporary prohibition on the acceptance of new reporting counterparties or the extension of the

services that the trade repository offers, when these would compromise the stability or the accuracy of data;

(dd) requiring the removal of a natural person from the governing bodies of a trade repository."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Amendment 230

Jakob von Weizsäcker, Jonás Fernández

Proposal for a regulation

Article 1 – paragraph 1 – point 15 a (new)

Regulation (EU) No 648/2012

Article 78 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(15a) In Article 78, the following paragraph is inserted:

4a. A trade repository shall identify and implement information security controls, to ensure confidentiality, integrity and availability of its processes and data. Those controls shall be identified within the context of a comprehensive information security risk management process, to ensure that the risks are appropriately identified and treated.

Or. en

Amendment 231

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation (EU) No 648/2012

Article 78 – paragraph 10 – introductory part

Text proposed by the Commission

To ensure a consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying:

Amendment

To ensure a consistent application of this Article, ESMA ***in close cooperation with the ESCB*** shall develop draft regulatory technical standards specifying:

Or. en

Amendment 232
Petr Ježek

Proposal for a regulation
Article 1 – paragraph 1 – point 16
Regulation (EU) No 648/2012
Article 78 – paragraph 10 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].

Or. en

Amendment 233
Kay Swinburne

Proposal for a regulation
Article 1 – paragraph 1 – point 16
Regulation (EU) No 648/2012
Article 78 – paragraph 10 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].

Or. en

Amendment 234
Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation (EU) No 648/2012

Article 78 – paragraph 10 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].

Or. en

Justification

9 months is a short timeframe, and 12 months is the usual standard

Amendment 235

Petr Ježek

Proposal for a regulation

Article 1 – paragraph 1 – point 17 – point c

Regulation (EU) No 648/2012

Article 81 – paragraph 5 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].

Or. en

Amendment 236

Danuta Maria Hübner, Gabriel Mato

Proposal for a regulation

Article 1 – paragraph 1 – point 17 – point c

Regulation (EU) No 648/2012

Article 81 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].

Or. en

Justification

9 months is a short timeframe, and 12 months is the usual standard

Amendment 237

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 17 – point c

Regulation (EU) No 648/2012

Article 81 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **9** months after the entry into force of this Regulation].

ESMA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date **12** months after the entry into force of this Regulation].

Or. en

Amendment 238

Danuta Maria Hübner

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point a a (new)

Regulation (EU) No 648/2012

Article 85 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(aa) paragraph 1a is inserted :

1a. By [three years after the entry into force of this amending Regulation], ESMA shall submit a report to the

European Parliament, to the Council and to the Commission analysing the impact on market participants of the changes introduced by this amending Regulation to the reporting regime. The report shall in particular assess the take up and implementation of the respective provisions allowing the delegation of reporting to financial counterparties and requiring reporting of contracts by CCPs and investigate whether those new provisions have had the intended effect of reducing the reporting burden for smaller counterparties. It shall also investigate how those new provisions have affected the competition between trade repositories and whether and to what extent they have resulted in a less competitive environment and less freedom of choice for clearing members and their clients.

Or. en

Amendment 239

Jakob von Weizsäcker, Pervenche Berès

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 1

Text proposed by the Commission

By [PO please add date of entry into force + **2 years**], the Commission shall prepare a report assessing whether viable technical solutions have been developed for the transfer by PSAs of cash and non-cash collateral as variation margins and the need for any measures to facilitate those technical solutions.

Amendment

By [PO please add date of entry into force **of this amending Regulation + 6 months**] **and every 6 months thereafter until the clearing exemption expires**, the Commission shall prepare a report assessing whether viable technical solutions have been developed for the transfer by PSAs of cash and non-cash collateral as variation margins and the need for any measures to facilitate those technical solutions.

Or. en

Amendment 240

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 1

Text proposed by the Commission

By [PO please add date of entry into force + 2 years], the Commission shall prepare a report assessing whether viable technical solutions have been developed for the transfer by PSAs of cash and non-cash collateral as variation margins and the need for any measures to facilitate those technical solutions.

Amendment

By ... [*one year following the entry into force of this amending Regulation*], and every year until three years following the date of entry into force of this amending Regulation, the Commission shall prepare a report assessing whether viable technical solutions have been developed for the transfer by PSAs of cash and non-cash collateral as variation margins and the need for any measures to facilitate those technical solutions.

Or. en

Amendment 241

Caroline Nagtegaal, Morten Løkkegaard, Petr Ježek, Wolf Klinz

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 1

Text proposed by the Commission

By [*PO please add* date of entry into force + 2 years], the Commission shall prepare a report assessing whether viable technical solutions have been developed for the transfer by PSAs of cash and non-cash collateral as variation margins and the need for any measures to facilitate those technical solutions.

Amendment

By ... [*one year following the* date of entry into force *of this amending Regulation*] and every year thereafter until ... [*three years following the date of entry into force of this amending Regulation*], the Commission shall prepare a report assessing whether viable technical solutions have been developed for the transfer by PSAs of cash and non-cash collateral as variation margins and the need

for any measures to facilitate those technical solutions.

Or. en

Amendment 242

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 1

Text proposed by the Commission

By [PO please add date of entry into force + 2 years], the Commission shall prepare a report assessing whether viable technical solutions have been developed for the transfer by PSAs of cash and non-cash collateral as variation margins and the need for any measures to facilitate those technical solutions.

Amendment

By [PO please add date of entry into force ***of this amending Regulation*** + 4 years], the Commission shall prepare a report assessing whether viable technical solutions have been developed for the transfer by PSAs of cash and non-cash collateral as variation margins and the need for any measures to facilitate those technical solutions.

Or. en

Amendment 243

Esther de Lange, Caroline Nagtegaal

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 1

Text proposed by the Commission

By [PO please add date of entry into force + 2 years], the Commission shall prepare a report assessing whether viable technical solutions have been developed for the transfer by PSAs of cash and non-cash collateral as variation margins and the need for any measures to facilitate those technical solutions.

Amendment

By [PO please add date of entry into force ***of this amending Regulation*** + 2 years], the Commission shall prepare a report assessing whether viable technical solutions have been developed for the transfer by PSAs of cash and non-cash collateral as variation margins and the need for any measures to facilitate those

technical solutions. *The report shall, if appropriate, be accompanied by a legislative proposal establishing rules for the equal treatment of high-quality government bonds collateral compared to cash collateral posted as variation margins.*

Or. en

Amendment 244

Jakob von Weizsäcker, Pervenche Berès

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

ESMA shall, by [PO please add date of entry into force + **18 months**], in cooperation with EIOPA, EBA and the ESRB, submit a report to the Commission, assessing the following:

Amendment

ESMA shall, by [PO please add date of entry into force *of this amending Regulation* + **6 months**] *and every 6 months thereafter until the clearing exemption expires*, in cooperation with EIOPA, EBA and the ESRB, submit a report to the Commission, assessing the following:

Or. en

Amendment 245

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

ESMA shall, by [**PO please add** date of entry into force + **18 months**], in cooperation with EIOPA, EBA and the

Amendment

ESMA shall, by [**six months following the** date of entry into force *of this amending Regulation*] *and every year thereafter*

ESRB, submit a report to the Commission, assessing the following:

until ... [three years following the date of entry into force of this Regulation] in cooperation with EIOPA, EBA and the ESRB, submit a report to the Commission, assessing the following:

Or. en

Amendment 246

Caroline Nagtegaal, Morten Løkkegaard, Petr Ježek, Wolf Klinz

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

ESMA shall, by [***PO please add*** date of entry into force + ***18 months***], in cooperation with EIOPA, EBA and the ESRB, submit a report to the Commission, assessing the following:

Amendment

ESMA shall, by ... [***six months following the date of entry into force of this amending Regulation, and every year thereafter until ... [three years following the date of entry into force of this amending Regulation]***], in cooperation with EIOPA, EBA and the ESRB, submit a report to the Commission, assessing the following:

Or. en

Amendment 247

Jakob von Weizsäcker, Pervenche Berès

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) whether CCPs, clearing members and PSAs have developed viable technical solutions facilitating the participation of PSAs in central clearing by posting cash and non-cash collateral as variation

Amendment

(a) whether CCPs, clearing members and PSAs have ***undertaken an appropriate effort and*** developed viable technical solutions facilitating the participation of PSAs in central clearing by posting cash

margins, including the implications of those solutions on market liquidity and procyclicality;

and non-cash collateral as variation margins, including the implications of those solutions on market liquidity and procyclicality *and their potential legal and further implications*;

Or. en

Amendment 248

Caroline Nagtegaal, Morten Løkkegaard, Petr Ježek

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

The Commission shall adopt a delegated act in accordance with Article 82 to extend the three-year period referred to in Article 89(1) once, by two years, where it concludes that no viable technical solution has been developed and that the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners remains unchanged.;

deleted

Or. en

Amendment 249

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

The Commission shall adopt a delegated act in accordance with Article 82 to extend the three-year period referred to in

deleted

Article 89(1) once, by two years, where it concludes that no viable technical solution has been developed and that the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners remains unchanged.;

Or. en

Amendment 250

Jakob von Weizsäcker, Pervenche Berès

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

The Commission shall adopt a delegated act in accordance with Article 82 to extend the three-year period referred to in Article 89(1) once, by two years, where it concludes that no viable technical solution has been developed and that the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners remains unchanged.; *deleted*

Or. en

Amendment 251

Esther de Lange

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b

Regulation (EU) No 648/2012

Article 85 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

The Commission shall adopt a delegated act in accordance with Article 82 to extend

The Commission shall adopt a delegated act in accordance with Article 82 to extend

the three-year period referred to in Article 89(1) ***once, by two years***, where it concludes that no viable technical solution has been developed and that the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners remains unchanged.;

the three-year period referred to in Article 89(1), where it concludes that no viable technical solution has been developed and that the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners remains unchanged. ***After the adoption of the delegated act referred to in this paragraph, the Commission shall present a legislative proposal establishing rules for the equal treatment of high-quality government bonds collateral compared to cash collateral posted as variation margins;***

Or. en

Amendment 252

Brian Hayes, Kay Swinburne, Petr Ježek

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b a (new)

Regulation (EU) No 648/2012

Article 85 – paragraph 2a (new)

Text proposed by the Commission

Amendment

(ba) paragraph 2a is inserted:

2 a. ESMA shall by [date of entry into force of this amending Regulation+ 12 months] submit a report to the Commission which assesses whether the list of financial instruments that are considered highly liquid with minimal credit and market risk, in accordance with Article 47, could be extended and whether this list could include money market funds as defined in Regulation (EU) 2017/1131.

Or. en

Justification

In order to improve the risk management capabilities of CCPs, ESMA should assess whether CCPs should be allowed to further diversify the range of secured investments by investing in

secured arrangements like money market funds (MMFs) which meet the criteria to be considered highly liquid with minimal credit and market risk.

Amendment 253

Neena Gill

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point b a (new)

Regulation (EU) No 648/2012

Article 85 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(ba) paragraph 2a is inserted:

2 a. ESMA shall, by [date of entry into force + 12 months], submit a report to the Commission which assesses whether the list of financial instruments that are considered highly liquid with minimal credit and market risk, in accordance with Article 47, could be extended and whether this list could include Money Market Funds as defined in Regulation (EU) 2017/1131.

Or. en

Amendment 254

Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point c

Regulation (EU) No 648/2012

Article 83 – paragraph 3

Text proposed by the Commission

Amendment

3. By [PO please add 6 months before the date referred to in paragraph 1] ESMA shall report to the Commission on the following:

(a) whether viable technical solutions have been developed that facilitate the participation of PSAs in central clearing

3. After the five year period referred to in Article 89(1) the Commission shall:

(a) submit a proposal for a binding solution if it considers that no solution has been found by stakeholders;

and the impact of those solutions on the level of central clearing by PSAs, taking into account the report referred to in paragraph 2;

(b) the impact of this Regulation on the level of clearing by non-financial counterparties and the distribution of clearing within the non-financial counterparty class, especially with regard to the appropriateness of the clearing thresholds referred to in Article 10(4);

(c) the impact of this Regulation on the level of clearing by financial counterparties other than those subject to Article 4a(2) and the distribution of clearing within that financial counterparty class, especially with regard to the appropriateness of the clearing thresholds referred to in Article 10(4);

(d) the improvement of the quality of transaction data reported to trade repositories, the accessibility of those data and the quality of the information received from trade repositories in accordance with Article 81;

(e) the accessibility of clearing by counterparties.;

(b) adopt a delegated act in accordance with Article 82 to extend the five-year period referred to in Article 89 (1) once, by two years, if it considers that a solution is within reach of the stakeholders and that additional time is needed for its finalization;

(c) let the exemption lapse, while encouraging stakeholders to implement their solution beforehand if it considers that a solution has been found;

(d) grant a permanent exemption for PSAs.

Or. en

Amendment 255

Caroline Nagtegaal, Morten Løkkegaard, Petr Ježek, Wolf Klinz

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point c

Regulation (EU) No 648/2012

Article 85 – paragraph 3

Text proposed by the Commission

3. *By [PO please add 6 months before the date referred to in paragraph 1] ESMA shall report to the Commission on the following:*

(a) *whether viable technical solutions*

Amendment

3. *After the three-year period referred to in Article 89(1) the Commission shall:*

(a) *submit a proposal for a binding*

have been developed that facilitate the participation of PSAs in central clearing and the impact of those solutions on the level of central clearing by PSAs, taking into account the report referred to in paragraph 2;

(b) the impact of this Regulation on the level of clearing by non-financial counterparties and the distribution of clearing within the non-financial counterparty class, especially with regard to the appropriateness of the clearing thresholds referred to in Article 10(4);

(c) the impact of this Regulation on the level of clearing by financial counterparties other than those subject to Article 4a(2) and the distribution of clearing within that financial counterparty class, especially with regard to the appropriateness of the clearing thresholds referred to in Article 10(4);

(d) the improvement of the quality of transaction data reported to trade repositories, the accessibility of those data and the quality of the information received from trade repositories in accordance with Article 81;

(e) the accessibility of clearing by counterparties.;

solution if it considers that no solution has been found by stakeholders;

(b) adopt a delegated act in accordance with Article 82 to extend the three-year period referred to in Article 89(1) once, by two years, if it considers that a solution is within reach of the stakeholders and that additional time is needed for its finalization;

(c) let the exemption lapse, while encouraging stakeholders to implement their solution beforehand if it considers that a solution has been found.

Or. en

Amendment 256

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point c

Regulation (EU) No 648/2012

Article 85 – paragraph 3

Text proposed by the Commission

3. *By [PO please add 6 months before the date referred to in paragraph 1]*

Amendment

3. *At the end of the three-year period referred to in Article 89(1) the Commission*

ESMA shall report to the Commission on the following:

shall let the exemption lapse.

(a) whether viable technical solutions have been developed that facilitate the participation of PSAs in central clearing and the impact of those solutions on the level of central clearing by PSAs, taking into account the report referred to in paragraph 2;

(b) the impact of this Regulation on the level of clearing by non-financial counterparties and the distribution of clearing within the non-financial counterparty class, especially with regard to the appropriateness of the clearing thresholds referred to in Article 10(4);

(c) the impact of this Regulation on the level of clearing by financial counterparties other than those subject to Article 4a(2) and the distribution of clearing within that financial counterparty class, especially with regard to the appropriateness of the clearing thresholds referred to in Article 10(4);

(d) the improvement of the quality of transaction data reported to trade repositories, the accessibility of those data and the quality of the information received from trade repositories in accordance with Article 81;

(e) the accessibility of clearing by counterparties.;

Or. en

Amendment 257

Jakob von Weizsäcker

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point c

Regulation (EU) No 648/2012

Article 85 – paragraph 3 – point c

Text proposed by the Commission

Amendment

(c) the impact of this Regulation on the level of clearing by financial counterparties other than those subject to Article 4a(2) and the distribution of clearing within that financial counterparty class, especially with regard to the appropriateness of the clearing thresholds referred to in Article 10(4);

(c) the impact of this Regulation on the level of clearing by financial counterparties other than those subject to Article 4a(2) and the distribution of clearing within that financial counterparty class, especially with regard to the appropriateness of the clearing thresholds referred to in Article 4 (3a);

Or. en

Amendment 258

Kay Swinburne, Markus Ferber, Werner Langen

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point c a (new)

Regulation (EU) No 648/2012

Article 85 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(ca) paragraph 5a is inserted:

5a. By 12 months after entry into force of this amending Regulation, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council assessing whether the alignment of the changes made to the clearing obligation for derivatives, in particular the scope of entities subject to the clearing obligation as well as the suspension mechanism, with the provisions for the trading obligation for derivatives in Regulation No 600/2014 is functioning.

Or. en

Amendment 259

Danuta Maria Hübner

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point c a (new)

Regulation (EU) No 648/2012

(ca) The following paragraph 5a is inserted:

5a. By [18months after the entry into force of this amending Regulation] the Commission shall prepare a report assessing whether trades directly resulting from post-trade risk reduction services, including portfolio compression, should be exempted from the clearing obligation referred to in Article 4(1). This report shall analyse in particular the extent to which those trades mitigate risks, in particular counterparty credit risk and operational risk, as well as the potential for circumvention of the clearing obligation through those trades.

The Commission shall submit that report to the European Parliament and the Council, together with any appropriate proposals.

For the purpose of informing the report referred to in the first subparagraph, by [12 months after the entry into force of this amending Regulation], ESMA shall, in cooperation with the ESRB, submit a report to the Commission assessing whether trades directly resulting from post-trade risk reduction services should be exempted from the clearing obligation. This report shall investigate portfolio compression and other available non-price forming post-trade risk reduction services which reduce non-market risks in derivatives portfolios without changing the market risk of the portfolios, such as rebalancing transactions. It shall explain the purposes and functioning of such post-trade risk reduction services, the extent to which they mitigate risks, in particular counterparty credit risk and operational risk, and assess the need to clear such trades, or to exempt them from clearing, in order to manage systemic risk. It shall also assess to what extent any

exemption from the clearing obligation for such services may lead to counterparties circumventing the clearing obligation.

Or. en

Amendment 260

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point c a (new)

Regulation (EU) No 648/2012

Article 85 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. ESMA shall, by ... [18 months following the date of entry into force of this amending Regulation], in cooperation with EIOPA, EBA and the ESRB, submit a report to the Commission, assessing whether the FRAND principle referred to in paragraph 3a of Article 4 has been effective in facilitating access to clearing. The Commission, by [insert date of entry into force + 2 years], shall present a report to the European Parliament and the Council assessing whether the FRAND principle has been effective in facilitating access to clearing and proposing, where necessary, improvements to that principle. That report shall consider the findings of the report referred to in the first subparagraph and be accompanied by a legislative proposal, where appropriate.

Or. en

Amendment 261

Markus Ferber

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point c a (new)
Regulation (EU) No 648/2012
Article 85 – paragraph 5 a new

Text proposed by the Commission

Amendment

(ca) The following paragraph 5a is inserted:

5a. By ... [six months after entry into force of this amending Regulation] the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council addressing the question if an alignment of the changes made to the clearing obligation for derivatives, in particular the scope of entities subject to the clearing obligation as well as the suspension mechanism, with the trading obligation for derivatives under Regulation No 600/2014 would be desirable. If such an alignment is deemed necessary and appropriate, the report shall be accompanied by a legislative proposal introducing the necessary changes.

Or. en

Justification

The clearing obligation for derivatives in EMIR and the trading obligation for derivatives in MiFIR should be closely aligned. Therefore the Commission should assess whether the changes made to the clearing obligation for derivatives via this regulation, in particular regarding the scope of entities subject to the clearing obligation as well as the suspension mechanism, should also be made to the trading obligation for derivatives as outlined in regulation No 600/2014 (MiFIR).

Amendment 262
Kay Swinburne

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point c b (new)
Regulation (EU) No 648/2012
Article 85 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

(cb) paragraph 5b is inserted:

5b. Based on the findings of the European Commission public consultation on fitness check on supervisory reporting published on 1 December 2017, the Commission shall, by [12 months following the entry into force of this Regulation], review and report on the application of Article 9(1a). The Commission shall submit that report to the European Parliament and the Council, together with any appropriate legislative proposal. When reviewing the application of Article 9(1a) the Commission shall assess whether the obligation to report transactions under Article 26 of Regulation (EU) No 600/2014 creates unnecessary duplication of transaction reporting for non-OTC derivatives and whether the requirement to report non-OTC transactions under Article 9(1a) could be reduced without undue loss of information with a view to simplifying the reporting chains for non-OTC derivatives for all counterparties, in particular for non-financial counterparties not subject to the clearing obligation referred to in the second subparagraph of Article 10(1).

In addition, ESMA shall, by [12 months after entry into force], in cooperation with the ESRB, submit a report to the Commission, assessing the following:

(a) the consistency between the reporting obligations for non OTC derivatives under Regulation (EU) No 600/2014 and under Article 9 of this Regulation, both in terms of details of the derivatives contract reported and access to data by the relevant entities;

(b) whether it is possible to align the reporting requirements for non OTC derivatives under Regulation (EU) No 600/2014 and under Article 9 of this Regulation both in terms of details of the derivatives contract reported and access to data by the relevant entities.

(c) the feasibility to simplify the reporting chains for all counterparties including all indirect clients, taking into account the need for the timely reporting and the provisions adopted pursuant to Article 4(4) of this Regulation and Article 30(2) of Regulation 600/2014.

Or. en

Amendment 263
Kay Swinburne

Proposal for a regulation
Article 1 – paragraph 1 – point 20
Regulation (EU) No 648/2012
Article 89 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Until [PO please add date of entry into force + 3 years], the clearing obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of PSAs, and to entities established to provide compensation to members of PSAs in case of a default of a PSA.;

Amendment

1. Until [date of entry into force + 5 years], the clearing obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of PSAs, and to entities established to provide compensation to members of PSAs in case of a default of a PSA.;

Or. en

Amendment 264
Jörg Meuthen

Proposal for a regulation
Article 1 – paragraph 1 – point 20
Regulation (EU) No 648/2012
Article 89 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Until [PO please add date of entry into force + 3 years], the clearing

Amendment

1. Until [date of entry into force + 5 years], the clearing obligation set out in

obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of PSAs, and to entities established to provide compensation to members of PSAs in case of a default of a PSA.;

Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of PSAs, and to entities established to provide compensation to members of PSAs in case of a default of a PSA.;

Or. en

Amendment 265

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 20

Regulation (EU) No 648/2012

Article 89 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Until [PO please add date of entry into force + 3 years], the clearing obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of PSAs, and to entities established to provide compensation to members of PSAs in case of a default of a PSA.;

Amendment

1. Until [date of entry into force + 3 years], the clearing obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of PSAs, and to entities established to provide compensation to members of PSAs in case of a default of a PSA. ***PSAs, CCPs and clearing members shall make their best efforts to contribute to the development of technical solutions that facilitate the clearing of such OTC derivative contracts by PSAs. The Commission shall set up an expert group made up of representatives of PSAs, CCPs, clearing members and other relevant parties to such technical solutions to monitor their efforts and assess the progress made in the development of technical solutions that facilitate the clearing of such OTC derivative contracts by PSAs. That expert group shall meet at least every six months. The Commission shall consider the efforts made by PSAs, CCPs and clearing***

members when drafting its reports pursuant to the first subparagraph of Article 85(2).

Or. en

Amendment 266

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 20 a (new)

Regulation (EU) No 648/2012

Article 89 – paragraph 9 a (new)

Text proposed by the Commission

Amendment

(20a) In Article 89, paragraph 9a is inserted:

9a. Whenever derivatives contracts are subject to the clearing obligation set out in Article 4, any phase-in period established in accordance with Article 5(2)(b) shall be completed by 1 July 2019.

Or. en

Amendment 267

Kay Swinburne, Markus Ferber, Werner Langen

Proposal for a regulation

Article 1 a (new)

Regulation (EU) No 600/2014

Article 28 – paragraph 1

Present text

Amendment

Article 1a

Article 28(1) of Regulation (EU) No 600/2014 is replaced by the following:

1. Financial counterparties as defined in Article 2(8) of Regulation (EU) No 648/2012 and non-financial counterparties that meet the conditions referred to in

1. Financial counterparties as defined in Article 2(8) of Regulation (EU) No 648/2012 *that are subject to the clearing obligation pursuant to Article 4a of that*

Article 10(1)(b) thereof shall conclude transactions which are neither intragroup transactions as defined in Article 3 of that Regulation nor transactions covered by the transitional provisions in Article 89 of that Regulation with other such financial counterparties or other such non-financial counterparties that meet the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012 in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation in accordance with the procedure set out in Article 32 and listed in the register referred to in Article 34 only on:

- (a) regulated markets;
- (b) MTFs;
- (c) OTFs; or
- (d) third-country trading venues, provided that the Commission has adopted a decision in accordance with paragraph 4 and provided that the third country provides for an effective equivalent system for the recognition of trading venues authorised under Directive 2014/65/EU to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis.

Regulation and non-financial counterparties that meet the conditions referred to in Article 10(1)(b) thereof shall conclude transactions which are neither intragroup transactions as defined in Article 3 of that Regulation nor transactions covered by the transitional provisions in Article 89 of that Regulation with other such financial counterparties or other such non-financial counterparties that meet the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012 in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation in accordance with the procedure set out in Article 32 and listed in the register referred to in Article 34 only on:

- (a) regulated markets;
- (b) MTFs;
- (c) OTFs; or
- (d) third-country trading venues, provided that the Commission has adopted a decision in accordance with paragraph 4 and provided that the third country provides for an effective equivalent system for the recognition of trading venues authorised under Directive 2014/65/EU to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis.

Non-financial counterparties that meet the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012 shall only be subject to the obligation to trade on regulated markets, MTFs or OTFs in relation to the transactions in asset classes to which they are subject to a clearing obligation under that Regulation.

Or. en

Amendment 268
Anne Sander, Alain Lamassoure

Proposal for a regulation
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Regulation shall apply from [PO please add the date 6 months after the entry into force].

Or. en

Amendment 269
Petr Ježek

Proposal for a regulation
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Regulation shall apply from [3 months following the entry into force of this amending Regulation].

Or. en

Amendment 270
Anne Sander, Alain Lamassoure

Proposal for a regulation
Article 2 – paragraph 2

Text proposed by the Commission

Amendment

Article 1(3), Article 1(7)(d), and paragraphs 8, 10, and 11 of Article 1 shall apply from [PO please add the date 6 months after the entry into force] and Article 1(2)(c), Article 1(7)(e), Article 1(9), points (b) and (c) of Article 1(12) and Article 1(16) shall apply from [PO please add the date 18 months after the entry into force].

Notwithstanding the subparagraph 1a, Article 1(7)(d), and paragraphs 8, 10, and 11 of Article 1 shall apply from [6 months after the entry into force] and Article 1(2)(c), Article 1(7)(e), Article 1(9), points (b) and (c) of Article 1(12) and Article 1(16) shall apply from [18 months after the entry into force].

Or. en

Amendment 271

Petr Ježek

Proposal for a regulation

Article 2 – paragraph 2

Text proposed by the Commission

Article 1(3), Article 1(7)(d), and paragraphs 8, 10, and 11 of Article 1 shall apply from [PO please add the date 6 months after the entry into force] and Article 1(2)(c), Article 1(7)(e), Article 1(9), points (b) and (c) of Article 1(12) and Article 1(16) shall apply from [PO please add the date 18 months after the entry into force].

Amendment

Notwithstanding the subparagraph 1a, the following shall apply: Article 1(3), Article 1(7)(d), and paragraphs 8, 10, and 11 of Article 1 shall apply from [PO please add the date 6 months after the entry into force] and Article 1(2)(c), Article 1(7)(e), Article 1(9), points (b) and (c) of Article 1(12) and Article 1(16) shall apply from [18 months after the entry into force].

Or. en

Amendment 272

Caroline Nagtegaal, Morten Løkkegaard, Petr Ježek, Wolf Klinz

Proposal for a regulation

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

If this Regulation enters into force after 16 August 2018, then Article 89(1) shall apply retrospectively to all OTC derivative contracts executed by PSAs after 16 August 2018 and before the date of entry into force of this Regulation.

Or. en

Amendment 273

Jakob von Weizsäcker, Jonás Fernández

Proposal for a regulation

Annex 1 – paragraph 1 – point -1

Regulation (EU) No 648/2012

Annex I – Section I – point d a (new)

Text proposed by the Commission

Amendment

(-1) In Section I, the following point (da) is added:

(da) a trade repository infringes Article 78(4a) by not identifying and implementing effective information security controls, to ensure confidentiality, integrity and availability of its processes and data;

Or. en

Amendment 274

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Annex 1 – paragraph 1 – point 2

Regulation (EU) No 648/2012

Annex I – section IV – point d

Text proposed by the Commission

Amendment

(d) a trade repository infringes Article 55(4) by not notifying ESMA in due time of material changes to the conditions for its registration..

(d) a trade repository infringes Article 55(4) by not notifying ESMA in due time of material changes to the conditions for its registration **or of periodic information relating to its financial information and risk and compliance reports.**

Or. en

Amendment 275

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Annex 1 – paragraph 2 a (new)

Regulation (EU) No 648/2012

Annex II – section I – point b

Present text

Amendment

(b) if the infringement has been committed for more than **six months**, a coefficient of 1,5 shall apply;

Annex II, section I, point b is amended as follows:

"(b) if the infringement has been committed for more than **one month**, a coefficient of 1,5 shall apply;"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0648>)

Amendment 276

Jakob von Weizsäcker

Proposal for a regulation

Annex 1 – paragraph 2 a (new)

Regulation (EU) No 648/2012

Annex II – Section I – point b

Present text

Amendment

(b) if the infringement has been committed for more than **six months**, a coefficient of 1,5 shall apply;

Annex II, section I, point b is amended as follows:

"(b) if the infringement has been committed for more than **one month**, a coefficient of 1,5 shall apply;"

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012R0648&qid=1519747597556&from=DE>)

Amendment 277

Jakob von Weizsäcker

Proposal for a regulation

Annex 1 – paragraph 2 b (new)

Regulation (EU) No 648/2012

Annex II – Section II – point (a)

Present text

Amendment

(a) if the infringement has been committed

Annex II, section II, point a is amended as follows:

"(a) if the infringement has been

for less than **10 working days**, a coefficient
of 0,9 shall apply;

committed for less than **24 hours**, a
coefficient of 0,9 shall apply;"

Or. en

([http://eur-lex.europa.eu/legal-
content/EN/TXT/HTML/?uri=CELEX:32012R0648&qid=1519747597556&from=DE](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012R0648&qid=1519747597556&from=DE))