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Committee on Economic and Monetary Affairs

2014/0017(COD)

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council
on reporting and transparency of securities financing transactions
(COM(2014)0040 – C7-0023/2014 – (2014)0017(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Renato Soru

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ¶ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	48

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on reporting and transparency of securities financing transactions (COM(2014)0040 – C8-0023(2014) – (2014)0017(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2014)0040),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0023(2014)),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank of 7 July 2014¹,
 - having regard to the opinion of the European Economic and Social Committee of 10 July 2014²,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2015),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

Amendment

(1) The 2008 global financial crisis

(1) The 2008 global financial crisis

¹ OJ C 451 of 16.12.2014, p. 56.

² OJ C 271 of 19.8.2014, p. 87.

revealed important regulatory gaps, ineffective supervision, opaque markets and overly-complex products in the financial system. The Union has adopted a range of measures in order to render the banking system more solid and more stable, including strengthening capital requirements, rules on improved governance and supervision and resolution regimes. The progress made on the establishment of the banking union is also decisive in this context. However, the crisis also highlighted the need to improve transparency and monitoring not only in the traditional banking sector but also in areas where non-bank credit activities take place, called ‘shadow banking’.

revealed important regulatory gaps, ineffective supervision, opaque markets and overly-complex products in the financial system. The Union has adopted a range of measures in order to render the banking system more solid and more stable, including strengthening capital requirements, rules on improved governance and supervision and resolution regimes. The progress made on the establishment of the banking union is also decisive in this context. However, the crisis also highlighted the need to improve transparency and monitoring not only in the traditional banking sector but also in areas where non-bank credit activities take place, called "shadow banking". ***Excessive leveraging of the financial system, in particular when this excess results in increased shadow banking activities, should be tackled in order to prevent a repeat of a major financial crisis.***

Or. en

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) In the context of its work to curb shadow banking, the Financial Stability Board (the ‘**FSB**’) and the European Systemic Risk Board (the ‘**ESRB**’) have identified the risks that securities financing transactions (‘**SFTs**’) pose. SFTs allow for the build-up of leverage, pro-cyclicality and interconnectedness in the financial markets. In particular, a lack of transparency in the use of **securities financing transactions (‘SFTs’) and other financing structures** has prevented regulators and supervisors as well as investors from correctly assessing and

Amendment

(2) In the context of its work to curb shadow banking, the Financial Stability Board (the "**FSB**") and the European Systemic Risk Board (the "**ESRB**") have identified the risks that securities financing transactions ("**SFTs**") pose. SFTs, ***including repurchase transactions, securities or commodities lending, securities or commodities borrowing, buy-sell back or sell-buy back transactions, and collateral swap transactions,*** allow for the build-up of leverage, pro-cyclicality and interconnectedness in the financial markets. In particular, a lack of

monitoring the respective bank-like risks and level of interconnectedness in the financial system in the period preceding and during the financial crisis. Against this background, on 29 August 2013, the FSB adopted a policy framework for addressing shadow banking risks in securities lending and repos. This was subsequently endorsed in September 2013 by the G20 Leaders.

transparency in the use of *SFTs* has prevented regulators and supervisors as well as investors from correctly assessing and monitoring the respective bank-like risks and level of interconnectedness in the financial system in the period preceding and during the financial crisis. Against this background, on 29 August 2013, the FSB adopted a policy framework for addressing shadow banking risks in securities lending and repos. This was subsequently endorsed in September 2013 by the G20 Leaders.

Or. en

Amendment 3

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Subsequently, on 14 October 2014, the FSB published a regulatory framework for haircuts on collateral posted in non-centrally cleared SFTs. In the absence of clearing, such operations raise major risks if they are not properly collateralised. While enhancing transparency on the re-use of collateral would be a first step towards facilitating counterparties' capacity to analyse and prevent risks, the FSB also considered it necessary to propose further reforms in the area of haircuts and margin requirements to the effect that market participants should apply haircuts on assets received as collateral for non-centrally cleared SFTs with non-banks. These proposals are intended to prevent excessive leveraging and mitigate concentration and default risk. The FSB is due to complete its work on those collateral haircuts by 2016, with the development of a final set of recommendations on haircuts for

*collateral delivered in non-centrally
cleared non-bank-to-non-bank STFs.*

Or. en

Amendment 4

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) In March 2012, the Commission published a Green Paper on Shadow Banking. Based on the extensive feedback received and taking into account international developments, the Commission published on 4 September 2013, a Communication to the Council and the European Parliament on Shadow Banking. The Communication stressed that the complex and opaque nature of SFTs makes it difficult to identify counterparties and monitor risk concentration. ***This also*** leads to the built-up of excessive leverage in the financial system.

Amendment

(3) In March 2012, the Commission published a Green Paper on Shadow Banking. Based on the extensive feedback received and taking into account international developments, the Commission published on 4 September 2013, a Communication to the Council and the European Parliament on Shadow Banking. The Communication stressed that the complex and opaque nature of SFTs makes it difficult to identify counterparties and monitor risk concentration. ***The Communication also concluded that this*** leads to the built-up of excessive leverage in the financial system.

Or. en

Amendment 5

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) This Regulation responds to the need to enhance transparency of securities financing markets and thus of the financial system. In order to ensure equivalent conditions of competition and international convergence, this Regulation ***follows*** the FSB Recommendations. It creates a Union

Amendment

(6) This Regulation responds to the need to enhance transparency ***and control*** of securities financing markets and thus of the financial system. In order to ensure equivalent conditions of competition and international convergence, this Regulation ***aims to follow*** the FSB Recommendations

framework under which information on SFTs can be efficiently reported to trade repositories and investors. This need for international convergence is reinforced by the probability that following structural reform of the Union banking sector activities that are currently exercised by traditional banks might migrate to the shadow banking sector and encompass financial and non-financial entities.

Therefore, even less transparency may arise for regulators and supervisors in respect of those activities, **preventing them from obtaining** a proper overview of the risks linked to securities financing transactions. This would only aggravate already well-established links between the regulated and the shadow banking sectors in particular markets.

1, 2, 5, 7, 12, 13 and 14. It creates a Union framework under which information on SFTs **carried out by all financial and non-financial counterparties (except by central banks and counterparties of trades with central banks)** can be efficiently reported to trade repositories and investors **and under which the haircuts for the collateral posted under these SFTs should be properly calculated and thresholds for these haircuts adequately applied.** This need for international convergence is reinforced by the probability that following structural reform of the Union banking sector activities that are currently exercised by traditional banks might migrate to the shadow banking sector and encompass financial and non-financial entities.

Accordingly, a need for greater transparency may arise for regulators and supervisors in respect of those activities, **which would allow them to obtain** a proper overview of the risks linked to securities financing transactions. This would **serve to counteract the** already well-established links between the regulated and the shadow banking sectors in particular markets.

Or. en

Amendment 6

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) The new rules on transparency therefore provide for the reporting of details regarding SFTs concluded by all market participants, whereas they are financial or non-financial entities, including the composition of the underlying collateral, if the underlying collateral is available for use or has been used, and the haircuts applied. **For reasons**

Amendment

(8) The new rules on transparency therefore provide for the reporting of details regarding SFTs concluded by all market participants, whereas they are financial or non-financial entities, including the composition of the underlying collateral, if the underlying collateral is available for use or has been used, and the haircuts applied. **With a view**

of efficiency, respective operational costs for market participants *should be minimised and, thus,* the new rules should build on pre-existing infrastructures and processes. *Therefore, it is important that* this legal framework is, to the extent possible, identical to that of Regulation (EU) No 648/2012/EC of the European Parliament and of the Council in respect of the reporting of derivative contracts to trade repositories registered for that purpose. This should also enable trade repositories authorised in accordance with Regulation *(EU) No 648/2012/EC* to fulfil the repository function assigned by the new rules, if they comply with certain additional criteria.

to minimising additional operational costs for market participants, the new rules *and standards* should build on pre-existing infrastructures and processes *which have been introduced in the area of over-the-counter derivatives. For this reason,* this legal framework is, to the extent possible, identical to that of Regulation (EU) No 648/2012/EC of the European Parliament and of the Council in respect of the reporting of derivative contracts to trade repositories registered for that purpose. This should also enable trade repositories authorised in accordance with *that* Regulation to fulfil the repository function assigned by the new rules, if they comply with certain additional criteria, *including third-country trade repositories*

Or. en

Amendment 7

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) SFTs are used extensively by fund managers for efficient portfolio management. This use can have a significant impact on the performance of those funds. They can be used either to fulfil investment objectives or to enhance returns. Managers also have the possibility to use other financing structures that have effects equivalent to SFTs. Those other financing structures include total return swaps, liquidity swaps or collateral swaps. They are also extensively used by fund managers to get exposure to certain strategies or to enhance the returns. Both SFTs and other financing structures have in common that they increase the general risk profile of the fund whereas their use is not properly disclosed to investors. It is crucial

Amendment

(11) SFTs are used extensively by *financial and non-financial counterparties, and can represent a risk for such parties.* Fund managers *use SFTs* for efficient portfolio management. This use can have a significant impact on the performance of those funds. They can be used either to fulfil investment objectives or to enhance returns. Managers also have the possibility to use other financing structures that have effects equivalent to SFTs. Those other financing structures include total return swaps, liquidity swaps or collateral swaps. They are also extensively used by fund managers to get exposure to certain strategies or to enhance the returns. Both SFTs and other financing structures have in common that they

to ensure that investors in such funds are able to make informed choices and to assess the overall risk and reward profile of investment funds.

increase the general risk profile of the fund whereas their use is not properly disclosed to investors. It is crucial to ensure that investors in such funds are able to make informed choices and to assess the overall risk and reward profile of investment funds.

Or. en

Amendment 8

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) In addition, SFTs are also used by other financial counterparties, such as credit institutions, and by non-financial counterparties, thereby creating specific risks for those who hold shares or who are clients of these counterparties. Credit institutions should therefore disclose their activities in SFTs. Likewise, listed companies are required to disclose any activities in SFTs to their shareholders, who should be able to make informed choices about the risk profile of the companies in which they invest. Consequently, those credit institutions and listed companies should also inform the public of their activities in SFTs as part of their regular public reports.

Or. en

Amendment 9

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) Re-hypothecation provides liquidity and enables counterparties reducing funding costs. However, it creates complex collateral **chains** between traditional banking and shadow banking, posing financial stability risks. The lack of transparency on the extent to which financial instruments provided as collateral have been **re-hypothecated** and the respective risks in case of bankruptcy can undermine confidence in counterparties and magnify risks to financial stability.

Amendment

(17) **Re-use of financial instruments, including re-hypothecation of client assets**, provides liquidity and enables counterparties reducing funding costs. However, it creates complex **chains of financial collateral arrangements** between traditional banking and shadow banking, posing financial stability risks. The lack of transparency on the extent to which financial instruments provided as collateral have been **re-used** and the respective risks in case of bankruptcy can undermine confidence in counterparties and magnify risks to financial stability. **Furthermore, the lack of a common framework for calculating haircuts on collateral in SFTs hinders the efficient and predictable determination of these haircuts. Setting a common methodology for haircut calculation and establishing a mandatory minimum haircut on collateral should ensure that the risks associated with collateral are properly priced and that collateral is not re-used infinitely. While taking into account the risks of procyclicality of mandatory minimum haircuts, the appropriate regulatory technical standards should also ensure an adequate transposition of the international recommendations developed by the FSB.**

Or. en

Amendment 10

**Proposal for a regulation
Recital 18**

Text proposed by the Commission

(18) This Regulation establishes information rules towards counterparties

Amendment

(18) This Regulation establishes information rules towards counterparties

on **re-hypothecation** which should not prejudice the application of sectorial rules adapted to specific actors, structures and situations. Therefore, the rules on **re-hypothecation** provided for in this Regulation should apply, for example, to funds and depositories only insofar as there are no more stringent rules on re-use foreseen within the framework for investment funds constituting a *lex specialis* and taking precedence over the rules contained in this Regulation. In particular, this Regulation should **be without prejudice to any rule restricting** the ability of counterparties to engage in **re-hypothecation** of financial instruments that are provided as collateral by counterparties or persons other than counterparties.

on **re-use** which should not prejudice the application of sectorial rules adapted to specific actors, structures and situations. Therefore, the rules on **re-use** provided for in this Regulation should apply, for example, to funds and depositories only insofar as there are no more stringent rules on re-use foreseen within the framework for investment funds constituting a *lex specialis* and taking precedence over the rules contained in this Regulation. In particular, this Regulation should **foresee rules on minimum collateral haircuts that may restrict** the ability of counterparties to engage in **re-use** of financial instruments that are provided as collateral by counterparties or persons other than counterparties.

Or. en

Amendment 11

Proposal for a regulation Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) The definition of the term "re-use" in this Regulation seeks to provide alignment with the FSB Recommendations. For the purpose of this Regulation, "re-use" encompasses the concept of re-hypothecation, without prejudice to the use of the term "re-use" elsewhere in legislative acts of the Union, such as in Directive 2014/91/EU.

Or. en

Amendment 12

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) Technical standards in the financial services sector should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it is efficient and appropriate to entrust the ESMA with the elaboration of draft regulatory technical and implementing standards, which do not involve policy choices. ESMA should ensure efficient administrative and reporting processes when drafting technical standards. The Commission should be empowered to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council in the following areas: the details of the different types of SFTs, the details of the application for registration of a trade repository, **and** the frequency and the details of publication of and access to trade repositories' data.

Amendment

(20) Technical standards in the financial services sector should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it is efficient and appropriate to entrust the ESMA with the elaboration of draft regulatory technical and implementing standards, which do not involve policy choices. ESMA should ensure efficient administrative and reporting processes when drafting technical standards. The Commission should be empowered to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council in the following areas: the details of the different types of SFTs, the details of the application for registration of a trade repository, the frequency and the details of publication of and access to trade repositories' data, ***the methodology for calculating haircuts on collateral in certain types of SFTs and the minimum collateral haircuts on collateral in certain types of SFTs.***

Or. en

Amendment 13

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) The Commission should be empowered to adopt implementing technical standards developed by ESMA by means of implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union and in accordance with the procedure set out in Article 15 of Regulation (EU) No 1095/2010 with regard to the format and frequency of the reports, , the format of the application for registration of a trade repository, as well as the procedures and forms for exchange of information on sanctions with ESMA.

Amendment

(21) The Commission should be empowered to adopt implementing technical standards developed by ESMA by means of implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union and in accordance with the procedure set out in Article 15 of Regulation (EU) No 1095/2010 with regard to the format and frequency of the reports, , the format of the application for registration of a trade repository, as well as the procedures and forms for exchange of information on sanctions with ESMA. ***The format for reporting, which is to be developed by ESMA, should be based on the format used for reporting under the Regulation on OTC derivatives, central counterparties and trade repositories (European Market Infrastructure Regulation, the "EMIR").***

Or. en

Amendment 14

Proposal for a regulation

Recital 22

Text proposed by the Commission

(22) 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 amending the list of entities that should be excluded from the scope of this Regulation in order to avoid limiting their power to perform their tasks of common interest; ***specific details concerning definitions***; the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be

Amendment

(22) 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 amending the list of entities that should be excluded from the scope of this Regulation in order to avoid limiting their power to perform their tasks of common interest; ***extending the list of SFTs covered by this Regulation***; the type of fees, the matters for which fees are due, the amount of the fees and the manner in

paid by trade repositories, and of the amendment of the the Annex in order to update information on *SFT as well as other financing structures and* information to investors. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

which they are to be paid by trade repositories, and of the amendment of the the Annex in order to update information on *SFTs and* information to investors. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Or. en

Amendment 15

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) In accordance with the principle of proportionality, it is necessary and appropriate to ensure the transparency of certain market activities such as SFTs, *rehypothecation* and, where appropriate, other financing structures and to enable the monitoring and identification of the corresponding risks to financial stability. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with Article 5(4) of the Treaty on the European Union.

Amendment

(24) In accordance with the principle of proportionality, it is necessary and appropriate to ensure the transparency of certain market activities such as SFTs, *re-use* and, where appropriate, other financing structures and to enable the monitoring and identification of the corresponding risks to financial stability. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with Article 5(4) of the Treaty on the European Union.

Or. en

Amendment 16

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

This Regulation lays down rules on the **transparency** of securities financing transactions (SFTs), **other financing structures and rehypothecation**.

Amendment

This Regulation lays down rules on the **reporting** of securities financing transactions (SFTs), **the public disclosure of the SFTs of investment funds, listed companies and credit institutions SFTs and the conditions and the limitations for the re-use of financial instruments received as collateral**.

Or. en

Amendment 17

Proposal for a regulation

Article 2 – paragraph 1 – point (d)

Text proposed by the Commission

- (d) a counterparty engaging in **rehypothecation** that is established:
- (1) in the Union, including all its branches irrespective of where they are located;
 - (2) in a third country, in either of the following cases:
 - (i.) the **rehypothecation** is effected in the course of the operations of an EU branch;
 - (ii.) the **rehypothecation** concerns financial instruments provided as collateral by a counterparty established in the Union or an EU branch of a counterparty established in a third country.

Amendment

- (d) a counterparty engaging in **re-use** that is established:
- (1) in the Union, including all its branches irrespective of where they are located;
 - (2) in a third country, in either of the following cases:
 - (i.) the **re-use** is effected in the course of the operations of an EU branch;
 - (ii.) the **re-use** concerns financial instruments provided as collateral by a counterparty established in the Union or an EU branch of a counterparty established in a third country.

Or. en

Amendment 18

Proposal for a regulation

Article 2 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. This Regulation shall not apply to:

2. **Articles 4 and 15 of** this Regulation shall not apply to:

Or. en

Amendment 19

Proposal for a regulation

Article 2 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the Bank for International Settlements.

(b) the Bank for International Settlements;

Or. en

Amendment 20

Proposal for a regulation

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

Text proposed by the Commission

Amendment

Articles 4 and 15 of this Regulation shall not apply to transactions to which the bodies listed in points (a) and (b) of the first subparagraph are counterparty.

Or. en

Amendment 21

Proposal for a regulation

Article 2 – paragraph 3 – subparagraph 1a (new)

Text proposed by the Commission

Amendment

To that end, and before adopting such delegated acts, the Commission shall produce a report specifying the reasons

for removing counterparties from, or adding them to, the list set out in paragraph 2 of this Article and analysing the potential effects of such a decision. It shall present this report to the European Parliament and the Council.

Or. en

Amendment 22

Proposal for a regulation

Article 2 – paragraph 3 – subparagraph 1b (new)

Text proposed by the Commission

Amendment

A decision of the Commission to adopted delegated acts in accordance with this Article in order to remove counterparties from the list set out in paragraph 2 shall take into account a comparative analysis of the treatment of these counterparties in third countries.

Or. en

Amendment 23

Proposal for a regulation

Article 3 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

2. 'counterparties' means 'financial counterparties' *and* 'non-financial counterparties' as defined in points (8) and (9) of Article 2 of Regulation (EU) No 648/2012 as well as '**CCPs**' as defined in point (1) of Article 2 of Regulation (EU) No **648/2012**;

2. 'counterparties' means 'financial counterparties', 'non-financial counterparties' *and* '**CCPs**' as defined in points **(1)**, (8) and (9) of Article 2 of Regulation (EU) No 648/2012 as well as '**CSDs**' as defined in point (1) of Article 2 of Regulation (EU) No **909/2014**;

Or. en

Amendment 24

Proposal for a regulation

Article 3 – paragraph 1 – point 6 – indent 3

Text proposed by the Commission

– any transaction having an equivalent economic effect and posing similar risks, in particular a buy-sell back or sell-back transaction;

Amendment

– buy-sell back or sell-buy back transaction or collateral swap transaction;

Or. en

Amendment 25

Proposal for a regulation

Article 3 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

Amendment

6a. – "re-use" means any use by a receiving counterparty of financial instruments delivered in one transaction in order to collateralise another transaction;

Or. en

Amendment 26

Proposal for a regulation

Article 3 – paragraph 1 – point 7

Text proposed by the Commission

Amendment

7. 'rehypothecation' means the use by a receiving counterparty of financial instruments received as collateral in its own name and for its own account or for the account of another counterparty;

deleted

Or. en

Amendment 27

Proposal for a regulation

Article 3 – paragraph 1 – point 7 a (new)

Text proposed by the Commission

Amendment

7a. "title transfer financial collateral arrangement" means a title transfer financial collateral arrangement as defined in point (b) of Article 2(1) of Directive 2002/47/EC;

Or. en

Amendment 28

Proposal for a regulation

Article 3 – paragraph 1 – point 7 b (new)

Text proposed by the Commission

Amendment

7b. "security financial collateral arrangement" means a security financial collateral arrangement as defined in point (c) of Article 2(1) of Directive 2002/47/EC;

Or. en

Amendment 29

Proposal for a regulation

Article 3 – paragraph 1 – point 10 a (new)

Text proposed by the Commission

Amendment

10a. "haircut" is the margin applied by a collateral receiver that is subtracted from the market value of an asset used as collateral.

Amendment 30

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

In order to reflect the evolution of market practices and technological developments, the Commission shall be empowered to adopt delegated acts in accordance with Article 27 ***concerning measures to further specify the*** types of transactions which have an equivalent economic effect and pose similar risks to SFTs ***as*** set out in point (6).

Amendment

The Commission shall be empowered to adopt delegated acts in accordance with Article 27 ***in order to extend the list set out in point (6) of this Article to cover other*** types of transactions which have an equivalent economic effect and pose similar risks to SFTs. ***The Commission shall adopt such delegated acts on the basis of an analysis of the evolution of market practices and technological developments establishing that other types of transactions should be included in the list*** set out in point (6) ***because these transactions have an equivalent economic effect and pose similar risks to SFTs.***

Or. en

Amendment 31

Proposal for a regulation Article 4 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) were concluded before the date referred to in the second ***subparagraph*** of Article 29 and remain outstanding on that date;

Amendment

(a) were concluded before the date ***of application of this paragraph*** referred to in the second ***paragraph*** of Article 28 and remain outstanding on that date;

Or. en

Amendment 32

Proposal for a regulation

Article 4 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

(b) are concluded after the date referred to in the second *subparagraph* of Article 29.

Amendment

(b) are concluded after the date *of application of this paragraph* referred to in the second *paragraph* of Article 28

Or. en

Amendment 33

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

2. Counterparties shall keep a record of any SFT that they have concluded, modified or terminated for at least *ten* years following the termination of the transaction.

Amendment

2. Counterparties shall keep a record of any SFT that they have concluded, modified or terminated for at least *five* years following the termination of the transaction.

Or. en

Amendment 34

Proposal for a regulation

Article 4 – paragraph 4

Text proposed by the Commission

4. Trade repositories and ESMA shall respect the relevant conditions on confidentiality, integrity and protection of information received under this Article set out in Regulation (EU) No 648/2012, in particular Article 80 of Regulation (EU) No 648/2012. References in that article to Article 9 of Regulation (EU) No 648/2012 and to ‘derivative contracts’ shall be read as references to Article 4 of this Regulation

Amendment

4. Trade repositories and ESMA shall respect the relevant conditions on confidentiality, integrity and protection of information received under this Article *and shall comply with the obligations* set out in particular *in Article 80 of Regulation (EU) No 648/2012, and be liable to the relevant fines set out in Article 65* of that Regulation. References in Article 80 of Regulation (EU) No 648/2012 to Article 9 of that same Regulation and to ‘derivative

and 'SFTs' respectively.

contracts' shall be read as references to Article 4 of this Regulation and 'SFTs' respectively.

Or. en

Amendment 35

Proposal for a regulation

Article 4 – paragraph 7 – subparagraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) the individual assets being used as collateral or that are subject to SFTs including, individual assets in the case of transactions collateralised by pools of assets.

Or. en

Amendment 36

Proposal for a regulation

Article 4 – paragraph 7 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the principal amount, currency, type, quality and value of collateral, the method used to provide collateral, where it is available for ***rehypothecation***, if it has been ***rehypothecated***, any substitution of the collateral, the repurchase rate or lending fee, counterparty, haircut, value date, maturity date and first callable date.

(b) the principal amount, currency, type, quality and value of ***the individual assets being used as*** collateral, the method used to provide collateral, where it is available for ***re-use***, if it has been ***re-used***, any substitution of the collateral, the repurchase rate or lending fee, counterparty, haircut, value date, maturity date and first callable date.

Or. en

Amendment 37

Proposal for a regulation

Article 4 – paragraph 7 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication of this Regulation].

Amendment

The technical standards shall take into account the technical specificities of pools of assets in order to facilitate reporting. The technical standards shall ensure compliance with the most recent internationally agreed standards.

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication of this Regulation].

Or. en

Amendment 38

Proposal for a regulation

Article 4 – paragraph 8 – subparagraph 1

Text proposed by the Commission

In order to ensure uniform conditions of application of paragraph 1, ESMA shall, in close cooperation with the ESCB and taking into account its needs, develop draft implementing technical standards specifying the format and frequency of the reports referred to in paragraphs 1 and 3 for the different types of SFTs;

Amendment

ESMA shall, in close cooperation with the ESCB and taking into account its needs, develop draft implementing technical standards ***that ensure uniform conditions of application of paragraph 1 by specifying the format and frequency of the reports referred to in paragraphs 1 and 3 for the different types of SFTs. The format shall include global legal entity identifiers (LEIs) or, until the current interim implementation phase of the Global Legal Entity Identifier System ends, shall include pre-LEIs, international securities identification numbers (ISINs), and a unique trade identifier (UTI) for each transaction, where applicable.***

Or. en

Amendment 39

Proposal for a regulation

Article 5 – paragraph 4

Text proposed by the Commission

4. A trade repository shall submit an application for registration to ESMA.

Amendment

4. A trade repository shall submit an application for registration to ESMA.
Where a trade repository is already registered under Regulation (EU) 648/2012, it shall apply for an extension of services.

Or. en

Amendment 40

Proposal for a regulation

Article 5 – paragraph 6 – subparagraph 1

Text proposed by the Commission

ESMA shall develop draft regulatory technical standards specifying the details of the application for registration referred to in paragraph 4.

Amendment

ESMA shall develop draft regulatory technical standards specifying the details of the application for registration referred to in paragraph 4, ***taking into account the need to prevent duplication of procedures for those trade repositories applying for an extension of services already provided under Regulation (EU) 648/2012.***

Or. en

Amendment 41

Proposal for a regulation

Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where a trade repository has been registered under this Regulation and also

under Regulation (EU) No 648/2012, fees charged by ESMA to the trade repository in accordance with this Regulation shall cover only ESMA's additional necessary expenditure.

Or. en

Amendment 42

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

2. A trade repository shall collect and maintain the details of SFTs and shall ensure that the entities referred to in Article 81(3) of Regulation (EU) No 648/2012, the European Banking authority (EBA) and the European Insurance Occupational Pensions Authority (EIOPA) have direct and immediate access to these details to enable them to fulfil their respective responsibilities and mandates.

Amendment

2. A trade repository shall collect and maintain the details of SFTs and shall ensure that the entities referred to in Article 81(3) of Regulation (EU) No 648/2012, ***including the ECB in the context of carrying out its responsibilities and mandate under the Single Supervisory Mechanism pursuant to Council Regulation (EU) No 1024/2013***, the European Banking authority (EBA) and the European Insurance Occupational Pensions Authority (EIOPA) have direct and immediate access to these details to enable them to fulfil their respective responsibilities and mandates.

Or. en

Amendment 43

Proposal for a regulation Article 12 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) operational standards required in order to aggregate and compare data across repositories;

Amendment

(b) operational standards required in order to aggregate and compare data across repositories ***automatically***;

Amendment 44

Proposal for a regulation

Article 12 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

(c) the details of the information to which the entities referred to in paragraph 2 have access to.

Amendment

(c) the details of the information to which the entities referred to in paragraph 2 have access to, ***depending on their respective responsibilities and mandates.***

Or. en

Amendment 45

Proposal for a regulation

Article 12 – paragraph 3 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the modalities under which the trade repositories shall grant direct and immediate access to the entities referred to in paragraph 2.

Or. en

Amendment 46

Proposal for a regulation

Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. All transfers of data between trade repositories, whether located in the Union or in a third country, and entities referred to in paragraph 2 should be made in accordance with Regulation (EC) No

Amendment 47

Proposal for a regulation
Article 13 – title

Text proposed by the Commission

Amendment

Investment fund's transparency in
periodical reports

Transparency in periodical reports

Amendment 48

Proposal for a regulation
Article 13 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Management companies of UCITS,
UCITS investment companies and AIFMs
shall inform their investors on ***the use they
make of SFTs as well as of other
financing structures:***

1. Management companies of UCITS,
UCITS investment companies and AIFMs
shall inform their investors on ***their use of
SFTs and their re-use of collateral in
SFTs by disclosing all of the information
listed in Section A of the Annex to this
Regulation:***

Amendment 49

Proposal for a regulation
Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

***1a. Credit institutions established in a
Member State and authorised in***

accordance with Directive 2013/36/EC shall inform their shareholders bi-annually, where applicable as part of their half-yearly and annual corporate report, of their use of SFTs and their re-use of collateral in SFTs by disclosing all of the information listed in Section A of the Annex to this Regulation.

Or. en

Amendment 50

Proposal for a regulation Article 13 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Undertakings admitted to trading on a regulated market or on a multilateral trading facility shall inform their shareholders bi-annually, where applicable as part of their half-yearly and annual corporate report, of their use of SFTs and their re-use of collateral in SFTs by disclosing all of the information listed in Section A of the Annex to this Regulation.

Or. en

Amendment 51

Proposal for a regulation Article 13 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 to amend Section A of the Annex in order to reflect the evolution of market practices and technological developments.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 to amend Section A of the Annex in order to reflect the evolution of market practices and technological developments ***and shall also be***

empowered to adopt implementing acts to ensure uniformity in the disclosure of the information referred to in paragraphs 1, 1a and 1b.

Or. en

Amendment 52

Proposal for a regulation Article 14 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 amending Section B of the Annex in order to reflect the evolution of market practices and technological developments.

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 amending Section B of the Annex in order to reflect the evolution of market practices and technological developments *and shall also be empowered to adopt implementing acts to ensure uniformity in the disclosure of the information referred to in paragraphs 1, 1a and 1b.*

Or. en

Amendment 53

Proposal for a regulation Article 15 – title

Text proposed by the Commission

Rehypothecation of financial instruments received as collateral

Amendment

Re-use of financial instruments received as collateral

Or. en

Amendment 54

Proposal for a regulation

Article 15 – paragraph 1 – introductory part

Text proposed by the Commission

1. Counterparties ***shall have the right to rehypothecation*** where at least all the following conditions are fulfilled:

Amendment

1. Counterparties ***may re-use financial instruments received as collateral*** where at least all the following conditions are fulfilled:

Or. en

Amendment 55

Proposal for a regulation

Article 15 – paragraph 1 – point a

Text proposed by the Commission

(a) the providing counterparty has been duly informed in writing by the receiving counterparty of the risks that may be involved in granting consent as referred to in point (b) in particular the potential risks in the event of the default of the receiving counterparty;

Amendment

(a) the providing counterparty has been duly informed in writing by the receiving counterparty of the risks ***and legal consequences*** that may be involved in granting consent as referred to in point (b) in particular the potential risks in the event of the default of the receiving counterparty;

Or. en

Amendment 56

Proposal for a regulation

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

Text proposed by the Commission

Amendment

The condition set out in point (b) shall be deemed fulfilled where the providing counterparty agrees to provide collateral under a title transfer financial collateral arrangement.

Amendment 57

Proposal for a regulation

Article 15 – paragraph 2 – introductory part

Text proposed by the Commission

2. Counterparties **shall** exercise their right to **rehypothecation where** at least all the following conditions are fulfilled:

Amendment

2. Counterparties **may** exercise their right to **re-use only when** at least all the following conditions are fulfilled:

Amendment 58

Proposal for a regulation

Article 15 – paragraph 2 – point a

Text proposed by the Commission

(a) **rehypothecation** is undertaken in accordance with the terms specified in the written agreement referred to in point (b) of paragraph 1;

Amendment

(a) **re-use** is undertaken in accordance with the terms specified in the written agreement referred to in point (b) of paragraph 1;

Amendment 59

Proposal for a regulation

Article 15 – paragraph 2 – point b

Text proposed by the Commission

(b) the financial instruments received as collateral are transferred **to an** account opened in the name of the receiving counterparty.

Amendment

(b) the financial instruments received as collateral are transferred **from the account of the providing counterparty to a separate** account opened in the name of **or held by** the receiving counterparty.

Amendment 60

**Proposal for a regulation
Article 15 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. Counterparties shall follow methodologies to calculate haircuts on an individual asset basis or on a consolidated portfolio basis, depending on the nature of their trading activities.

Or. en

Amendment 61

**Proposal for a regulation
Article 15 – paragraph 3 b (new)**

Text proposed by the Commission

Amendment

3b. In order to ensure the consistent application of paragraph 3a, ESMA, in close cooperation with the European System of Central Banks (ESCB) and taking into account international regulatory developments, shall develop draft regulatory technical standards specifying the methodologies to be used by counterparties to determine:

(a) the appropriate calculation method (individual asset basis or on a consolidated portfolio basis), depending on the type of counterparty and of its trading activities;

(b) the appropriate degree of variation of haircuts to prevent procyclicality;

(c) the minimum time period for historical data to take as reference in calculating haircuts;

(d) the liquidation risk when liquidating large concentrated positions;

(e) the "wrong-way" risk when the exposure to a single counterparty and the probability of default of the issuer of the collateral are positively correlated;

(f) portfolio margin requirements and stress testing of these requirements.

Or. en

Amendment 62

Proposal for a regulation Article 15 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

3c. Credit institutions which engage in non-centrally cleared SFTs with other counterparties that are not credit institutions against collateral other than government securities shall apply minimum numerical haircuts to the collateral received or collect minimum excess margin amounts consistent with the minimum numerical haircuts.

Or. en

Amendment 63

Proposal for a regulation Article 15 – paragraph 3 d (new)

Text proposed by the Commission

Amendment

3d. Institutions other than credit institutions which engage in SFTs with other counterparties that are not credit institutions against collateral other than government securities shall apply minimum numerical haircuts to the

collateral received.

Or. en

Amendment 64

**Proposal for a regulation
Article 15 – paragraph 3 e (new)**

Text proposed by the Commission

Amendment

3e. In order to ensure the consistent application of paragraphs 3c and 3d, ESMA, in close cooperation with the ESCB and EBA and taking into account international regulatory developments and the need for an harmonised international approach, shall develop draft regulatory technical standards specifying:

(a) the haircut levels for corporate and other issuers and for securitised products, depending on the residual maturity of the collateral;

(b) the conditions for exempting cash-collateralised securities lending from the haircut levels;

(c) the conditions for exempting "collateral upgrade" transactions from the haircut levels;

(d) the approach of a competent authority in a Member State to implement these haircut levels, whether at product level or at entity level;

Or. en

Amendment 65

**Proposal for a regulation
Article 15 – paragraph 3 f (new)**

Text proposed by the Commission

Amendment

3f. The technical standards referred to in paragraphs 3b and 3e shall take into account the technical specificities of different counterparties and portfolios. They shall ensure compliance with the most recent internationally agreed standards.

ESMA shall submit those draft regulatory technical standards to the Commission by

... *

Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 3b and 3e in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

*** OJ: please insert the date: 18 months after the publication of this Regulation**

Or. en

Amendment 66

Proposal for a regulation Article 16 – paragraph 1 – point a

Text proposed by the Commission

(a) for financial counterparties, the competent authorities referred to in point (8) of Article 2 of Regulation (EU) No 648/2012;

Amendment

(a) for financial counterparties, the competent authorities **designated in accordance with the legislation** referred to in point (8) of Article 2 of Regulation (EU) No 648/2012;

Or. en

Amendment 67

Proposal for a regulation Article 16 – paragraph 1 – point b

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Text proposed by the Commission

(b) for non-financial counterparties, the competent authorities designated in Article 10(5) of Regulation (EU) No 648/2012;

Amendment

(b) for non-financial counterparties, the competent authorities designated in ***accordance with*** Article 10(5) of Regulation (EU) No 648/2012;

Or. en

Amendment 68

**Proposal for a regulation
Article 16 – paragraph 1 – point d**

Text proposed by the Commission

(d) for central securities depositories, the competent authorities designed in accordance with ***[CSDR]***;

Amendment

(d) for central securities depositories, the competent authorities designed in accordance with ***Article 11 of Regulation (EU) 909/2014;***

Or. en

Amendment 69

**Proposal for a regulation
Article 16 – paragraph 1 – point e**

Text proposed by the Commission

(e) for ***investment funds***, the competent authorities designated in accordance with ***Directive 2009/65/EC and Directive 2011/61/EU.***

Amendment

(e) for ***UCITS and UCITS managing companies***, the competent authorities designated in accordance with ***Article 97 of Directive 2009/65/EC;***

Or. en

Amendment 70

**Proposal for a regulation
Article 16 – paragraph 1 – point e a (new)**

Text proposed by the Commission

Amendment

(ea) for AIFs and AIF managing companies, the competent authorities designated in accordance with Article 44 of Directive 2011/61/EU.

Or. en

Amendment 71

Proposal for a regulation Article 19 – title

Text proposed by the Commission

Amendment

Recognition of trade repositories

Equivalence of supervisory arrangements and recognition of trade repositories

Or. en

Amendment 72

Proposal for a regulation Article 19 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

When the Commission adopts an implementing act on equivalence for a third country, the counterparties entering into a securities financing transaction and located in that third country shall be deemed to have complied with Article 4 of this Regulation if, in respect of the transaction concerned, they comply with the relevant similar reporting obligations of that third country.

Or. en

Amendment 73

Proposal for a regulation

Article 19 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

International agreements that have been concluded between the Union and third countries pursuant to Article 75(2) of Regulation (EU) No 648/2012 shall be amended so that their scope extends also to SFTs.

Or. en

Amendment 74

Proposal for a regulation

Article 19 – paragraph 3 – subparagraph 2 b (new)

Text proposed by the Commission

Amendment

With respect to ongoing negotiations of international agreements between the Union and third countries pursuant to Article 75(2) of Regulation (EU) No 648/2012, the Commission shall request new negotiating directives from the Council in order to extend its negotiating directives granted by the Council in respect of Regulation (EU) No 648/2012.

Or. en

Amendment 75

Proposal for a regulation

Article 19 – paragraph 4

Text proposed by the Commission

Amendment

4. Within 30 working days **of** receipt of the application, ESMA shall assess whether the application is complete. If the

4. Within 30 working days **from the** receipt of the application, ESMA shall assess whether the application is complete. If the

application is not complete, ESMA shall set a deadline by which the applicant trade repository has to provide additional information.

application is not complete, ESMA shall set a deadline by which the applicant trade repository has to provide additional information.

Or. en

Amendment 76

Proposal for a regulation Article 19 – paragraph 5

Text proposed by the Commission

5. Within 180 working days **of** the submission of a complete application, ESMA shall inform the applicant trade repository in writing with a fully reasoned explanation whether the recognition has been granted or refused.

Amendment

5. Within 180 working days **from** the submission of a complete application, ESMA shall inform the applicant trade repository in writing with a fully reasoned explanation whether the recognition has been granted or refused.

Or. en

Amendment 77

Proposal for a regulation Article 19 – paragraph 7

Text proposed by the Commission

7. By way of derogation from points (b) and (c) of paragraph 3, where direct and immediate access by **Union relevant authorities** to the data they need to fulfil their respective responsibilities and mandate available at trade repositories registered or established in third countries is ensured **as a** binding and enforceable obligation against those trade repositories, the Commission may conclude cooperation **agreements** with the relevant third country authorities regarding mutual access to, and exchange of information on, SFTs held in trade repositories which are established in

Amendment

7. By way of derogation from points (b) and (c) of paragraph 3, where direct, **continuous** and immediate access by the **authorities referred to in Article 12(2)** to the data they need to fulfil their respective responsibilities and mandate available at trade repositories registered or established in third countries is ensured **by an international agreement or a legal disposition of the third country as a non-reversible**, binding and enforceable obligation against those trade repositories, the Commission may, **after consulting ESMA**, conclude cooperation

that third country, provided that professional secrecy, including the protection of business secrets shared by the authorities with third parties, is guaranteed.

arrangements with the relevant third country authorities regarding mutual access to, and exchange of information on, SFTs held in trade repositories which are established in that third country, provided that professional secrecy, including the protection of business *and trade* secrets shared by the authorities with third parties, is guaranteed. ***These arrangements may take the legal form of a Memorandum of Understanding.***

Or. en

Amendment 78

Proposal for a regulation

Article 20 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) breach of ***the reporting obligation set out by*** Article 4;

(a) breach of Article 4;

Or. en

Amendment 79

Proposal for a regulation

Article 20 – paragraph 1 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) breach of Article 18.

Or. en

Amendment 80

Proposal for a regulation

Article 20 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Where Member States have chosen to lay down criminal sanctions for the breaches of the provisions referred to in paragraph 1 of this Article, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with **judicial** authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for possible violations of Articles 4 and 15, and to provide the same to other competent authorities and ESMA to fulfil their obligation to cooperate with each other and, where relevant with ESMA for the purposes of paragraph 1 of this Article.

Amendment

Where Member States have chosen to lay down criminal sanctions for the breaches of the provisions referred to in paragraph 1 of this Article, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with **police and criminal justice** authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for possible violations of Articles 4, 15 **and 18**, and to provide the same to other competent authorities and ESMA to fulfil their obligation to cooperate with each other and, where relevant with ESMA for the purposes of paragraph 1 of this Article.

Or. en

Amendment 81

Proposal for a regulation
Article 20 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Competent authorities may also cooperate with competent authorities of other Member States with respect to the exercise of their sanctioning powers.

Amendment

Competent authorities may also cooperate with competent authorities of other Member States **and of third countries** with respect to the exercise of their sanctioning powers.

Or. en

Amendment 82

Proposal for a regulation
Article 20 – paragraph 4 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) ***withdrawal or*** suspension of the authorisation;

(d) suspension of the authorisation;

Or. en

Amendment 83

Proposal for a regulation

Article 20 – paragraph 4 – subparagraph 1 – point g

Text proposed by the Commission

Amendment

(g) maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the breach where those can be determined;

(g) in the event of a breach of Article 15, the maximum administrative pecuniary sanctions shall be at least five times the amount of the profits gained or losses avoided because of the breach, where those can be determined; in the event of a breach of this Regulation other than a breach of Article 15, maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the breach where those can be determined;;

Or. en

Amendment 84

Proposal for a regulation

Article 20 – paragraph 4 – subparagraph 1 – point i

Text proposed by the Commission

Amendment

(i) in respect of legal persons, maximum administrative pecuniary sanctions of at least 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of

(i) in respect of legal persons, maximum administrative pecuniary sanctions of at least ***EUR 5 000 000 or*** 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body, ***whichever is the highest***; where the legal

the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU¹⁶, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting regime according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting regime according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

Or. en

Amendment 85

Proposal for a regulation

Article 20 – paragraph 4a (new)

Text proposed by the Commission

Amendment

4a. The ECB shall, pursuant to Article 4(1)(a) of Council Regulation (EU) No 1024/2013, be the authority competent to withdraw authorisations of credit institutions in the event of any of the breaches referred to in paragraph 1 of this Article.

Or. en

Amendment 86

Proposal for a regulation

Article 20 – paragraph 5

Text proposed by the Commission

Amendment

5. A breach of the rules laid down by Article 4 shall not affect the validity of the terms of a SFT or the possibility of the parties to enforce the terms of a SFT. A breach of the rules defined under Article 4

5. A breach of the rules laid down by Article 4 **or Article 15** shall not affect the validity of the terms of a SFT or the possibility of the parties to enforce the terms of a SFT. A breach of the rules

shall not give rise to compensation rights from a party to a SFT.

defined under Article 4 shall not give rise to compensation rights from a party to a SFT.

Or. en

Amendment 87

Proposal for a regulation Article 26 – paragraph 1

Text proposed by the Commission

Three years after the entry into force, the Commission shall, after consulting ESMA, report on the effectiveness and efficiency of this Regulation to the European Parliament and to the Council and, *if appropriate*, submit a revised proposal.

Amendment

Three years after the entry into force, *or as soon as the Financial Stability Board publishes its complete and final regulatory set of policy recommendations on SFTs, whichever is the earlier*, the Commission shall, after consulting ESMA, report on the effectiveness and efficiency of this Regulation to the European Parliament and to the Council and, submit a revised proposal *taking into account all recent international regulatory developments, including implementation of similar FSB recommendations in third countries*.

Or. en

Amendment 88

Proposal for a regulation Article 28 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) Article 4(1), which shall apply **18** months after the date of entry into force; and

Amendment

(a) Article 4(1), which shall apply **four** months after the date of entry into force *of the regulatory technical standards and of the implementing technical standards adopted by the Commission pursuant to Articles 4(7) and 4(8)*; and

Amendment 89

Proposal for a regulation

Article 28 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) Articles 13 and 14, which shall apply **6** months after the date of entry into force.

(b) Articles 13 and 14, which shall apply **three** months after the date of entry into force.

Amendment 90

Proposal for a regulation

Article 28 – paragraph 2 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) Article 15(3), which shall apply six months after the date of entry into force of the regulatory technical standards adopted by the Commission pursuant to Article 15(4)

EXPLANATORY STATEMENT

1. Background

The global economic and financial crisis since 2007 made government and supervisory authorities very well aware of the consequences and the costs for the economy and the society of leaving the financial system unregulated. Since then, unprecedented regulatory efforts aimed at reducing systemic risks in the financial sector and legislative changes in the banking sector could result in regulatory arbitrage, with a considerable amount of banking activities shifting into the shadow banking system. Now, shadow banking provides a valuable alternative to bank funding for the real economy, but it is also generally considered as a potential source of risks in the current financial system. This is due to its size, worth \$ 75 Billion in 2014 according to the Financial Stability Board, and to the interconnectedness between the shadow banking system and the regulated sector, particularly the banking system. Consequently, the Commission proposed several measures addressing existing and potential systemic risk in the area of shadow banking, including a proposal for a regulation aimed at increasing transparency of certain transactions outside the regulated banking sector. The latter provides a set of measures aiming to enhance regulators' and investors' understanding of securities financing transactions (SFTs).

The Commission's proposal was largely based on the work done in this field by the Financial Stability Board (FSB) with the support of the G-20. FSB produced since 2013 policy recommendations to regulate Securities Financing Transactions (SFTs) and the rapporteur welcomes that the European Commission proposed to start transposing them in Europe through the abovementioned regulation, even if the FSB will complete its mandate only by 2017.

The basic principles and objectives of the Commission's proposal correspond largely to those introduced by the European Market Infrastructure Regulation in 2011, which are applicable to over-the-counter derivatives. The SFT Regulation should seek full transparency on these trades for the authorities, promote appropriate public disclosure of sensible information to investors and shareholders and aim at mitigating risks associated to these trades. The rapporteur believes nevertheless that the SFT legislation should include more ambitious provisions for these different aspects, including expanding the public disclosure requirements to credit institutions and listed companies and providing a sound regulatory frame for the haircuts to be applied on collateral provided in SFTs.

2. Reporting obligation

The reporting obligations should cover all financial and non-financial counterparties, with the exception of central banks and their counterparties. The rapporteur believes that reporting obligations should cover all types of SFTs currently in the market while leaving to the Commission the power to extend the list of SFTs and of SFT's counterparties to be included in the scope of the Regulation.

Reporting obligations and the consequent acquisition of reliable data, would allow supervisory Authorities to better identify the links between banks and shadow banking entities and to better monitor the exposures to and risks associated with SFTs and, eventually take measures directed at further reducing these risks.

Given the parallels with EMIR as far as reporting requirements are concerned, lessons can be

drawn and synergies can be built. Existing mechanisms under EMIR should be established to mitigate extra costs for counterparties to report their SFTs and for trade repositories (TRs) to extend their services to the recording of these trades. The application and registration of trade repositories, as well as recognition of third-country repositories, have to rest on existing rules and procedures as much as possible.

Likewise, lessons should be drawn from EMIR with regards to the practicalities of data communication and information technology systems to be devised. Data discrepancies between various reporting should also be prevented, as it would increase the likelihood of errors in the reporting and make the interpretation of aggregated data more complicated and ultimately less reliable. Therefore, the rapporteur supports the work of the authorities, including the FSB, in that area.

Authorities and counterparties have also gained experience in dealing with the implementation of such requirements and should therefore be able to implement them in a more coherent manner than under EMIR.

3. Transparency obligation

The rapporteur believes that using SFTs is far from a risk-free activity. Therefore, investment funds, which are the most likely financial counterparties to be involved in such transactions, must disclose all relevant details on these activities in their applicable public report and investor documents.

Credit institutions are also key components of our financial system and their stability is of primary importance. Therefore, disclosure details on their SFTs, similarly to what is required to other financial institutions, would help to inform their clients and stakeholders at large of the risk profile of the credit institution.

Finally, listed companies have a clear responsibility, should they engage in SFTs, to inform their shareholders of the risks that these activities entail.

Increased transparency will allow investors to compare and better assess different investment opportunities and thus to make more informed decisions.

4. Re-use

This regulation should aim at making the European Union compliant with FSB Recommendations on SFTs by end of 2017, the targeted implementation date set by the FSB. It is therefore very important, in the view of the rapporteur, to take the opportunity of this regulation to set already all the principles agreed by the FSB in a text of legislative nature while leaving out the technical details to be specified by the ESMA in a time frame which binds the EU to deliver in a timely fashion standards equivalent to the international recommendations of the FSB.

For this reason, the rapporteur believes necessary to include the following elements in Article 15:

- An immediate clarification of the conditions for re-use of collateral;
- An obligation for counterparties to use a common methodology for haircuts applicable to collateral in certain types of SFTs;
- Mandatory minimum haircuts on collateral in certain types of SFTs.

The development of a framework for Haircuts will contribute to reduce risks related to the

build-up of excessive leverage and pro-cyclical incentives associated with securities financing transactions, particularly in times of financial stress.

5. Other issues

In line with the overall effort directed at reducing fragmentation and to avoid possible incoherencies and overlapping between the SFTR and other Directives and Regulations regulating financial markets, the Rapporteur has dedicated particular attention to harmonization issues. Specific attention has been dedicated also to harmonization issues in the international context, in the attempt of making the rules clearer, more coherent and to avoid double legislation.