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NOTE

From: Presidency
To: Delegations

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL on reporting and transparency of securities financing
transactions
- General approach

Please find enclosed the Presidency compromise on the file in subject, which the Presidency presents with a view to COREPER's confirmation of the general approach, following agreement in the Working Party.

Encl.

2014/0017 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on reporting and transparency of securities financing transactions

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the European Central Bank²,

After consulting the European Data Protection Supervisor³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C [...], [...], p. [...].

- (1) The 2008 global financial crisis 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 bank-like credit intermediation takes place, called “shadow banking”.
- (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 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.
- (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 Council and the European Parliament on Shadow Banking⁴. 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 build-up of excessive leverage in the financial system.

⁴ Communication to the Council and the European Parliament on Shadow Banking – Addressing New Sources of Risk in the Financial Sector, COM(2013) 614 final.

- (4) A High-Level Expert Group chaired by Erkki Liikanen adopted a report on reforming the structure of the Union banking sector in October 2012. It discussed among other things the interaction between the traditional and the shadow banking systems. The report recognised the risks of shadow banking activities such as high leverage and pro-cyclicality, and it called for a reduction of the interconnectedness between banks and the shadow banking system, which had been a source of contagion in a system-wide banking crisis. The report also suggested certain structural measures to deal with remaining weaknesses in the Union banking sector.
- (5) Structural reforms of the Union banking system are dealt with in a separate legal proposal. However, imposing structural measures on banks could result in certain activities being shifted to less regulated areas such as the shadow banking sector. For these reasons, the legal proposal on structural reform of the Union banking sector should be accompanied by the binding transparency and reporting requirements for SFTs set out in this Regulation. Thus, the transparency rules of this Regulation complement the Union structural reform rules.
- (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 broadly follows the FSB Recommendations. It creates a Union framework under which information on SFTs can be efficiently reported to trade repositories and investors in collective investment undertakings. 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.

- (6a) The evolution of market practices and technological developments enable market participants to use SFTs other than traditional SFTs in the form of repurchase transactions, sell-buy back and buy-sell back transactions, margin lending transactions or securities or commodities lending and borrowing as a source of funding, for liquidity and collateral management, as a yield-enhancement strategy, to cover short sales or for dividend tax arbitrage. Such SFTs could have an equivalent economic effect and pose similar risks, including: procyclicality brought about by fluctuating asset values and volatility; maturity or liquidity transformation stemming from financing long-term or illiquid assets through short-term or liquid assets; financial contagion arising from interconnectedness of chains of transactions involving collateral reuse.
- (7) In order to respond to the issues raised by the FSB Recommendations and the developments envisaged following structural reform of the Union banking sector, Member States are likely to adopt divergent national measures which could create obstacles to the smooth functioning of the internal market and be to the detriment of market participants and financial stability. In addition, the lack of harmonised transparency rules makes it difficult for national authorities to compare the micro-level data stemming from different Member States and thus to understand the real risks individual market participants pose to the system. It is therefore necessary to prevent such distortions and obstacles from arising in the Union. Consequently, the appropriate legal basis for this Regulation should be Article 114 of the Treaty on the Functioning of the European Union ("TFEU"), as interpreted in accordance with the consistent case law of the Court of Justice of the European Union.

- (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 of efficiency, respective operational costs for market participants should be minimised and, thus, the new rules should build on pre-existing infrastructures, operational processes and formats. It is therefore important that this legal framework is, to the extent possible, identical to that of Regulation (EU) No 648/2012 of the European Parliament and of the Council⁵ 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 to fulfil the repository function assigned by the new rules, subject to the completion of a simplified registration process.
- (8a) Transactions with members of the ESCB should be exempted from the obligation to report SFTs to trade repositories. However, in order to ensure that regulators and supervisors obtain a proper overview of the risks linked to SFTs concluded by the entities they regulate or supervise, members of the ESCB, taking into account the requirements of Article 130 of TFEU, should closely cooperate with the relevant regulators and supervisors. This cooperation should enable regulators and supervisors to fulfil their respective responsibilities and mandates.

⁵ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(8b) The Commission should cooperate with third-country authorities in order to explore mutually supportive solutions to ensure consistency between this Regulation and the requirements established by third countries and thus avoid any possible overlapping in this respect. With the assistance of the European Securities and Markets Authority ("ESMA"), the Commission should monitor and prepare reports to the European Parliament and the Council on the international application of the reporting obligation laid down in this Regulation. In order to avoid potentially duplicative or conflicting requirements, the Commission might adopt decisions on equivalence of the legal, supervisory and enforcement framework in third countries, if a number of conditions are met. The assessment which forms the basis of such decisions should not prejudice the right of a trade repository established in a third country and recognised by ESMA to provide reporting services to entities established in the Union, as the recognition decision should be independent of this assessment. Furthermore, in order to minimise any potential duplicative reporting requirements, ESMA should take into account whether or not certain transactions are included in the scope of this Regulation when it is preparing its draft Regulatory Technical Standards under Article 26(9) of Regulation (EU) No 600/2014.

- (9) As a result, information on the risks inherent in securities financing markets will be centrally stored and easily and directly accessible, among others, to ESMA, the European Banking Authority ("EBA"), the European Insurance and Occupational Pensions Authority ("EIOPA"), the relevant competent authorities, the ESRB and the relevant central banks of the European System of Central Banks ("ESCB"), including the European Central Bank ("ECB"), for the purpose of identification and monitoring of financial stability risks entailed by shadow banking activities of regulated and non-regulated entities. ESMA should take into consideration the existing technical standards established by Article 9 of Regulation (EU) No 648/2012 regulating trade repositories for derivative contracts and their future developments when drawing up or proposing to revise the regulatory technical standards provided for in this Regulation. In this context, ESMA should, to the extent feasible and relevant, minimise overlaps and avoid inconsistencies between the technical standards developed under this Regulation and those developed under Article 9 of Regulation (EU) No 648/2012. ESMA should also aim to ensure that the relevant competent authorities, the ESRB and the relevant central banks of the ESCB, including the ECB, have direct and immediate access to the information necessary to perform their duties, including the duties to define and implement monetary policy and to perform oversight of financial market infrastructures. In order to ensure this, ESMA shall set out the terms and conditions for accessing to such data in regulatory technical standards.

- (10) It is necessary to introduce provisions on exchange of information between competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their functions, so as to ensure the effective enforcement of this Regulation, including in situations where infringements or suspected infringements may be of concern to authorities in two or more Member States. In the exchange of information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights. Without prejudice to the provisions of criminal or tax law, the competent authorities, ESMA, bodies or natural or legal persons other than the competent authorities, which receive confidential information, should use it only in the performance of their duties and for the exercise of their functions. However, this should not prevent the exercise, in accordance with national law, of the functions of national bodies responsible for the prevention, investigation or correction of cases of maladministration.
- (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. They are extensively used by fund managers to get exposure to certain strategies or to enhance the returns. All types of SFTs have in common that they may 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.

- (12) Investments made on the basis of incomplete or inaccurate information as regards a fund's investment strategy can result in significant investor losses. It is therefore essential that investment funds disclose all relevant information linked to their use of SFTs. In addition, full transparency is especially relevant in the area of investment funds as the entirety of assets that are subject to SFTs are not owned by the fund managers but by the fund investors. Full disclosure as regards SFTs is therefore an essential tool to safeguard against possible conflicts of interest.
- (13) The new rules on transparency of SFTs are closely linked to Directives 2009/65/EC⁶ and 2011/61/EU of the European Parliament and of the Council⁷ since they form the legal framework governing the establishment, management and marketing of collective investment undertakings.
- (14) Collective investment undertakings may operate as undertakings for collective investment in transferable securities ("UCITS") managed by UCITS managers or investment companies authorised under Directive 2009/65/EC or as AIFs managed by alternative investment fund managers ("AIFMs") authorised or registered under Directive 2011/61/EU. These new rules on transparency supplement the provisions of those Directives. Hence, these new uniform rules on transparency of SFTs should apply in addition to those laid down in Directives 2009/65/EC and 2011/61/EU.
- (15) In order to enable investors to become aware of the risks associated with the use of SFTs, fund managers should include detailed information on any recourse they have to these techniques in regular reports. The existing periodical reports that UCITS management or investment companies and AIFMs have to produce should be supplemented by the additional information on the use of SFTs.

⁶ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

⁷ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

- (16) A fund's investment policy with respect to SFTs should be clearly disclosed in the pre-contractual documents, such as the prospectus for the UCITS funds and the pre-contractual disclosure to investors for the AIFs. This should ensure that investors understand and appreciate the inherent risks before they decide to invest in a particular UCITS and AIF.
- (17) Reuse of financial instruments provides liquidity and enables counterparties to reduce funding costs. However, it can create complex collateral chains between traditional banking and shadow banking, and can pose financial stability risks. The lack of transparency on the extent to which financial instruments provided as collateral have been reused and the respective risks in case of bankruptcy can undermine confidence in counterparties and magnify risks to financial stability.
- (17a) In order to increase transparency of reuse, minimum information requirements should be imposed. Reuse should take place only with the express knowledge and consent of the providing counterparty and should be reflected in its securities account. Thus, it should be required that financial instruments are transferred from the account of the providing counterparty when reuse is being exercised. However, in the case where a counterparty to a collateral arrangement is established in a third country and the account of the counterparty providing the collateral is maintained in and subject to the law of a third country, it should be required that the reuse be evidenced either by a transfer from the account of the providing counterparty or by other appropriate means. This requirement should be read in addition to Directive 2002/47/EC⁸ and should not be construed as modifying Article 2(2) of Directive 2002/47/EC.

⁸ Directive 2002/47/EC of the European Parliament and Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 4).

- (17b) Although the subjective scope of the rules concerning reuse is wider than the one of the Directive 2002/47/EC, this Regulation should not amend the scope of Directive 2002/47/EC. Moreover, this Regulation should not diminish any protection afforded to financial collateral arrangements by Directive 2002/47/EC. Against this background, any breach of transparency requirements of reuse should not affect national law concerning the validity or effect of a transaction.
- (18) This Regulation establishes information rules towards counterparties on reuse which should not prejudice the application of sectorial rules adapted to specific actors, structures and situations. Therefore, the rules on reuse provided for in this Regulation should apply, for example, to funds and depositories only insofar as there are no more stringent rules on reuse foreseen within the framework for investment funds or for safeguarding of client assets 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 under EU law or national law restricting the ability of counterparties to engage in reuse of financial instruments that are provided as collateral by counterparties or persons other than counterparties. A phasing-in period of 6 months is provided for the application of reuse requirements in order to provide counterparties with sufficient time to adapt their outstanding collateral arrangements, including master agreements, and to ensure new collateral arrangements comply with this Regulation.

- (19) In order to ensure compliance by counterparties, with the obligations deriving from this Regulation and to ensure that they are subject to similar treatment across the Union, administrative sanctions and measures which are effective, proportionate and dissuasive should be ensured. Therefore, administrative sanctions and measures set by this Regulation should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication of sanctions or measures, key sanctioning powers and levels of administrative pecuniary sanctions. It is appropriate that measures and sanctions established under Directives 2009/65/EC and 2011/61/EU apply to infringements of the investment funds transparency obligations under this Regulation.
- (19a) This Regulation should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.
- (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 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 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁹ 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.

⁹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (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 TFEU 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.
- (22) The power to adopt acts in accordance with Article 290 of the TFEU 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; 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 paid by trade repositories, and of the amendment of 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, also at expert level, including ESMA. 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.
- (23) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to take decisions on the assessment of rules from third countries for the purposes of recognition of third country trade repositories.
- (24) In accordance with the principle of proportionality, it is necessary and appropriate to ensure the transparency of certain market activities such as SFTs and reuse 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.

- (25) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data, the right to respect private and family life, the right to defence and the principle of ne bis in idem, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial. This Regulation must be applied according to these rights and principles.
- (26) Directive 95/46/EC of the European Parliament and of the Council¹⁰ governs the processing of personal data carried out in the Member States pursuant to this Regulation. Any exchange or transmission of personal data by competent authorities of the Member States should be undertaken in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. Regulation (EC) No 45/2001 of the European Parliament and of the Council¹¹ governs the processing of personal data carried out by ESMA, EBA and EIOPA pursuant to this Regulation. Any exchange or transmission of personal data carried out by ESMA, EBA and EIOPA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.
- (28) The application of the reporting and transparency requirements under this Regulation should be deferred in order to provide trade repositories with sufficient time to apply for authorisation and recognition of their activities provided for in this Regulation, and counterparties and investments funds with sufficient time to comply with these requirements.

¹⁰ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

¹¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

HAVE ADOPTED THIS REGULATION:

Chapter I

Subject matter and scope

Article 1

Subject matter

This Regulation lays down rules on the reporting and transparency of securities financing transactions (SFTs) and on the transparency of reuse.

Article 2

Scope

1. This Regulation applies to:
 - (a) a counterparty to a SFT that is established:
 - (1) in the Union, including all its branches irrespective of where they are located;
 - (2) in a third country, if the SFT other than a derivative or derivative contract as defined in point (5) of Article 2 of Regulation (EU) No 648/2012, is concluded in the course of operations of an EU branch of that counterparty;

- (b) management companies of undertakings for collective investment in transferable securities ("UCITS") and UCITS investment companies in accordance with Directive 2009/65/EC;
- (c) managers of alternative investment funds ("AIFMs") authorised in accordance with Directive 2011/61/EU;
- (d) a counterparty engaging in reuse 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 reuse is effected in the course of the operations of an EU branch of that counterparty;
 - (ii) the reuse concerns financial instruments provided under a collateral arrangement by a counterparty established in the Union or an EU branch of a counterparty established in a third country.

2. Articles 4 and 15 shall not apply to:

- (a) members of the European System of Central Banks (ESCB), other Member States' bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt in the Union;
- (b) the Bank for International Settlements.

- 2a. By way of derogation to point (b) of Article 15(2), where a counterparty to a collateral arrangement is established in a third country and the account of the counterparty providing the collateral is maintained in and subject to the law of a third country, the reuse shall be evidenced either by a transfer from the account of the providing counterparty or by other appropriate means.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 to amend the list set out in paragraph 2 of this Article.

To that end, the Commission shall present to the European Parliament and the Council a report assessing the international treatment of central banks and of public bodies charged with or intervening in the management of the public debt.

The report shall include a comparative analysis of the treatment of central banks and of those bodies within the legal framework of a number of third countries. If the report concludes, in particular in regard to the comparative analysis, that the exemption of the monetary responsibilities of those third-country central banks and bodies from Article 15 is necessary, the Commission shall add them to the list set out in paragraph 2.

Article 3

Definitions

1. For purposes of this Regulation, the following definitions apply:
 - (1) "trade repository" means a legal person that centrally collects and maintains the records of SFTs;
 - (2) "financial counterparty" means:
 - (a) an investment firm authorised in accordance with Directive 2014/65/EC;
 - (b) a credit institution authorised in accordance with Directive 2013/36/EC or Council Regulation (EU) No 1024/2013;
 - (c) an insurance undertaking authorised in accordance with Directive 2009/138/EC;
 - (d) an assurance undertaking authorised in accordance with Directive 2009/138/EC;
 - (e) a reinsurance undertaking authorised in accordance with Directive 2009/138/EC;
 - (f) a UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC;
 - (g) an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU;
 - (h) an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC;

(i) a central counterparty (CCP) authorised in accordance with Regulation (EU) No 648/2012;

(j) a central securities depository (CSD) authorised in accordance with Regulation (EU) No 909/2014;

(k) an entity established in a third country that would be a financial counterparty as defined in points (a) to (j) if it was established in the Union.

(2a) "non-financial counterparty" means an undertaking established in the Union or in a third country other than the entities referred to in paragraph 2 points (a) to (k).

(3) "established" means:

(a) if the counterparty is a natural person, having its head office;

(b) if the counterparty is a legal person, having its registered office;

(c) if the counterparty has, under its national law, no registered office, having its head office;

(4) "branch" means a place of business other than the head office which is part of a counterparty and which has no legal personality;

(5) "securities or commodities lending" and "securities or commodities borrowing" mean any transaction in which a counterparty transfers securities or commodities subject to a commitment that the borrower will return equivalent securities or commodities at some future date or when requested to do so by the transferor, that transaction being considered as securities or commodities lending for the counterparty transferring the securities or commodities and being considered as securities or commodities borrowing for the counterparty to which they are transferred;

- (5b) "buy-sell back transaction" and "sell-buy back transaction" mean any transaction in which a counterparty buys or sells securities or commodities or guaranteed rights, agreeing respectively to sell or buy back securities or commodities or guaranteed rights of the same description at a specified price on a future date, that transaction being a buy-sell back transaction for the counterparty buying the securities or commodities or guaranteed rights and a sell-buy back transaction for the counterparty selling them. Buy-sell back transactions and sell-buy back transactions are not governed by a repurchase agreement or a reverse repurchase agreement as defined in point (82) of Article 4(1) of Regulation (EU) No 575/2013;
- (6) "securities financing transaction" or ("SFT") means:
- (a) a "repurchase transaction" as defined in point (83) of Article 4(1) of Regulation (EU) No 575/2013. For the purposes of this Regulation, repurchase transactions are not limited to transactions governed by agreements between institutions as defined in Regulation (EU) No 575/2013 and their counterparties.
 - (b) securities or commodities lending and securities or commodities borrowing;
 - (ba) buy-sell back transaction or sell-buy back transaction;
 - (bb) a margin lending transaction as defined in point (3) of Article 272 of Regulation (EU) No 575/2013. For the purposes of this Regulation, margin lending transactions are not limited to transactions governed by agreements between institutions as defined in Regulation (EU) No 575/2013 and their counterparties;

- (7) "reuse"¹² means the use by a receiving counterparty of financial instruments received under a collateral arrangement in its own name and for its own account or for the account of another person, including any natural person, by way of transfer of title or by way of exercise of a right of use in accordance with Article 5 of Directive 2002/47/EC¹³. This shall not include the liquidation of the financial instrument in the event of default of the providing counterparty;
- (8) "financial instruments" means financial instruments as defined in point (15) of Article 4(1) of Directive 2014/65/EU¹⁴;

¹² The replacement of the word “rehypothecation” by the word “reuse” throughout the Regulation has been suggested by many Member States in order to align with the FSB Recommendations. However, Member States should be also aware that this leads to inconsistency within Union acquis. Under Article 22(7) second sentence of UCITS V (Directive 2014/91/EU, O.J. L 257 of 28.8.2014, p. 186) any transaction in funds’ assets undertaken by the depository or any third party to which the depository function has been delegated is covered by the notion of “reuse”, while under point 7 of Article 3 SFTR it is only the use of assets that have been delivered as collateral.

¹³ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements.

¹⁴ Directive 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 L173, 12.6.2014, p. 173).

- (9) “collateral arrangement” means “financial collateral arrangement” as defined in point (a) of Article 2(1) of Directive 2002/47/EC¹⁵ concluded between counterparties to secure any obligation. This shall not be construed as extending the scope of Directive 2002/47/EC.
- (10) "commodity" means commodity as defined in point (1) of Article 2 of Commission Regulation (EC) No 1287/2006¹⁶.

Chapter II

Transparency of SFTs

Article 4

Reporting obligation and safeguarding in respect of SFTs

1. Counterparties to SFTs shall report the details of SFTs they have concluded, as well as any modification or termination thereof, of SFTs, to a trade repository registered in accordance with Article 5 or recognised in accordance with Article 19.

¹⁵ (a) ‘financial collateral arrangement’ means a title transfer financial collateral arrangement or a security financial collateral arrangement whether or not these are covered by a master agreement or general terms and conditions;

¹⁶ Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1).

The details shall be reported no later than the working day following the conclusion, modification or termination of the transaction.

The reporting obligation shall apply to SFTs which:

- (a) were concluded before the date of application referred to in point (a) of Article 28(2) and remain outstanding on that date;
- (b) are concluded on or after the date of application referred to in point (a) of Article 28(2).

A counterparty which is subject to the reporting obligation may delegate the task of reporting of the details of SFTs.

- 1a. Where a financial counterparty concludes a SFT 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 reporting obligations of both counterparties apply only to the financial counterparty.
- 1b. Where a UCITS is the counterparty to SFTs, the reporting obligation applies to management companies of UCITS or UCITS investment companies and where an AIF is the counterparty to SFTs, the reporting obligation applies to AIFMs.
- 1c. Where a financial counterparty concludes a SFT with a member of the ESCB the reporting obligation referred to in paragraph 1 shall not apply.

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.
3. Where a trade repository is not available to record the details of SFTs, counterparties shall ensure that those details are reported to European Securities and Markets Authority (ESMA).

In those cases, ESMA shall ensure that all the relevant entities referred to in Article 12(2) have access to all the details of SFTs they need to fulfil their respective responsibilities and mandates.

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 derivatives' and "derivative contracts" shall be read as references to this Article and to SFTs respectively.
5. A counterparty that reports the details of a SFT to a trade repository or to ESMA, or an entity that reports such details on behalf of a counterparty shall not be considered in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.
6. No liability resulting from that disclosure shall lie with the reporting entity or its directors or employees.

- 6a. In cases where the details of a SFT have to be reported to a trade repository in accordance with Article 9 of Regulation (EU) No 648/2012 and provided that the report effectively contains the details referred to in paragraph 1 of this Article, the reporting obligation set out in paragraph 1 of this Article shall be considered to have been complied with.
7. In order to ensure consistent application of this Article and, to the extent feasible, in order to ensure consistency with the reporting made under Article 9 of Regulation (EU) No 648/2012, ESMA shall, in close cooperation with and taking into account the needs of the ESCB, develop draft regulatory technical standards specifying the details for the different types of SFTs that shall include at least:
- (a) the parties to the SFT and, where different, the beneficiary of the rights and obligations arising from it;
 - (b) the principal amount, currency, type, assets used as collateral, quality, purpose and value of assets being used as collateral, the method used to provide collateral, where it is available for reuse, if it has been reused, any substitution of the collateral, the repurchase rate or lending fee or margin lending rate, haircut, value date, maturity date, first callable date and market segment. The technical standards should take into account the technical specificities of pools of assets.
 - (c) Depending on the SFT characteristics, the following should also be included where applicable:
 - i. cash collateral reinvestment;
 - ii. securities or commodities being lent or borrowed.

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication 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 Regulation (EU) No 1095/2010.

8. In order to ensure uniform conditions of application of paragraph 1 and, to the extent feasible, ensure consistency with the reporting made under Article 9 of Regulation (EU) No 648/2012 and to ensure harmonisation of formats between trade repositories, ESMA shall, in close cooperation with and taking into account the needs of the ESCB, 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;

In developing these technical standards, ESMA shall take into account internationally agreed developments and standards. In particular, the format of the reports should include, inter alia, the following international standards or other equivalent standards developed over time:

- (a) global legal entity identifiers (LEIs) or, on an interim basis, pre-LEIs;
- (b) international securities identification numbers (ISINs).

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

Chapter III

Registration and supervision of a trade repository

Article 5

Registration of a trade repository

1. A trade repository shall register with ESMA for the purposes of Article 4 under the conditions and the procedure set out in this Article.

To be eligible to be registered under this Article, a trade repository shall be a legal person established in the Union and meet the requirements laid down in Articles 78 to 80 of Regulation (EU) No 648/2012. References to Article 9 of Regulation (EU) No 648/2012 shall be read as reference to Article 4 of this Regulation.

2. The registration of a trade repository shall be effective for the entire territory of the Union.
3. 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.
4. A trade repository shall submit an application for registration to ESMA.
5. ESMA shall assess whether the application is complete within 20 working days of receipt of the application. Where the application is not complete, ESMA shall set a deadline by which the trade repository is to provide additional information. After assessing an application as complete, ESMA shall notify the trade repository accordingly.

- 5(a). A trade repository already registered under Title VI, Chapter 1 of Regulation (EU) No 648/2012 shall also submit an application for the extension of their services to ESMA for the purposes of Article 4 of this Regulation. ESMA shall assess this application under the process set out in paragraph 5 and Articles 7 and 8.
6. ESMA shall develop draft regulatory technical standards specifying the details of the application for registration referred to in paragraph 4 and for the extension of services referred to in paragraph 5(a). The process for the registration referred to in paragraph 5(a) shall take into consideration whether the trade repository has already been registered under Title VI, Chapter 1 of Regulation (EU) No 648/2012. In such cases, a simplified process shall be envisaged.

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication 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 Regulation (EU) No 1095/2010.

7. In order to ensure uniform conditions of application of paragraph 1, ESMA shall develop draft implementing technical standards specifying the format of the application for registration referred to in paragraph 4 and for the extension of services referred to in paragraph 5(a). The process for the extension of services referred to in paragraph 5(a) shall take into consideration whether the trade repository has already been registered under Title VI, Chapter 1 of Regulation (EU) No 648/2012. In such cases, a simplified process shall apply.

ESMA shall submit those draft implementing technical standards to the Commission by [12 months after the publication of the 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.

Article 6

Notification of and consultation with competent authorities prior to registration

- (1) If a trade repository which is applying for registration or an extension of services provided is an entity which is authorised or registered by a competent authority in the Member State where it is established, ESMA shall, without undue delay, notify and consult that competent authority prior to the registration of the trade repository.
- (2) ESMA and the relevant competent authority shall exchange all information that is necessary for the registration or an extension of services provided of the trade repository as well as for the supervision of the entity's compliance with the conditions of its registration or authorisation in the Member State where it is established.

Article 7

Examination of the application

- (1) ESMA shall, within 40 working days from the notification referred to in Article 5(5), examine the application for registration based on the compliance of the trade repository with this Chapter and shall adopt a fully reasoned registration decision or a decision refusing registration.
- (2) A decision issued by ESMA pursuant to paragraph 1 shall take effect on the fifth working day following its adoption.

Article 8

Notification of ESMA decisions relating to registration

- (1) Where ESMA adopts a registration decision or a decision refusing or withdrawing registration, it shall notify the trade repository within five working days with a fully reasoned explanation of its decision.

ESMA shall, without undue delay, notify the relevant competent authority referred to in Article 6(1) of its decision.

- (2) ESMA shall communicate any decision taken in accordance with paragraph 1 to the Commission.
- (3) ESMA shall publish on its website a list of trade repositories registered in accordance with this Regulation. That list shall be updated within five working days following the adoption of a decision under paragraph 1.

Article 9

Powers of ESMA

- (1) The powers conferred on ESMA in accordance with Articles 61 to 68, 73,74 and Annexes I and II of Regulation (EU) No 648/2012 shall be exercised also with respect to this Regulation.

References to Article 81(1) and (2) of Regulation (EU) No 648/2012 shall be read as references to Article 12(1) and 12(2) of this Regulation respectively.

- (2) The powers conferred on ESMA or any official or other person authorised by ESMA by Articles 61 to 63 of Regulation (EU) No 648/2012 shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 10

Withdrawal of registration

1. Without prejudice to Article 73 of Regulation (EU) No 648/2012, ESMA shall withdraw the registration of a trade repository where the trade repository:
 - (a) expressly renounces the registration or has provided no services for the preceding six months;
 - (b) obtained the registration by making false statements or by any other irregular means;
 - (c) no longer meets the conditions under which it was registered.
2. ESMA shall, without undue delay, notify the relevant competent authority referred to in Article 6(1) of a decision to withdraw the registration of a trade repository.
3. The competent authority of a Member State in which the trade repository performs its services and activities and which considers that one of the conditions referred to in paragraph 1 has been met, may request ESMA to examine whether the conditions for the withdrawal of registration of the trade repository concerned are met. Where ESMA decides not to withdraw the registration of the trade repository concerned, it shall provide full reasons.
4. The competent authority referred to in paragraph 3 shall be the authority designated under Article 22 of Regulation (EU) No 648/2012.

Article 11

Supervisory fees

1. ESMA shall charge fees to the trade repositories in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 2 of this Article. Those fees shall be proportionate to the turnover of the trade repository concerned and fully cover ESMA's necessary expenditure relating to the registration and supervision of trade repositories as well as the reimbursement of any costs that the competent authorities may incur as a result of any delegation of tasks pursuant to Article 9(1) of this Regulation in combination with Article 74 of Regulation (EU) No 648/2012. References to Article 72(3) of Regulation (EU) No 648/2012 shall be read as reference to paragraph 2 of this Article.
 - 1a. The fees referred to in paragraph 1 shall take into consideration whether the trade repository has already been registered under Title VI, Chapter 1 of Regulation No (EU) 648/2012.
2. The Commission shall be empowered to adopt a delegated act in accordance with Article 27 to specify further 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 paid.

Article 12

Trade repository data transparency and availability

1. A trade repository shall regularly, and in an easily accessible way, publish aggregate positions by type of SFTs reported to it.

2. A trade repository shall collect and maintain the details of SFTs and shall ensure that the following entities have direct and immediate access to these details to enable them to fulfil their respective responsibilities and mandates, having regard to the subject, matter and scope of this Regulation:
 - (a) the entities referred to in Article 81(3) of Regulation (EU) No 648/2012, including the ECB in carrying out its tasks within a single supervisory mechanism under Council Regulation (EU) No 1024/2013;
 - (b) the European Banking Authority (EBA);
 - (c) the European Insurance and Occupational Pensions Authority (EIOPA).
3. In order to ensure consistent application of this Article, ESMA shall, in close cooperation with the ESCB and taking into account the needs of the entities referred to in paragraph 2, develop draft regulatory technical standards specifying:
 - (a) the frequency and the details of the aggregate positions referred to in paragraph 1 and the details of SFTs referred to in paragraphs 2 ;
 - (b) operational standards required in order to compile, aggregate and compare data across repositories;
 - (c) the details of the information to which the entities referred to in paragraph 2 have access, taking into account their mandate and their need to have access to complete, granular data in standardised form;
 - (d) the terms and conditions under which the entities referred to in paragraph 2 have access to data registered in trade repositories.

Those draft regulatory technical standards shall ensure that the information published under paragraph 1 is not capable of identifying a party to any SFT.

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication 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 Regulation (EU) No 1095/2010.

Chapter IV

Transparency towards investors

Article 13

Transparency of collective investment undertakings in periodical reports

1. Management companies of UCITS, UCITS investment companies and AIFMs shall inform investors on the use they make of SFTs:
 - (a) UCITS management companies or investment companies shall include this information as part of annual reports referred to in Article 68 of Directive 2009/65/EC;
 - (b) AIFMs shall include this information in the annual report referred to in Article 22 of Directive 2011/61/EU.

2. The information on SFT shall comprise at least the data provided for in Section A of the Annex.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 to amend the wording of Section A of the Annex to ensure uniform disclosure of data or accommodate changing market practices.

Article 14

Transparency of collective investment undertakings in pre-contractual documents

1. The UCITS prospectus referred to in Article 69 of Directive 2009/65/EC, and the disclosure by AIFMs to investors referred to in Article 23 (1) and (3) of Directive 2011/61/EU shall specify the SFT which UCITS management companies or investment companies, and AIFMs respectively, are authorised to use and include a clear statement that these techniques are used.
2. The prospectus and the disclosure to investors referred to in paragraph 1 shall comprise at least the data provided for in Section B of the Annex.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 to amend the wording of Section B of the Annex to ensure uniform disclosure of data or accommodate changing market practices.

Chapter V

Transparency of reuse

Article 15

Reuse of financial instruments received under a collateral arrangement

1. Counterparties shall not have a right to reuse unless at least the following conditions are fulfilled:
 - (a) the providing counterparty has been duly informed in writing by the receiving counterparty of the risks and consequences that may be involved in granting consent as referred to in point (b) in particular the potential risks and consequences in the event of the default of the receiving counterparty;
 - (b) the providing counterparty has granted its prior express consent as evidenced by the signature of the providing counterparty to a collateral arrangement evidenced in writing or in a legally equivalent manner. This requirement shall be deemed fulfilled where a counterparty expressly agrees to provide collateral by way of title transfer collateral arrangement as defined in point (b) of Article 2(1) of Directive 2002/47/EC.

2. Counterparties shall not exercise their right to reuse unless at least all the following conditions are fulfilled:
 - (a) reuse is undertaken in accordance with the terms specified in the collateral arrangement referred to in point (b) of paragraph 1;
 - (b) the financial instruments received under a collateral arrangement are transferred from the account of the providing counterparty.

3. This Article is without prejudice to stricter sectoral legislation, in particular to Directives 2014/91/EU and 2009/65/EC, and to national law aimed at ensuring a higher level of protection of providing counterparties.
4. This Article shall not affect national law concerning the validity or effect of a transaction.

Chapter VI

Supervision and competent authorities

Article 16

Designation and powers of competent authorities

1. For the purpose of this Regulation, competent authorities shall be:
 - (a) for financial counterparties, the competent authorities designated in accordance with the legislation referred to in points (a) to (j) of Article 3(1)(2), having regard to the subject, matter and scope of this Regulation;
 - (b) for non-financial counterparties, the competent authorities designated in accordance with Article 10(5) of Regulation (EU) No 648/2012;
 - (c) for the purpose of Article 13 and 14, concerning management companies of UCITS and UCITS investment companies, the competent authorities designated in accordance with Directive 2009/65/EC; and
 - (d) for the purpose of Article 13 and 14, for AIFMs, the competent authorities designated in accordance with Directive 2011/61/EU.

2. The competent authorities shall exercise the powers conferred on them by the provisions referred to in paragraph 1 and supervise compliance with the obligations set out in this Regulation.
3. The competent authorities referred to in points (c) and (d) of paragraph 1 of this Article shall monitor UCITS or AIFs established in their territories to verify that they do not use SFTs unless they comply with Articles 13 and 14.

Article 17

Cooperation between competent authorities

1. The competent authorities referred to in Article 16 and ESMA shall cooperate closely with each other and exchange information for the purpose of carrying out their duties pursuant to this Regulation, in particular to identify and remedy breaches of this Regulation.
2. The competent authorities referred to in Articles 12(2) and 16(1), the relevant members of ESCB and ESMA shall cooperate closely where relevant for the exercise of their respective tasks under this Regulation.
3. A competent authority may refuse to act on a request for information or a request to cooperate or exchange information only in the following exceptional circumstances, namely where:
 - (a) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or
 - (b) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

In the case of such a refusal, the competent authority shall notify the requesting authority and ESMA accordingly, providing as detailed information as possible.

Article 18

Professional secrecy

1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 2 and 3.
2. The obligation of professional secrecy shall apply to all persons who work or have worked for the entities referred to in Article 12(2) and the competent authorities referred to in Article 16, for ESMA, EBA and EIOPA, or for auditors and experts instructed by the competent authorities or ESMA, EBA and EIOPA. Information covered by professional secrecy may not be divulged to any other person or authority, except in summary or aggregate form such that an individual counterparty, trade repository or any other person cannot be identified, without prejudice to requirements of national criminal or taxation law or the other provisions of this Regulation.
3. Without prejudice to requirements of national criminal or taxation law, the competent authorities, ESMA, EBA, EIOPA, bodies or natural or legal persons other than competent authorities which receive confidential information pursuant to this Regulation may use it only in the performance of their duties and for the exercise of their functions, in the case of the competent authorities, within the scope of this Regulation or, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them or in the context of administrative or judicial proceedings specifically relating to the exercise of those functions, or both. Where ESMA, EBA, EIOPA, the competent authority or another authority, body or person communicating information consents thereto, the authority receiving the information may use it for other non-commercial purposes.

4. However, those conditions shall not prevent ESMA, EBA, EIOPA, the competent authorities or the relevant central banks from exchanging or transmitting confidential information in accordance with this Regulation and with other legislation applicable to investment firms, credit institutions, pension funds, insurance and reinsurance intermediaries, insurance undertakings, regulated markets or market operators or otherwise with the consent of the competent authority or other authority or body or natural or legal person that communicated the information.
5. Paragraphs 2 and 3 shall not prevent the competent authorities from exchanging or transmitting confidential information, in accordance with national law, that has not been received from a competent authority of another Member State.

Chapter VII

Relationship with third countries

Article 18a

Mechanism to avoid duplicative or conflicting rules

1. The Commission shall be assisted by ESMA in monitoring and preparing reports to the European Parliament and to the Council on the international application of principles laid down in Article 4 in particular with regard to potential duplicative or conflicting requirements on market participants, and recommend possible action.

2. The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country:
 - (a) are equivalent to the requirements laid down in this Regulation under Article 4;
 - (b) ensure protection of professional secrecy that is equivalent to that set out in this Regulation; and
 - (c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in paragraph 2 of Article 27a.

3. An implementing act on equivalence as referred to in paragraph 2 shall imply that counterparties entering into a transaction subject to this Regulation shall be deemed to have fulfilled the obligations contained in Article 4 where at least one of the counterparties is established in that third country and counterparties have complied with the relevant obligations of that third country in relation to that transaction.
4. The Commission shall, in cooperation with ESMA, monitor the effective implementation by third countries, for which an implementing act on equivalence has been adopted, of the requirements equivalent to those laid down in Article 4 and regularly report, at least on an annual basis, to the European Parliament and the Council. Where the report reveals an insufficient or inconsistent application of the equivalent requirements by third country authorities, the Commission shall, within 30 calendar days of the presentation of the report, withdraw the recognition as equivalent of the third country legal framework in question. Where an implementing act on equivalence is withdrawn, counterparties shall automatically be subject again to all requirements laid down in this Regulation.

Article 18b

Equivalence and memorandum of understanding

1. The Commission may adopt an implementing act determining that the legal and supervisory arrangements of a third country ensure that:
 - a. trade repositories authorised in that third country comply with legally binding requirements which are equivalent to those laid down in this Regulation;
 - b. effective supervision and enforcement of trade repositories takes place in that third country on an ongoing basis; and
 - c. guarantees of professional secrecy exist, including the protection of business secrets shared with third parties by the authorities, and they are at least equivalent to those set out in this Regulation.

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 27a(2).

2. Where appropriate, and in any case after adopting an implementing act as referred to in paragraph 1, the Commission shall submit recommendations to the Council for the negotiation of memorandum of understanding with the relevant third countries regarding mutual access to, and exchange of information on, SFTs held in trade repositories which are established in that third country, in a way that ensures that all the authorities listed in paragraph 2 of Article 12 have immediate and continuous access to all the information needed for the exercise of their duties.

3. After conclusion of the memoranda of understanding referred to in paragraph 2, and in accordance with them, ESMA shall establish cooperation arrangements with the competent authorities of the relevant third countries. Those arrangements shall specify at least:
 - a. a mechanism for the exchange of information between ESMA and any other authorities listed in paragraph 2 of Article 12 that exercise responsibilities in accordance with this Regulation on the one hand and the relevant competent authorities of third countries concerned on the other; and
 - b. procedures concerning the coordination of supervisory activities.
4. ESMA shall apply Regulation (EC) No 45/2001 with regard to the transfer of personal data to a third country.

Article 18c

Cooperation arrangements

1. Relevant authorities of third countries that do not have any trade repository established in their jurisdiction may contact ESMA with a view to establishing cooperation arrangements to access information on SFTs held in Union trade repositories. ESMA may establish cooperation arrangements with those relevant authorities regarding access to information on SFTs held in Union trade repositories that these authorities need to fulfil their respective responsibilities and mandates, provided that guarantees of professional secrecy exist, including the protection of business secrets shared by the authorities with third parties.

Article 19

Recognition of trade repositories

1. A trade repository established in a third country may provide its services and activities to entities established in the Union for the purposes of Article 4 only after its recognition by ESMA in accordance with the requirements laid down in paragraph 2 of this Article.
2. A trade repository referred to in paragraph 1 shall submit to ESMA its application for recognition together with all necessary information, including at least the information necessary to verify that the trade repository is authorised and subject to effective supervision in a third country which satisfies all the following criteria:
 - (a) it has been recognised by the Commission, by means of an implementing act pursuant to paragraph 1 of Article 18b, as having an equivalent and enforceable regulatory and supervisory framework;
 - (b) it has entered into a memorandum of understanding with the Union pursuant to Article 18b(2);
 - (c) it has entered into cooperation arrangements pursuant to Article 18b(3) to ensure that all the authorities listed in Article 12(2) have immediate and continuous access to all the necessary information.
3. Within 30 working days of 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.

4. 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.
5. ESMA shall publish on its website a list of the trade repositories recognised in accordance with this Article.

Chapter VIII

Administrative sanctions and other measures

Article 20

Administrative sanctions and other measures

1. Without prejudice to Article 25 and the right of Member States to provide for and impose criminal sanctions, Member States shall, in conformity with national law, provide for competent authorities to have the power to impose administrative sanctions and other administrative measures in relation to at least the following breaches:
 - (a) breach of the reporting obligation set out by Article 4;
 - (b) breach of Article 15.

Where the provisions referred to in the first subparagraph apply to legal persons, in case of a breach Member States shall provide for competent authorities to be able to apply sanctions, subject to the conditions laid down in national law, to members of the management body, and to other individuals who under national law are responsible for the breach.

2. The administrative sanctions and measures taken for the purpose of paragraph 1 shall be effective, proportionate and dissuasive.
3. Where Member States have chosen, in accordance with paragraph 1, 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 or prosecuting 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 this Regulation.

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

Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.

4. Without prejudice to the supervisory powers of competent authorities, the competent authorities shall, in conformity with national law, have the power to apply at least the following administrative sanctions and other measures in the event of the breaches referred to in paragraph 1 of this Article:
 - (a) an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;
 - (b) a public statement which indicates the person responsible and the nature of the breach in accordance with Article 24;

- (c) the suspension or withdrawal of the authorisation, or where applicable, proposing to the authority entrusted with that power, withdrawal the suspension of the authorisation;
- (d) a temporary ban against any person discharging managerial responsibilities or any natural person who is deemed responsible, from exercising management functions;
- (e) 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, even if that exceeds the amounts referred to in points (f) and (g);
- (f) in respect of a natural person, a maximum administrative pecuniary sanctions of at least EUR 2 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry to force of this Regulation;
- (g) in respect of legal persons, maximum administrative pecuniary sanctions of at least:
 - i. EUR 5 000 000 or up to 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body for breaches of Article 4;
 - ii. EUR 15 000 000 or up to 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body for breaches of Article 15.

For the purpose of points (i) and (ii), where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU¹⁷, 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.

Member States may provide that competent authorities may have powers in addition to those referred to in this paragraph and that they may provide for a wider scope of sanctions and higher levels of sanctions than those provided for in this paragraph.

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 shall not give rise to compensation rights from a party to a SFT.
- 5a. Member States may decide not to lay down rules for administrative sanctions as referred to in the paragraph 1 of this Article where the infringements referred to in that paragraph are already subject to criminal sanctions in their national law by 2 years after the date of entry into force. Where they so decide, Member States shall notify, in detail, to the Commission and to ESMA, the relevant parts of their criminal law.
6. By [24 months after entry into force of this Regulation] Member States shall notify the rules regarding paragraphs 1, 3 and 4 to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

¹⁷ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC OJ L 182, 29.6.2013, p. 19.

Article 21

Sanctions

Member States shall ensure that, when determining the type and level of administrative sanctions and other measures, competent authorities shall take into account all relevant circumstances, including, where appropriate:

- (a) the gravity and duration of the breach;
- (b) the degree of responsibility of the person responsible for the breach;
- (c) the financial strength of the person responsible for the breach, by considering factors such as the total turnover of a legal person or the annual income in the case of a natural person;
- (d) the importance of the profits gained or losses avoided by the person responsible for the breach, insofar as they can be determined;
- (e) the level of cooperation of the person responsible for the breach with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (f) previous breaches by the person responsible for the breach;

Competent authorities may take into account additional factors to those referred to in the first subparagraph when determining the type and level of administrative sanctions and measures.

Article 22

Reporting of breaches

1. The competent authorities shall establish effective mechanisms to enable reporting of actual or potential breaches of Articles 4 and 15 to competent authorities.
2. The mechanisms referred to in paragraph 1 shall include at least:
 - (a) specific procedures for the receipt of reports of breaches and their follow-up, including the establishment of secure communication channels for such reports;
 - (b) appropriate protection for persons working under a contract of employment, who report breaches or who are accused of breaches, against retaliation, discrimination or other types of unfair treatment;
 - (c) protection of personal data both of the person who reports the breach and the natural person who allegedly committed the breach, including protection in relation to preserving the confidentiality of their identity, at all stages of the procedure without prejudice to disclosure of information being required by national law in the context of investigations or subsequent judicial proceedings.
3. Counterparties shall have in place appropriate internal procedures for their employees to report breaches of Articles 4 and 15.

Article 23

Exchange of information with ESMA

1. Competent authorities shall provide ESMA annually with aggregated information regarding all administrative measures, sanctions and fines imposed by them in accordance with Article 20. ESMA shall publish that information in an annual report.
2. Where Member States have chosen to lay down criminal sanctions for the breaches of the provisions referred to in Article 20, their competent authorities shall provide ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal sanctions imposed. ESMA shall publish data on criminal sanctions imposed in an annual report.
3. Where the competent authority has disclosed an administrative measure, sanction or criminal sanction to the public, it shall, at the same time, report that information to ESMA.
4. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraphs 1 and 2.

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

Power is conferred to 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.

Article 24

Publication of decisions

1. Subject to the fourth paragraph Member States shall ensure that competent authorities publish any decision imposing an administrative sanction or other measure in relation to a breach of Articles 4 and 15 on their website immediately after the person subject to that decision has been informed of that decision.
2. The information published pursuant to the first paragraph shall specify at least the type and nature of the breach and the identity of the person subject to the decision.
3. The first and second paragraphs do not apply to decisions imposing measures that are of an investigatory nature.

Where a competent authority considers, following a case-by-case assessment, that the publication of the identity of the legal person subject to the decision, or the personal data of a natural person, would be disproportionate, or where such publication would jeopardise an ongoing investigation or the stability of the financial markets, it shall do one of the following:

- (a) defer publication of the decision until the reasons for that deferral cease to exist;
- (b) publish the decision on an anonymous basis in accordance with national law where such publication ensures the effective protection of the personal data concerned and, where appropriate, postpone publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication will cease to exist during that period;

(c) not publish the decision in the event that the competent authority is of the opinion that publication in accordance with point (a) or (b) will be insufficient to ensure:

(i.) that the stability of financial markets is not jeopardised; or

(ii.) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

4. Where the decision is subject to an appeal before a national judicial, administrative or other authority, competent authorities shall also publish immediately on their website such information and any subsequent information on the outcome of such an appeal. Moreover, any decision annulling a decision subject to appeal shall also be published.

Competent authorities shall inform ESMA of all administrative sanctions imposed but not published in accordance with point (c) of the third subparagraph including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgement in relation to any criminal sanction imposed and submit it to ESMA. ESMA shall maintain a central database of sanctions communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be accessible only to competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

5. Competent authorities shall ensure that any decision that is published in accordance with this Article shall remain accessible on their website for a period of at least five years after its publication. Personal data contained in those decisions shall be kept on the website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.

Article 24a

Right of appeal

Member States shall ensure that decisions and measures taken in pursuance of this Regulation are properly reasoned and subject to a right of appeal before a tribunal. The right of appeal before a tribunal shall apply where no decision is taken, within six months of its submission, in respect of an application for authorisation which contains all the information required under the provisions in force.

Article 25

Sanctions for the purpose of Articles 13 and 14

Sanctions and other measures established in accordance with Directive 2009/65/EC and Directive 2011/61/EU shall be applicable to breaches of the obligations set in Articles 13 and 14 of this Regulation.

Chapter IX

Review

Article 26

Review

Three years after the entry into force, the Commission shall, after consulting ESMA, report on the effectiveness, efficiency and proportionality of this Regulation to the European Parliament and to the Council and, if appropriate, submit a revised proposal. This review shall include in particular an overview of similar reporting obligations in third countries.

Chapter X

Final provisions

Article 27

Exercise of delegated powers

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 2(3), 11(2), 13(3), and 14(3) shall be conferred on the Commission for an indeterminate period of time from the date referred to in Article 28.
3. The delegation of power referred to in Articles 2(3), 11(2), 13(3), and 14(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 2(3), 11(2), 13(3), and 14(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 27a

Committee procedure

1. For the adoption of implementing acts, the Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 27b

Transitional provision

(deleted)

Article 28

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall apply from the date of entry into force, with the exception of:
 - (a) Article 4(1), which shall apply:

- (i) 12 months after the date of entry into force of the regulatory technical standards and the implementing technical standards adopted by the Commission pursuant to Article 4 (7) and 4(8) for financial counterparties; and
- (ii) 24 months after the date of entry into force of the regulatory technical standards and the implementing technical standards adopted by the Commission pursuant to Article 4 (7) and 4(8) for non-financial counterparties;
- (b) Articles 13 and 14 which shall apply 6 months after the date of entry into force; and
- (c) Article 15 shall apply 6 months after the date of entry into force, including for collateral arrangements existing at the [date of entry into force].

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President

*Section A – Information to be provided in the UCITS and the AIF's annual reports***Global data:**

- The amount of securities and commodities on loan as a proportion of total lendable assets (i.e. total assets not including cash and cash equivalents);
- The amount of assets engaged in each type of SFT expressed as an absolute amount (in fund's currency) and as a proportion of the fund's assets under management (AUM)

Concentration data:

- Top 10 collateral issuers for all types of SFT (Names of the issuers and volumes of the collateral received from these)
- Top 10 counterparties of each type of SFTs separately (Name of counterparty and gross volume of outstanding transactions)

Aggregate transaction data for each type of SFT separately – to be broken down according to the below categories:

- Type and quality of collateral;
- Maturity tenor of the collateral broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one month to three months, three months to one year, above one year, open maturity;
- Currency of the collateral;
- Maturity tenor of the SFT broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one month to three months, three months to one year, above one year, open transactions;

- Country of domicile of counterparties;
- Settlement and clearing (e.g., tri-party, Central Counterparty, bilateral).

Data on reuse of collateral:

- Share of collateral received that is reused, compared to the maximum amount specified in the prospectus or in the disclosure to investors;
- Cash collateral reinvestment returns to the fund.

Safekeeping of collateral received by the fund as part of SFT

Number and names of custodians and the amount of collateral assets safe-kept by each

Safekeeping of collateral granted by the fund as part of SFT

The proportion of collateral held either in segregated accounts or in pooled accounts, or in any other accounts

Data on return and cost for each type of SFTs broken down between the fund, fund manager and third parties (e.g. agent lender) in absolute terms and as a percentage of overall returns generated by that type of SFT

Section B – Information to be included in the UCITS Prospectus and AIF disclosure to investors:

- General description of the SFTs used by the fund and the rationale for their use
- Overall data to be reported for each type of SFT
 - Types of assets that can be subject to them
 - Maximum proportion of AUM that can be subject to them
 - Expected proportion of AUM that will be subject to each of them

- Criteria used to select counterparties (including legal status, country of origin, minimum credit rating)
 - Acceptable collateral: description of acceptable collateral with regard to asset types, issuer, maturity, liquidity as well as the collateral diversification and correlation policies.
 - Collateral valuation: description of the collateral valuation methodology used and its rationale, and whether daily mark-to-market and daily variation margins are used.
 - Risk management: description of the risks linked to SFT, as well as risks linked to collateral management, such as operational, liquidity, counterparty, custody and legal risks as well as, where applicable, the risks arising from its reuse.
 - Specification of how assets subject to SFTs and collateral received are safe-kept (e.g. with fund custodian).
 - Specification of any restrictions (regulatory or self-imposed) on reuse of collateral.
 - Policy on direct and indirect operational costs/fees arising from SFT: description of the revenue generated by SFT that is returned to the fund, and of the costs/fees assigned to the manager or third parties (e.g. the agent lender). The prospectus shall also indicate if these are related parties to the manager.
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