

Transparency of securities financing transactions and of reuse

2014/0017(COD) - 29/10/2015 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 546 votes to 89, with 7 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on reporting and transparency of securities financing transactions.

The European Parliament's position at first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Subject matter and definitions: this Regulation lays down rules on the transparency of securities financing transactions (SFTs) and of reuse.

Under this proposal, "**reuse**" shall mean the use by a receiving counterparty, in its own name and on its own account or on the account of another counterparty, including any natural person, of financial instruments received under a collateral arrangement.

The Regulation seeks to create a Union framework under which details of SFTs can be efficiently reported to trade repositories and information on SFTs and total return swaps is disclosed to investors in collective investment undertakings.

The **definition** of "securities or commodities lending" or "securities or commodities borrowing" has been defined as well as "buy-sell back transaction" or "sell-buy back transaction" and "repurchase transaction" and "margin lending transaction".

Reporting obligation and safeguarding in respect of SFTs: counterparties to SFTs shall report the details of any SFT they have concluded, as well as any modification or termination thereof, to a trade repository registered. Those details shall be reported no **later than the working day** following the conclusion, modification or termination of the transaction.

Transactions with members of the **European System of Central Banks (ESCB)** should be exempted from the obligation to report SFTs to trade repositories.

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**.

In order to ensure consistent application of this Regulation, **the ESMA shall:**

- develop **draft regulatory technical standards** specifying the details of the reports;
- develop draft implementing technical standards specifying the **format and frequency** of the reports. The format shall include, in particular: (a) global legal entity identifiers (LEIs), or pre-LEIs until the Global Legal Entity Identifier System is fully implemented; (b) international securities identification numbers (ISINs); and (c) unique trade identifiers.

Transparency: information on the risks inherent in securities financing markets should be centrally stored, and easily and directly accessible by, inter alia, ESMA, the European Supervisory Authority

(European Banking Authority) ("EBA"), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ("EIOPA"), the relevant competent authorities, the ESRB and the relevant central banks of the ESCB, including the European Central Bank (ECB).

Parliament also enhanced measures as regards the transparency of collective investment undertakings in pre-contractual documents and in periodical reports.

Reuse of financial instruments received under a collateral arrangement: 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.

This measure is without prejudice to stricter sectoral legislation and to national law that aims to ensure a higher level of protection for providing counterparties.

Cooperation between the competent authorities: the amended Regulation introduces provisions on the **exchange of information** between competent authorities and to strengthen the **duties of assistance and cooperation** which they owe each other.

Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their functions in order 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.

Equivalence of reporting: the Commission may adopt implementing acts determining that the legal, supervisory and enforcement arrangements of a **third country**: (a) are equivalent to the requirements regarding the reporting obligation and safeguarding laid down in the Regulation; (b) ensure protection of professional secrecy equivalent to that laid down in this Regulation; (c) are being effectively applied and enforced in an equitable and non-distortive manner in order to ensure effective supervision and enforcement in that **third country**.

Sanctions: competent authorities may have the power to apply at least the following administrative sanctions and other administrative measures in the event of the infringements. In respect of legal persons, maximum administrative pecuniary sanctions of at least:

- **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 infringements regarding the reporting obligation and safeguarding;
- **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 infringements regarding the reuse of financial instruments received under a collateral arrangement.

The powers to impose sanctions conferred on competent authorities should be without prejudice to the exclusive competence of the ECB, pursuant to [Regulation \(EU\) No 1024/2013](#), to withdraw authorisations of credit institutions for prudential supervisory purposes.

Reports: with the assistance of ESMA, the Commission should monitor and prepare reports to the European Parliament and to the Council on the international application of the reporting obligation laid down in this Regulation. The time provided for submission of the Commission reports should allow for the prior effective application of this Regulation.

Following the outcome of the work carried out by relevant international fora, and with the assistance of ESMA, EBA and the ESRB, the Commission should submit a report to the European Parliament and to

the Council on progress in international efforts to mitigate the risks associated with SFTs, including the FSB recommendations for haircuts on non-centrally cleared SFTs, and on the appropriateness of those recommendations for Union markets.