Transparency of securities financing transactions and of reuse

2014/0017(COD) - 25/11/2015 - Final act

PURPOSE: to enhance the transparency of certain activities in financial markets such as the use of SFTs and reuse of collateral in order to enable the monitoring and identification of the corresponding risks.

LEGISLATIVE ACT: Regulation (EU) 2015/2365 of the European Parliament and of the Council on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

CONTENT: 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.

This Regulation lays down rules on the **transparency of securities financing transactions (SFTs) and of reuse**. It creates 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. It is intended to counter the risk of trading activities developing outside the regulated banking system, or otherwise without proper oversight.

- **The definition of 'securities financing transaction' or 'SFT'** shall cover a repurchase transaction; securities or commodities lending and securities or commodities borrowing; a buy-sell back transaction or sell-buy back transaction and a margin lending transaction.
- '**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.

Reporting obligation and safeguarding: 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 with European Securities and Markets Authority (ESMA) or recognised in accordance with this Regulation. Those details shall be reported **no later than the working day following the conclusion**, modification or termination of the transaction.

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, ESMA shall, in close cooperation with, and taking into account the needs of, the European System of Central Banks (ESCB): (i) develop **draft regulatory technical standards** specifying the details of the reports for the different types of SFTs; (b) develop **draft implementing technical standards** specifying the format and frequency of the reports for the different types of SFTs.

Transparency towards investors: in order to enable investors to become aware of the risks associated with the use of SFTs and total return swaps, managers of collective investment undertakings should include detailed information on any recourse they have to those techniques in **periodical reports**.

A collective investment undertaking's investment policy with respect to SFTs and total return swaps should be **clearly disclosed in the pre-contractual documents**, such as the prospectus for undertakings for collective investment in transferable securities (UCITS) and the pre-contractual disclosure to investors for alternative investment funds (AIFs).

Transparency of reuse: reuse of collateral provides liquidity and enables counterparties to reduce funding costs. However, it tends to create complex collateral chains between traditional banking and shadow banking, giving rise to 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 the case of bankruptcy can undermine confidence in counterparties and magnify risks to financial stability.

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**.

Cooperation between competent authorities: the Regulation provides that the competent authorities referred to in the Regulation 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 in order to identify and remedy infringements of this Regulation.

A competent authority may refuse to act on a request to cooperate and exchange information in exceptional circumstances.

Any confidential information received, exchanged or transmitted shall be subject to the conditions of **professional secrecy.**

Relationship with third countries: 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 the rules of third countries for the purposes of recognising third-country trade repositories, and in order to avoid potentially duplicate or conflicting requirements.

Where appropriate, 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 those third countries and thus avoid any possible duplication in this respect.

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

Sanctions: Member States shall ensure that competent authorities have the power to impose **administrative sanctions** and other administrative measures which are effective, proportionate and dissuasive. These sanctions shall 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 powers to impose sanctions and levels of administrative pecuniary sanctions.

Reports: with the assistance of ESMA, the Commission shall 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 shall allow for the prior effective application of this Regulation.

By 13 October 2017, the Commission shall submit a report on progress in international efforts to mitigate the risks associated with SFTs.

ENTRY INTO FORCE AND APPLICATION: from 12.01.2016 (with the exception of certain provisions which shall apply at the end of a delay following the adoption of the delegated acts by the Commission).

DELEGATED ACTS: the Commission should be empowered to adopt regulatory technical standards in the following areas: the details to be reported for different types of SFTs; the details of the application for registration or extension of the registration of a trade repository, etc. The power to adopt delegated acts shall be conferred on the Commission for an **indeterminate period of time from 12 January 2016.** The European Parliament or the Council may formulate objections with regard to the delegated act within a period of two months of its notification (this period may be extended by two months). If the European Parliament and the Council object, the delegated act may not enter into force.