

Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (Text with EEA relevance)

CHAPTER VI

SUPERVISION AND COMPETENT AUTHORITIES

Article 16

Designation and powers of competent authorities

- 1 For the purpose of this Regulation, competent authorities shall comprise the following:
 - a for financial counterparties, competent authorities or national competent authorities within the meaning of Regulations (EU) No 648/2012, (EU) No 1024/2013 and (EU) No 909/2014 and of Directives 2003/41/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU and 2014/65/EU, and the supervisory authorities within the meaning of Directive 2009/138/EC;
 - 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 Articles 13 and 14 of this Regulation, concerning UCITS management companies and UCITS investment companies, the competent authorities designated in accordance with Article 97 of Directive 2009/65/EC;
 - d for the purpose of Articles 13 and 14 of this Regulation, concerning AIFMs, the competent authorities designated in accordance with Article 44 of Directive 2011/61/EU.
- 2 The competent authorities shall exercise the powers conferred on them by the provisions referred to in paragraph 1 and shall supervise compliance with the obligations laid down in this Regulation.
- 3 The competent authorities referred to in points (c) and (d) of paragraph 1 of this Article shall monitor UCITS management companies, UCITS investment companies and AIFMs established in their territories to verify that they do not use SFTs and total return swaps, 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 in order to identify and remedy infringements of this Regulation.
- 2 A competent authority may refuse to act on a request to cooperate and exchange information in accordance with paragraph 1 only in either of the following exceptional circumstances:

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- a where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State of the competent authority receiving the request; or
- b where a final judgment has already been delivered in relation to such persons for the same actions in the Member State of the competent authority receiving the request.

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

3 The entities referred to in Article 12(2) and the relevant members of ESCB shall cooperate closely in accordance with the conditions laid down in this paragraph.

Such cooperation shall be confidential and conditional upon a justified request from the relevant competent authorities, and only with a view to enabling those authorities to fulfil their respective responsibilities.

Notwithstanding the first and second subparagraphs the members of the ESCB may refuse to provide information where the transactions are entered into by them in the performance of their functions as monetary authorities.

In the case of a refusal as referred to in the third subparagraph, the relevant member of the ESCB shall notify the requesting authority of that refusal together with the justification therefor.

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. No confidential information that those persons receive in the course of their duties shall be divulged to any 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 national criminal or tax law or to this Regulation.

3 Without prejudice to national criminal or tax 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 Paragraphs 2 and 3 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,

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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.

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Changes and effects yet to be applied to :

- Regulation power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 1](#)
- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 1](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Art. 2(1)(b) substituted by [S.I. 2019/542 reg. 6\(a\)\(i\)](#)
- Art. 2(1)(c) words substituted by [S.I. 2019/542 reg. 6\(a\)\(ii\)](#)
- Art. 2(2)(a) substituted by [S.I. 2019/542 reg. 6\(b\)](#)
- Art. 3(3)(a)-(g) substituted for Art. 3(3)(a)-(h) by [S.I. 2019/542 reg. 7\(a\)](#)
- Art. 3(3)(a) words substituted in earlier amending provision S.I. 2019/542, reg. 7(a) by [S.I. 2020/1301 reg. 3Sch. para. 30\(a\)](#)
- Art. 3(3)(g) words inserted in earlier affecting provision S.I. 2019/542, reg. 7(a) by [S.I. 2020/646 reg. 8](#)
- Art. 3(3)(g) words substituted in earlier amending provision S.I. 2019/542, reg. 7(a) by [S.I. 2020/1385 reg. 56\(2\)](#)
- Art. 3(3)(h) inserted by [S.I. 2020/1385 reg. 75](#)
- Art. 3(12) words substituted by [S.I. 2019/542 reg. 7\(b\)](#)
- Art. 3(13) words substituted by [S.I. 2019/542 reg. 7\(c\)](#)
- Art. 3(14) words substituted by [S.I. 2019/542 reg. 7\(d\)](#)
- Art. 3(16) words substituted by [S.I. 2019/542 reg. 7\(e\)](#)
- Art. 3(19)-(32) inserted by [S.I. 2019/542 reg. 7\(f\)](#)
- Art. 3(30)(32) words substituted in earlier amending provision S.I. 2019/542, reg. 7(f) by [S.I. 2020/1301 reg. 3Sch. para. 30\(f\)](#)
- Art. 4(5)(5a) substituted for Art. 4(5) by [S.I. 2019/542 reg. 8\(a\)](#)
- Art. 1010a10b substituted for Art. 10 by [S.I. 2019/542 reg. 13](#)
- Art. 12(2)(b) substituted by [S.I. 2019/542 reg. 15\(a\)\(i\)](#)
- Art. 12(2)(c) substituted by [S.I. 2019/542 reg. 15\(a\)\(ii\)](#)
- Art. 12(2)(d) substituted by [S.I. 2019/542 reg. 15\(a\)\(iii\)](#)
- Art. 12(2)(e) omitted by [S.I. 2019/542 reg. 15\(a\)\(iv\)](#)
- Art. 12(2)(e) substituted for Art. 12(2)(h) by [S.I. 2019/542 reg. 15\(a\)\(vi\)](#)
- Art. 12(2)(f) omitted by [S.I. 2019/542 reg. 15\(a\)\(iv\)](#)
- Art. 12(2)(g) words substituted by [S.I. 2019/542 reg. 15\(a\)\(v\)](#)
- Art. 12(2)(i)-(m) omitted by [S.I. 2019/542 reg. 15\(a\)\(vii\)](#)
- Art. 13(1)(a) words substituted by [S.I. 2019/542 reg. 16\(a\)\(i\)](#)
- Art. 13(1)(b) words substituted by [S.I. 2019/542 reg. 16\(a\)\(ii\)](#)
- Art. 19(1)(a) words inserted by [S.I. 2019/542 reg. 21\(b\)\(ii\)](#)
- Art. 19(1)(d) omitted by [S.I. 2019/542 reg. 21\(b\)\(iii\)](#)
- Art. 19(5)(a) word substituted by [S.I. 2019/542 reg. 21\(d\)\(i\)](#)
- Art. 19(5)(b)(i) words omitted by [S.I. 2019/542 reg. 21\(d\)\(ii\)](#)