

Directive 2014/65/EU 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 (recast) (Text with EEA relevance)

TITLE I

SCOPE AND DEFINITIONS

Article 4

Definitions

1 For the purposes of this Directive, the following definitions apply:

- (1) ‘investment firm’ means any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.

Member States may include in the definition of investment firms undertakings which are not legal persons, provided that:

- (a) their legal status ensures a level of protection for third parties’ interests equivalent to that afforded by legal persons; and
- (b) they are subject to equivalent prudential supervision appropriate to their legal form.

However, where a natural person provides services involving the holding of third party funds or transferable securities, that person may be considered to be an investment firm for the purposes of this Directive and of Regulation (EU) No 600/2014 only if, without prejudice to the other requirements imposed in this Directive, in Regulation (EU) No 600/2014, and in Directive 2013/36/EU, that person complies with the following conditions:

- (a) the ownership rights of third parties in instruments and funds must be safeguarded, especially in the event of the insolvency of the firm or of its proprietors, seizure, set-off or any other action by creditors of the firm or of its proprietors;
- (b) the firm must be subject to rules designed to monitor the firm’s solvency and that of its proprietors;
- (c) the firm’s annual accounts must be audited by one or more persons empowered, under national law, to audit accounts;
- (d) where the firm has only one proprietor, that person must make provision for the protection of investors in the event of the firm’s cessation of business following the proprietor’s death or incapacity or any other such event;

- (2) ‘investment services and activities’ means any of the services and activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I.

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The Commission shall adopt delegated acts in accordance with Article 89 measures specifying:

- (a) the derivative contracts referred to in Section C.6 of Annex I that have the characteristics of wholesale energy products that must be physically settled and C.6 energy derivative contracts;
 - (b) the derivative contracts referred to in Section C.7 of Annex I that have the characteristics of other derivative financial instruments;
 - (c) the derivative contracts referred to in Section C.10 of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, an MTF or an OTF;
- (3) ‘ancillary services’ means any of the services listed in Section B of Annex I;
 - (4) ‘investment advice’ means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments;
 - (5) ‘execution of orders on behalf of clients’ means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients and includes the conclusion of agreements to sell financial instruments issued by an investment firm or a credit institution at the moment of their issuance;
 - (6) ‘dealing on own account’ means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;
 - (7) ‘market maker’ means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person’s proprietary capital at prices defined by that person;
 - (8) ‘portfolio management’ means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;
 - (9) ‘client’ means any natural or legal person to whom an investment firm provides investment or ancillary services;
 - (10) ‘professional client’ means a client meeting the criteria laid down in Annex II;
 - (11) ‘retail client’ means a client who is not a professional client;
 - (12) ‘SME growth market’ means a MTF that is registered as an SME growth market in accordance with Article 33;
 - (13) ‘small and medium-sized enterprises’ for the purposes of this Directive, means companies that had an average market capitalisation of less than EUR 200 000 000 on the basis of end-year quotes for the previous three calendar years;
 - (14) ‘limit order’ means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size;
 - (15) ‘financial instrument’ means those instruments specified in Section C of Annex I;

- (16) ‘C6 energy derivative contracts’ means options, futures, swaps, and any other derivative contracts mentioned in Section C.6 of Annex I relating to coal or oil that are traded on an OTF and must be physically settled;
- (17) ‘money-market instruments’ means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;
- (18) ‘market operator’ means a person or persons who manages and/or operates the business of a regulated market and may be the regulated market itself;
- (19) ‘multilateral system’ means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system;
- (20) ‘systematic internaliser’ means an investment firm which, on an organised, frequent systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system;
- The frequent and systematic basis shall be measured by the number of OTC trades in the financial instrument carried out by the investment firm on own account when executing client orders. The substantial basis shall be measured either by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument or by the size of the OTC trading carried out by the investment firm in relation to the total trading in the Union in a specific financial instrument. The definition of a systematic internaliser shall apply only where the pre-set limits for a frequent and systematic basis and for a substantial basis are both crossed or where an investment firm chooses to opt-in under the systematic internaliser regime;
- (21) ‘regulated market’ means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of this Directive;
- (22) ‘multilateral trading facility’ or ‘MTF’ means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of this Directive;
- (23) ‘organised trading facility’ or ‘OTF’ means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of this Directive;
- (24) ‘trading venue’ means a regulated market, an MTF or an OTF;
- (25) ‘liquid market’ means a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:

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- (a) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument;
 - (b) the number and type of market participants, including the ratio of market participants to traded instruments in a particular product;
 - (c) the average size of spreads, where available;
- (26) ‘competent authority’ means the authority, designated by each Member State in accordance with Article 67, unless otherwise specified in this Directive;
- (27) ‘credit institution’ means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;
- (28) ‘UCITS management company’ means a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC of the European Parliament and of the Council⁽¹⁾;
- (29) ‘tied agent’ means a natural or legal person who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts, promotes investment and/or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;
- (30) ‘branch’ means a place of business other than the head office which is a part of an investment firm, which has no legal personality and which provides investment services and/or activities and which may also perform ancillary services for which the investment firm has been authorised; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;
- (31) ‘qualifying holding’ means a direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council⁽²⁾, taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;
- (32) ‘parent undertaking’ means a parent undertaking within the meaning of Article 2(9) and 22 of Directive 2013/34/EU of the European Parliament and of the Council⁽³⁾;
- (33) ‘subsidiary’ means a subsidiary undertaking within the meaning of Articles 2(10) and 22 of Directive 2013/34/EU, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking;
- (34) ‘group’ means a group as defined in Article 2(11) of Directive 2013/34/EU;
- (35) ‘close links’ means a situation in which two or more natural or legal persons are linked by:
- (a) participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking;
 - (b) ‘control’ which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 22(1) and (2) of Directive

2013/34/EU, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;

- (c) a permanent link of both or all of them to the same person by a control relationship;
- (36) ‘management body’ means the body or bodies of an investment firm, market operator or data reporting services provider, which are appointed in accordance with national law, which are empowered to set the entity’s strategy, objectives and overall direction, and which oversee and monitor management decision-making and include persons who effectively direct the business of the entity.
- Where this Directive refers to the management body and, pursuant to national law, the managerial and supervisory functions of the management body are assigned to different bodies or different members within one body, the Member State shall identify the bodies or members of the management body responsible in accordance with its national law, unless otherwise specified by this Directive;
- (37) ‘senior management’ means natural persons who exercise executive functions within an investment firm, a market operator or a data reporting services provider and who are responsible, and accountable to the management body, for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;
- (38) ‘matched principal trading’ means a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction;
- (39) ‘algorithmic trading’ means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;
- (40) ‘high-frequency algorithmic trading technique’ means an algorithmic trading technique characterised by:
- (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access;
- (b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and
- (c) high message intraday rates which constitute orders, quotes or cancellations;
- (41) ‘direct electronic access’ means an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the

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- trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access);
- (42) ‘cross-selling practice’ means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package;
- (43) ‘^{X1}structured deposit’ means a deposit as defined in point (3) of Article 2(1) of Directive 2014/49/EU of the European Parliament and of the Council⁽⁴⁾, which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:]
- (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;
 - (b) a financial instrument or combination of financial instruments;
 - (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
 - (d) a foreign exchange rate or combination of foreign exchange rates;
- (44) ‘transferable securities’ means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:
- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
 - (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
 - (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;
- (45) ‘depositary receipts’ means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;
- (46) ‘exchange-traded fund’ means a fund of which at least one unit or share class is traded throughout the day on at least one trading venue and with at least one market maker which takes action to ensure that the price of its units or shares on the trading venue does not vary significantly from its net asset value and, where applicable, from its indicative net asset value;
- (47) ‘certificates’ means certificates as defined in Article 2(1)(27) of Regulation (EU) No 600/2014;
- (48) ‘structured finance products’ means structured finance products as defined in Article 2(1)(28) of Regulation (EU) No 600/2014;
- (49) ‘derivatives’ means derivatives as defined in Article 2(1)(29) of Regulation (EU) No 600/2014;

- (50) ‘commodity derivatives’ means commodity derivatives as defined in Article 2(1)(30) of Regulation (EU) No 600/2014;
- (51) ‘CCP’ means a CCP as defined in Article 2(1) of Regulation (EU) No 648/2012;
- (52) ‘approved publication arrangement’ or ‘APA’ means a person authorised under this Directive to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of Regulation (EU) No 600/2014;
- (53) ‘consolidated tape provider’ or ‘CTP’ means a person authorised under this Directive to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 of Regulation (EU) No 600/2014 from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;
- (54) ‘approved reporting mechanism’ or ‘ARM’ means a person authorised under this Directive to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;
- (55) ‘home Member State’ means:
- (a) in the case of investment firms:
 - (i) if the investment firm is a natural person, the Member State in which its head office is situated;
 - (ii) if the investment firm is a legal person, the Member State in which its registered office is situated;
 - (iii) if the investment firm has, under its national law, no registered office, the Member State in which its head office is situated;
 - (b) in the case of a regulated market, the Member State in which the regulated market is registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the regulated market is situated;
 - (c) in the case of an APA, a CTP or an ARM:
 - (i) if the APA, CTP or ARM is a natural person, the Member State in which its head office is situated;
 - (ii) if the APA, CTP or ARM is a legal person, the Member State in which its registered office is situated;
 - (iii) if the APA, CTP or ARM has, under its national law, no registered office, the Member State in which its head office is situated;
- (56) ‘host Member State’ means the Member State, other than the home Member State, in which an investment firm has a branch or provides investment services and/or activities, or the Member State in which a regulated market provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same Member State;
- (57) ‘third-country firm’ means a firm that would be a credit institution providing investment services or performing investment activities or an investment firm if its head office or registered office were located within the Union;

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- (58) ‘wholesale energy product’ means wholesale energy products as defined in point (4) of Article 2 of Regulation (EU) No 1227/2011;
- (59) ‘agricultural commodity derivatives’ means derivative contracts relating to products listed in Article 1 of, and Annex I, Parts I to XX and XXIV/1, to, Regulation (EU) No 1308/2013 of the European Parliament and of the Council⁽⁵⁾;
- (60) ‘sovereign issuer’ means any of the following that issues debt instruments:
- (i) the Union;
 - (ii) a Member State, including a government department, an agency, or a special purpose vehicle of the Member State;
 - (iii) in the case of a federal Member State, a member of the federation;
 - (iv) a special purpose vehicle for several Member States;
 - (v) an international financial institution established by two or more Member States which has the purpose of mobilising funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems; or
 - (vi) the European Investment Bank;
- (61) ‘sovereign debt’ means a debt instrument issued by a sovereign issuer;
- (62) ‘durable medium’ means any instrument which:
- (a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
 - (b) allows the unchanged reproduction of the information stored;
- (63) ‘data reporting services provider’ means an APA, a CTP or an ARM^{[F1];}
- (64) ^[F2]‘central securities depository’ or ‘CSD’ means a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014.]

2 The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to specify some technical elements of the definitions laid down in paragraph 1, to adjust them to market developments, technological developments and experience of behaviour that is prohibited under Regulation (EU) No 596/2014 and to ensure the uniform application of this Directive.

Editorial Information

- X1** Substituted by [Corrigendum to Directive 2014/65/EU 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 \(Official Journal of the European Union L 173 of 12 June 2014\)](#).
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Textual Amendments

- F1** Substituted by [Regulation \(EU\) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation \(EU\) No 236/2012 \(Text with EEA relevance\)](#).

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F2 Inserted by Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (Text with EEA relevance).

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- (1) 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](#)).
- (2) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC ([OJ L 390, 31.12.2004, p. 38](#)).
- (3) 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](#)).
- (4) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (see page 149 of this Official Journal).
- (5) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([OJ L 347, 20.12.2013, p. 671](#)).