

Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Text with EEA relevance)

TITLE V

DERIVATIVES

Article 28

Obligation to trade on regulated markets, MTFs or OTFs

1 [F¹Relevant financial counterparties and relevant non-financial counterparties shall conclude transactions which are neither intragroup transactions as defined in Article 3 of Regulation (EU) No 648/2012 nor transactions covered by the transitional provisions in Article 89 of that Regulation with other relevant financial counterparties or other relevant non-financial counterparties] in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation in accordance with the procedure set out in Article 32 and listed in the register referred to in Article 34 only on:

- a regulated markets;
- b MTFs;
- c OTFs; or
- [F²d third-country trading venues, provided that—
 - i either—
 - aa a decision has been adopted before IP completion day by the European Commission in accordance with paragraph 4 of this Article as it had effect in the European Union before IP completion day; or
 - bb the Treasury has made regulations in accordance with paragraph 4 of this Article as it applies in the United Kingdom on and after IP completion day; and
 - ii the third country provides for an effective equivalent system for recognition of UK trading venues to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis.]

[F³1A For the purposes of this Article—

- a) “financial counterparty” and “non-financial counterparty” have the same meanings as in Regulation (EU) No 648/2012 (see Article 2(8) and (9) of that Regulation);
- b) a financial counterparty is a “relevant” financial counterparty if it is subject to the clearing obligation referred to in Article 4 of Regulation (EU) No 648/2012;
- c) a non-financial counterparty is a “relevant” non-financial counterparty in respect of derivative contracts pertaining to any asset classes if it is subject to that clearing obligation in respect of derivative contracts pertaining to those asset classes.]

2 The trading obligation shall also apply to counterparties referred to in paragraph 1 which enter into derivatives transactions pertaining to a class of derivatives that has been declared subject to the trading obligation with third-country financial institutions or other third-country entities that would be subject to the clearing obligation if they were established in the [F⁴United Kingdom]. The trading obligation shall also apply to third-country entities that

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would be subject to the clearing obligation if they were established in the [F4United Kingdom], which enter into derivatives transactions pertaining to a class of derivatives that has been declared subject to the trading obligation, provided that the contract has a direct, substantial and foreseeable effect within the [F4United Kingdom] or where such obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

[F5The competent authority must] regularly monitor the activity in derivatives which have not been declared subject to the trading obligation as described in paragraph 1 in order to identify cases where a particular class of contracts may pose systemic risk and to prevent regulatory arbitrage between derivative transactions subject to the trading obligation and derivative transactions which are not subject to the trading obligation.

3 Derivatives declared subject to the trading obligation pursuant to paragraph 1 shall be eligible to be admitted to trading on a regulated market or to trade on any trading venue as referred to in paragraph 1 on a non-exclusive and non-discriminatory basis.

4 [F6 The Treasury may by regulations specify] that the legal and supervisory framework of a third country ensures that a trading venue authorised in that third country complies with legally binding requirements which are equivalent to the requirements for the trading venues referred to in paragraph 1(a), (b) or (c) of this Article, resulting from this Regulation, [F7United Kingdom law which was relied on by the United Kingdom before IP completion day to implement] Directive 2014/65/EU, and Regulation (EU) No 596/2014, and which are subject to effective supervision and enforcement in that third country.

Those decisions shall be for the sole purpose of determining eligibility as a trading venue for derivatives subject to the trading obligation.

The legal and supervisory framework of a third country is considered to have equivalent effect where that framework fulfils all the following conditions:

- a trading venues in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
- b trading venues have clear and transparent rules regarding admission of financial instruments to trading so that such financial instruments are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
- c issuers of financial instruments are subject to periodic and ongoing information requirements ensuring a high level of investor protection;
- d it ensures market transparency and integrity via rules addressing market abuse in the form of insider dealing and market manipulation;

[F8Regulations made by the Treasury] under this paragraph may be limited to a category or categories of trading venues. In that case, a third-country trading venue is only included in paragraph 1(d) if it falls within a category covered by [F9regulations made by the Treasury].

[F10In this paragraph, references to requirements of United Kingdom law which was relied on by the United Kingdom before IP completion day to implement Directive 2014/65/EU are to those requirements as they apply on the day on which regulations are made by the Treasury under this Article.]

5 In order to ensure consistent application of this Article, [F11the FCA may make] technical standards to specify the types of contracts referred to in paragraph 2 which have a direct, substantial and foreseeable effect within [F12the United Kingdom] and the cases where the trading obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

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Where possible and appropriate, the ^{F14}... technical standards referred to in this paragraph shall be identical to those adopted under Article 4(4) of Regulation (EU) No 648/2012.

Textual Amendments

- F1** Words in Art. 28(1) substituted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(3), **Sch. 2 para. 16(2)** (with s. 2(3)); S.I. 2023/779, reg. 4(zz)(i)(cc)
- F2** Art. 28(1)(d) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(a)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 12(j)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F3** Art. 28(1A) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(3), **Sch. 2 para. 16(3)** (with s. 2(3)); S.I. 2023/779, reg. 4(zz)(i)(cc)
- F4** Words in Art. 28(2) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 28(2) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Art. 28(4) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(c)(i)(aa)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 28(4) inserted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(c)(i)(bb)** (as amended by S.I. 2019/1212, regs. 1(3), **14(4)(a)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 45(a)(ii)**)); 2020 c. 1, **Sch. 5 para. 1(1)**
- F8** Words in Art. 28(4) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(c)(ii)(aa)**; 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Art. 28(4) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(c)(ii)(bb)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in Art. 28(4) inserted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(c)(iii)** (as inserted by S.I. 2019/1212, regs. 1(3), **14(4)(b)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 45(a)(iii)**)); 2020 c. 1, **Sch. 5 para. 1(1)**
- F11** Words in Art. 28(5) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(d)(i)(aa)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in Art. 28(5) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(d)(i)(bb)**; 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in Art. 28(5) omitted (31.12.2020) by virtue of The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(d)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F14** Word in Art. 28(5) omitted (31.12.2020) by virtue of The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **30(1)(d)(iii)**; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

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

- Title IVa addition by [EUR 2019/2175](#) Regulation (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Title VIa addition by [EUR 2019/2175](#) Regulation (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Sch. 3 para. 31 revoked by [2023 c. 29 Sch. 2 para. 50\(c\)\(ii\)](#)
- Sch. 3 para. 32 revoked by [2023 c. 29 Sch. 2 para. 50\(c\)\(ii\)](#)
- Art. 2.1(12)(12A) substituted by [2023 c. 29 Sch. 2 para. 8](#)
- Art. 2.1(17) words omitted by [2023 c. 29 Sch. 2 para. 19\(a\)](#)
- Art. 3(4)(5) inserted by [2023 c. 29 Sch. 2 para. 2](#)
- Art. 18-18b substituted for Art. 18 by [2023 c. 29 Sch. 2 para. 10](#)
- Art. 28a inserted by [2023 c. 29 Sch. 2 para. 17](#)
- Art. 46(2A) inserted by S.I. 2018/1403, reg. 33(1)(ba) (as inserted) by [S.I. 2019/710 reg. 16\(15\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 16(15)(a) omitted (30.9.2020) by virtue of S.I. 2020/1055, regs. 1(2), 13)
- Art. 46(2A) omitted by [2021 c. 22 Sch. 10 para. 5\(4\)](#)
- Art. 50C(2) words inserted by [2023 c. 29 Sch. 2 para. 26\(2\)](#)
- Art. 50C(3) words inserted by [2023 c. 29 Sch. 2 para. 26\(3\)](#)
- Art. 50C(4) words inserted by [2023 c. 29 Sch. 2 para. 26\(4\)](#)
- Art. 50D(1) words substituted by [2023 c. 29 Sch. 2 para. 27\(2\)\(a\)](#)
- Art. 50D(1) words substituted by [2023 c. 29 Sch. 2 para. 27\(2\)\(b\)](#)
- Art. 50D(2A) inserted by [2023 c. 29 Sch. 2 para. 27\(4\)](#)
- Art. 50D(3) words substituted by [2023 c. 29 Sch. 2 para. 27\(5\)](#)
- Art. 54a addition by [EUR 2019/2175](#) Regulation (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)
- Art. 54b addition by [EUR 2019/2175](#) Regulation (This amendment by the EU not applied to legislation.gov.uk because it is brought into force after IP completion day.)