

Annex D

COMMISSION DELEGATED REGULATION (EU) 2017/579 of 13 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations

~~(Text with EEA relevance)~~

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Article -1

Interpretation

1. For the purposes of this Regulation, where a term is defined in Article 2 of Regulation 600/2014/EU that definition applies.
2. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation.

Article 1

Definitions

For the purposes of this Regulation the following definition shall apply:

‘guarantee’ means an explicitly documented legal obligation by a guarantor to cover payments of the amounts due or that may become due pursuant to the OTC derivative contracts covered by that guarantee and entered into by the guaranteed entity in favour of the beneficiary where there is a default as defined in the guarantee or where no payment has been effected by the guaranteed entity.

Article 2

Contracts with a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom

1. An OTC derivative contract shall be considered as having a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom when at least one third country entity benefits from a guarantee provided by a financial counterparty established in the ~~Union~~ United Kingdom which covers all or part of its liability resulting from that OTC derivative contract, to the extent that the guarantee meets both following

conditions:

- (a) it covers the entire liability of a third country entity resulting from one or more OTC derivative contracts for an aggregated notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency, or it covers only a part of the liability of a third country entity resulting from one or more OTC derivative contracts for an aggregated notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency divided by the percentage of the liability covered;
 - (b) it is at least equal to 5 per cent of the sum of current exposures, as defined in Article 272(17) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (1), in OTC derivative contracts of the financial counterparty established in the ~~Union~~ United Kingdom issuing the guarantee.
2. When the guarantee is issued for a maximum amount which is below the threshold set out in paragraph 1(a), the contracts covered by that guarantee shall not be considered to have a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom unless the amount of the guarantee is increased, in which case the direct, substantial and foreseeable effect of the contracts within the ~~Union~~ United Kingdom shall be re-assessed by the guarantor against the conditions set out in points (a) and (b) of paragraph 1 on the day of the increase.
 3. Where the liability resulting from one or more OTC derivative contracts is below the threshold set out in paragraph 1(a), such contracts shall not be considered to have a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom even where the maximum amount of the guarantee covering such liability is equal to or above the threshold set out in paragraph 1(a) and even where the condition set out in paragraph 1(b) has been met.
 4. In the event of an increase in the liability resulting from the OTC derivative contracts or of a decrease of the current exposure, the guarantor shall re-assess whether the conditions set out in paragraph 1 are met. Such assessment shall be done respectively on the day of the increase of liability for the condition set out in paragraph 1(a), and on a monthly basis for the condition set out in paragraph 1(b).
 5. OTC derivative contracts for an aggregate notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency concluded before a guarantee is issued or increased, and subsequently covered by a guarantee that meets the conditions set out in paragraph 1, shall be considered as having a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom.
 6. An OTC derivative contract shall be considered as having a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom where the two entities established in a third country enter into the OTC derivative contract through their branches in the ~~Union~~ United Kingdom and would qualify as financial counterparties if they were established in the ~~Union~~ United Kingdom.

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~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

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