

## Annex N

**COMMISSION DELEGATED REGULATION (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business**

~~(Text with EEA relevance)~~

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Article -2

**Application**

This Regulation applies to persons.

Article -1

**Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that term shall apply for the purposes of this Regulation except where (2) applies.
- (2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
- (3) Article 2(1)(62) of Regulation 600/2014/EU shall not apply for the purposes of this Regulation.
- (4) References in this Regulation to ‘the Union’ are to be interpreted as if the United Kingdom continues to be a Member State.
- (5) ‘CRD credit institution’ is defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority, immediately after Exit Day.

Article 1

**Application of thresholds**

~~The activities of persons referred to in points (i) and (ii) of Article 2(1)(j) of Directive 2014/65/EU~~ An ‘article 2.1(j) activity’, as referred to in article 72J(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 shall be considered to be ancillary to

the main business of the group if those activities meet the conditions set out in Article 2 and constitute a minority of activities at group level in accordance with Article 3.

## Article 2

### Overall market threshold

1. The size of the activities referred to in Article 1 calculated in accordance with paragraph 2 divided by the overall market trading activity calculated in accordance with paragraph 3 shall, in each of the following asset classes, account for less than the following values:
  - (a) 4% in relation to derivatives on metals;
  - (b) 3% in relation to derivatives on oil and oil products;
  - (c) 10% in relation to derivatives on coal;
  - (d) 3% in relation to derivatives on gas;
  - (e) 6% in relation to derivatives on power;
  - (f) 4% in relation to derivatives on agricultural products;
  - (g) 15% in relation to derivatives on other commodities, including freight and commodities referred to in Section C 10 of Annex I to Directive 2014/65/EU paragraph 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
  - (h) 20% in relation to emission allowances or derivatives thereof.
2. The size of the activities referred to in Article 1 undertaken in the Union by a person within a group in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts within the relevant asset class to which that person is a party.
 

The aggregation referred to in the first subparagraph shall not include contracts resulting from transactions referred to in points (a), (b) and (c) of the fifth subparagraph of Article 2(4) of Directive 2014/65/EU or contracts where the person within the group that is a party to any of them is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU of the European Parliament and of the Council or in accordance with Part 4A of the Financial Services and Markets Act 2000 to provide investment services or perform investment activities or accept deposits (as a CRD credit institution).
3. The overall market trading activity in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts that are not traded on a trading venue within the relevant asset class to which any person located in the Union is a party and of any other contract within that asset class that is traded on a trading venue located in the Union during the relevant annual accounting period referred to in Article 4(2).
4. The aggregate values referred to in paragraphs 2 and 3 shall be denominated in EUR.

## Article 3

**Main business threshold**

1. The activities referred to in Article 1 shall be considered to constitute a minority of activities at group level where they comply with any of the following conditions:
  - (a) the size of those activities calculated in accordance with the first subparagraph of paragraph 3 does not account for more than 10% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3;
  - (b) the estimated capital employed for carrying out those activities calculated in accordance with paragraphs 5 to 7 does not account for more than 10% of the capital employed at group level for carrying out the main business calculated in accordance with paragraph 9.
2. The following derogations from paragraph 1(a) shall apply:
  - (a) where the size of the activities referred to in Article 1 calculated in accordance with the first subparagraph of paragraph 3 accounts for more than 10% but less than 50% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 50% of the threshold established by Article 2(1) for each relevant asset class;
  - (b) where the size of the trading activities calculated in accordance with the first subparagraph of paragraph 3 accounts for equal to or more than 50% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 20% of the threshold established by Article 2(1) for each relevant asset class.
3. The size of the activities referred to in Article 1 undertaken by a person within a group shall be calculated by aggregating the size of the activities undertaken by that person with respect to all of the asset classes referred to in Article 2(1) in accordance with the same calculation criteria as that referred to in Article 2(2).

The total size of the trading activity of the group shall be calculated by aggregating the gross notional value of all contracts in commodity derivatives, emission allowances and derivatives thereof to which persons within that group are a party to.

4. The aggregation referred to in the first subparagraph of paragraph 3 shall not include contracts where the person within the group that is a party to any of those contracts is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU or as such in accordance with Part 4A of the Financial Services and Markets Act 2000 to provide investment services or perform investment activities or accept deposits (as a CRD credit institution).

5. The estimated capital employed for carrying out the activities referred to in Article 1 shall be the sum of the following:
  - (a) 15% of each net position, long or short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof;
  - (b) 3% of the gross position, long plus short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof.
6. For the purposes of paragraph 5, point (a), the net position in a commodity derivative, an emission allowance or derivative thereof shall be determined by netting long and short positions:
  - (a) in each type of commodity derivative contract with a particular commodity as underlying in order to calculate the net position per type of contract with that commodity as underlying;
  - (b) in an emission allowance contract in order to calculate the net position in that emission allowances contract; or
  - (c) in each type of emission allowance derivative contract in order to calculate the net position per type of emission allowance derivative contract.

For the purposes of paragraph 5, point (a), net positions in different types of contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying can be netted against each other.

7. For the purposes of paragraph 5, point (b), the gross position in a commodity derivative, an emission allowance or a derivative contract thereof, shall be determined by computing the sum of the absolute values of the net positions per type of contract with a particular commodity as the underlying, per emission allowance contract or per type of contract with a particular emission allowance as the underlying.

For the purposes of paragraph 5, point (b), net positions in different types of derivative contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying cannot be netted against each other.

8. The calculation of the estimated capital shall not include positions resulting from transactions referred to in points (a), (b) and (c) of subparagraph 5 of Article 2(4) of Directive 2014/65/EU.
9. The capital employed for carrying out the main business of a group shall be the sum of the total assets of the group minus its short-term debt as recorded in its consolidated financial statements of the group at the end of the relevant annual calculation period. For the purposes of the first sentence, short-term debt means debt with a maturity of less than 12 months.
10. The values resulting from the calculations referred to in this Article shall be denominated in EUR.

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

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