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DIRECTIVE (EU) 2024/790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 28 February 2024

amending Directive 2014/65/EU on markets in financial instruments

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

After consulting the European Central Bank,

Acting in accordance with the ordinary legislative procedure ([1]),

Whereas:

(1) In its communication of 24 September 2020 entitled 'A Capital Markets Union for people and businesses – new action plan' ('CMU Action Plan'), the Commission announced its intention to table a legislative proposal to create a continuous electronic live data stream, which was meant to provide a comprehensive view of the prices and the volume of equity and equity-like financial instruments traded throughout the Union across trading venues ('consolidated tape'). In its conclusions of 2 December 2020 on the Commission's CMU Action Plan, the Council encouraged the Commission to stimulate more investment activity inside the Union by enhancing data availability and transparency by further assessing how to tackle the barriers to establishing a consolidated tape in the Union.

(2) In its communication of 19 January 2021 entitled 'The European economic and financial system: fostering openness, strength and resilience', the Commission confirmed its intention to improve, simplify and further harmonise the securities markets transparency framework, as part of the review of Directive 2014/65/EU of the European Parliament and of the Council ([2]) and of Regulation (EU) No 600/2014 of the European Parliament and of the Council ([3]). As part of efforts to strengthen the international role of the euro, the Commission also announced that such a reform would include the design and implementation of a consolidated tape, in particular for corporate bond issuances, to increase secondary trading in euro-denominated debt instruments.

(3) In parallel with the review of Directive 2014/65/EU, Regulation (EU) No 600/2014 is amended by Regulation (EU) 2024/791 of the European Parliament and of the Council ([4]), which removes the main obstacles that have prevented the emergence of a consolidated tape. That Regulation introduces mandatory contributions of data to the consolidated tape provider and enhances data quality by, inter alia, harmonising the synchronisation of business clocks. Furthermore, it introduces enhancements to the trading obligations and the prohibition of the practice of

([1]) Position of the European Parliament of 16 January 2024 (not yet published in the Official Journal) and decision of the Council of 20 February 2024.

([2]) 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 (OJ L 173, 12.6.2014, p. 349).

([3]) 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 (OJ L 173, 12.6.2014, p. 84).

([4]) Regulation (EU) 2024/791 of the European Parliament and of the Council of 28 February 2024 amending Regulation (EU) No 600/2014 as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow (OJ L, 2024/791, 8.3.2024, ELI: http://data.europa.eu/eli/reg/2024/791/oj).

receiving payment for executing orders from certain clients on a particular execution venue or for forwarding orders of those clients to any third party for their execution on a particular execution venue ('payment for order flow'). Since Directive 2014/65/EU also contains provisions related to the consolidated tape and transparency, the amendments to Regulation (EU) No 600/2014 should be reflected in Directive 2014/65/EU.

(4) Article 1(7) of Directive 2014/65/EU requires systems and facilities in which multiple third-party buying and selling trading interests in financial instruments are able to interact ('multilateral systems') to operate in accordance with the requirements concerning regulated markets, multilateral trading facilities (MTFs) or organised trading facilities (OTFs). However, market practice, as evidenced by the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([5]) in its final report of 23 March 2021 on the functioning of organised trading facilities, has shown that the principle of multilateral trading activity requiring authorisation has not been upheld in the Union, which has led to an uneven playing field between multilateral systems that are authorised as a regulated market, an MTF or an OTF and multilateral systems that are not authorised as such. In addition, that situation has created legal uncertainty for certain market participants as to the regulatory expectations for such multilateral systems. To provide market participants with clarity, to safeguard a level playing field, to improve the functioning of the internal market and to ensure the uniform application of the requirement that hybrid systems perform multilateral trading activities only where they are authorised as a regulated market, an MTF or an OTF, the content of Article 1(7) of Directive 2014/65/EU should be moved from Directive 2014/65/EU to Regulation (EU) No 600/2014. In view of the removal of multilateral systems from the scope of Article 1(7) of Directive 2014/65/EU and their inclusion within the scope of Regulation (EU) No 600/2014, it is also appropriate to move the definition of 'multilateral system' to that Regulation.

(5) Article 2(1), point (d)(ii), of Directive 2014/65/EU exempts persons dealing on own account from the requirement to be authorised as an investment firm or credit institution, unless those persons are members of or participants in a regulated market or an MTF or have direct electronic access to a trading venue. Non-financial entities that are members of or participants in a regulated market or an MTF for the purpose of executing transactions with regard to liquidity management or for the purpose of reducing risks directly relating to the commercial activity or treasury financing activity should not be required to be authorised as an investment firm, as such a requirement would be disproportionate. With regard to direct electronic access to a trading venue, Article 17(5) and Article 48(7) of Directive 2014/65/EU require that providers of direct electronic access be authorised investment firms or credit institutions. Investment firms or credit institutions that provide direct electronic access are responsible for ensuring that their clients comply with the requirements laid down in Article 17(5) and Article 48(7) of Directive 2014/65/EU. That gatekeeper function is effective and makes it unnecessary for clients of the direct electronic access provider, including persons dealing on own account, to become subject to Directive 2014/65/EU. In addition, removing that requirement would contribute to a level playing field between, on the one hand, persons established in the Union, and, on the other, persons established in a third country who access Union venues via direct electronic access, for which Directive 2014/65/EU does not require authorisation.

(6) Article 18(7) of Directive 2014/65/EU requires MTFs and OTFs to have at least three materially active members or users. That requirement should apply to all multilateral systems. Therefore, that requirement should be extended to regulated markets.

(7) Directive 2014/65/EU provides that an investment firm is to be considered to be a systematic internaliser only where it is deemed to perform its activities on an organised, frequent, systematic and substantial basis or where it chooses to opt in under the systematic internaliser regime. A frequent, systematic and substantial basis is determined by quantitative criteria. This has led to an excessive burden for the investment firms that are required to perform the assessment, and for ESMA, which is required to publish data for the purposes of the assessment. The assessment on the basis of those criteria should therefore be replaced by a qualitative assessment. Taking into account that

([5]) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Regulation (EU) No 600/2014 is amended to exclude systematic internalisers from the scope of the pre-trade transparency requirements for non-equity instruments, the qualitative assessment of systematic internalisers should apply only to equity instruments. It should, however, be possible for an investment firm to opt in to become a systematic internaliser for non-equity instruments.

(8) Article 27(3) and (6) of Directive 2014/65/EU contain the requirement for execution venues to publish reports with a list of details relating to the obligation to execute orders on terms most favourable to the client ('best execution'). Evidence and feedback from stakeholders have shown that those reports are rarely read and do not enable investors or other users of those reports to make meaningful comparisons based on the information provided in them. As a consequence, Directive (EU) 2021/338 of the European Parliament and of the Council ([6]) suspended the reporting requirement under Article 27(3) of Directive 2014/65/EU for two years in order for that requirement to be reviewed. Regulation (EU) 2024/791 amends Regulation (EU) No 600/2014 to remove the obstacles that have prevented the emergence of a consolidated tape. The data that the consolidated tape is expected to disseminate are the European best bid and offer, post-trade information regarding transactions in shares and exchange-traded funds (ETFs) and post-trade information regarding transactions in bonds and over-the-counter (OTC) derivatives. That information can be used for proving best execution. The reporting requirement laid down in Article 27(3) of Directive 2014/65/EU will therefore no longer be relevant and should be removed.

(9) Article 27 of Directive 2014/65/EU also contains more general provisions related to best execution. However, different interpretations of that Article by national competent authorities have led to diverging approaches to the application of best-execution requirements and to market practice supervision. That divergence is particularly evident in the different ways in which practices related to receiving payment for order flow are regulated across the Union. Regulation (EU) 2024/791 amending Regulation (EU) No 600/2014 prohibits investment firms from receiving such payment across the Union. However, feedback from regulators and stakeholders has shown that best-execution requirements for professional clients could also benefit from further clarification. Therefore, ESMA should develop draft regulatory technical standards on the criteria to be taken into account for the purpose of establishing and assessing the effectiveness of the order execution policy pursuant to Article 27(5) and (7) of Directive 2014/65/EU, taking into account the difference between retail and professional clients.

(10) The correct functioning of a consolidated tape depends on the quality of the data that the consolidated tape provider receives. Regulation (EU) No 600/2014 sets out data quality requirements to which contributors to the consolidated tape should adhere. In order to ensure that investment firms and market operators operating an MTF or an OTF, and regulated markets, effectively meet those requirements, Member States should require that such investment firms, market operators and regulated markets have the necessary arrangements in place to do so.

(11) The receipt of high-quality data is of the utmost importance for the functioning of the consolidated tape and the internal market and requires all data contributors and the consolidated tape provider to timestamp their data in a synchronised manner and thus to synchronise their business clocks. Regulation (EU) 2024/791 therefore amends Regulation (EU) No 600/2014 to extend that requirement, which under Directive 2014/65/EU applies only to trading venues and their members, participants or users, to systematic internalisers, to designated publishing entities, to approved publication arrangements and to consolidated tape providers. Since that requirement is now laid down in Regulation (EU) No 600/2014, it can be removed from Directive 2014/65/EU.

([6]) Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

(12) Within the framework regulating the Union's markets in financial instruments, many substantive requirements laid down in Regulation (EU) No 600/2014 are supervised, and sanctions and measures are imposed, at national level, in accordance with Articles 69 and 70 of Directive 2014/65/EU. Regulation (EU) 2024/791 amends Regulation (EU) No 600/2014 to include new rules on the volume-cap mechanism, on mandatory contributions of data to the consolidated tape provider, on data quality standards to which contributors are subject and on the prohibition of receiving payment for order flow. As national authorities are responsible for the supervision of the relevant entities, those new substantive requirements should be added to the list in Directive 2014/65/EU of provisions for which the Member States are to provide for sanctions at national level.

(13) Directive 2014/65/EU contains rules that require trading venues to implement mechanisms designed to limit excessive volatility in the markets, in particular trading halts and price collars. However, the extreme circumstances to which markets for energy derivatives and for commodity derivatives have been subject throughout the energy crisis of 2022 have led to further scrutiny of those mechanisms and have shown that there is a lack of transparency with regard to the activation of those mechanisms by the relevant trading venues in the Union, as highlighted in ESMA's answer of 22 September 2022 to the Commission's call for advice to address the excessive volatility in markets for energy derivatives. Market participants would benefit from further information and more transparency on the circumstances that lead to the halting or constraining of trading and on the principles that regulated markets are to consider for establishing the main technical parameters for halting or constraining trading. ESMA should establish, by means of draft regulatory technical standards, the principles that the regulated markets are to consider for establishing the main technical parameters for halting or constraining trading. Due to the importance of ensuring orderly trading, regulated markets should maintain broad discretion with regard to which mechanisms to use and which parameters to set for those mechanisms. In addition, national competent authorities should carefully monitor the use of those mechanisms by trading venues and make use of their supervisory powers where appropriate.

(14) Following the energy crisis of 2022 and the resulting higher and more frequent margin calls and extreme volatility, a comprehensive assessment of the appropriateness of the overall framework for markets for commodity derivatives, for markets for emission allowances and for markets for derivatives of emission allowances is warranted. Such an assessment should have a strategic focus and consider the liquidity and proper functioning of markets for commodity derivatives, for emission allowances and for derivatives of emission allowances in the Union to ensure that the framework governing those markets is fit for purpose in order to facilitate the energy transition and to ensure food security and the ability of the markets to withstand external shocks. In carrying out its analysis, the Commission should also take into account the fact that markets for commodity derivatives play an important role in ensuring that market participants can properly manage the risks arising from their business activities, and that it is very important to set the right parameters in order to ensure that the Union has competitive liquid markets for commodity derivatives that ensure the open strategic autonomy of the Union and the delivery of the European Green Deal. With those objectives in mind, the Commission should, first, assess whether the regimes for the position limits and the position management controls have been conducive to the prevention of market abuse and support for orderly pricing and settlement conditions. That assessment should also establish to what extent nascent markets for energy derivatives have been able to develop in the Union.

Second, the Commission should assess the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level, taking into account the overall liquidity in, and the orderly functioning of, markets for commodity derivatives, for emission allowances and for derivatives of emission allowances. Energy companies are increasingly assuming the role of market makers in the markets for energy derivatives. Therefore, the Commission should take into consideration the overall impact of the ancillary activity exemption by looking not only at the authorisation but also at the impact of prudential requirements as set out in Regulation (EU) 2019/2033 of the European Parliament and of the Council ([7]) and clearing, margining and collateralisation obligations as set out

([7]) Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

in Regulation (EU) No 648/2012 of the European Parliament and of the Council ([8]). Third, the Commission should assess to what extent transaction data in markets for commodity derivatives or for derivatives of emission allowances could be collected in a single collecting entity and harmonised across Regulations (EU) No 600/2014 and (EU) No 648/2012 in respect of the number of data fields, format, submission technologies, technical acknowledgement processes and data receivers. The single collecting entity could be the consolidated tape provider for derivatives. The Commission should assess which transaction data would be relevant for the public and how that transaction data would be best disseminated.

(15) The Commission should be empowered to adopt the regulatory technical standards developed by ESMA with regard to: the criteria to be taken into account in establishing and assessing the effectiveness of the order execution policy; the principles that regulated markets are to consider when establishing their mechanisms to halt or constrain trading; and the information that regulated markets are to disclose on the circumstances leading to trading being halted or constrained, including the parameters for halting trading that regulated markets are to report to competent authorities. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(16) Since the objectives of this Directive, namely to improve transparency on markets in financial instruments and to enhance the international competitiveness of the Union's capital markets, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(17) Directive 2014/65/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

(1) in Article 1, paragraph 7 is deleted;

(2) in Article 2(1), point (d), point (ii) is replaced by the following:

'(ii) are members of or participants in a regulated market or an MTF, except for non-financial entities that execute transactions on a trading venue where such transactions are part of liquidity management or are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;';

(3) in Article 4, paragraph 1 is amended as follows:

(a) point (19) is replaced by the following:

'(19) "multilateral system" means a multilateral system as defined in Article 2(1), point (11), of Regulation (EU) No 600/2014;';

([8]) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(b) point (20) is replaced by the following:

'(20) "systematic internaliser" means an investment firm which, on an organised, frequent and systematic basis, deals on own account in equity instruments by executing client orders outside a regulated market, an MTF or an OTF, without operating a multilateral system, or which opts in to the status of systematic internaliser;';

(4) Article 27 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraph 3 is replaced by the following:

'3. With regard to financial instruments that are subject to the trading obligations laid down in Articles 23 and 28 of Regulation (EU) No 600/2014, Member States shall require that, following the execution of an order on behalf of a client, an investment firm inform the client of the venue where the order was executed.';

(c) paragraph 6 is deleted;

(d) paragraph 7 is replaced by the following:

'7. Member States shall require investment firms which execute client orders to monitor the effectiveness of their order execution arrangements and execution policy for the purpose of identifying and, where appropriate, correcting any deficiencies. In particular, Member States shall require such investment firms to assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. Member States shall require investment firms to notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or execution policy.';

(e) paragraph 10 is replaced by the following:

'10. ESMA shall develop draft regulatory technical standards to specify the criteria to be taken into account in establishing and assessing the effectiveness of the order execution policy pursuant to paragraphs 5 and 7, taking into account whether the orders are executed on behalf of retail or professional clients.

Those criteria shall include at least the following:

(a) factors determining the choice of execution venues included in the order execution policy;

(b) the frequency of assessing and updating the order execution policy;

(c) the manner in which to identify classes of financial instruments as referred to in paragraph 5.

ESMA shall submit those draft regulatory technical standards to the Commission by 29 December 2024.

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(5) in Article 31(1), the following subparagraph is added:

'Member States shall require that investment firms and market operators operating an MTF or an OTF have arrangements in place to ensure that they meet data quality standards pursuant to Article 22b of Regulation (EU) No 600/2014.';

(6) in Article 47(1), the following points are added:

'(g) to have arrangements in place to ensure that it meets data quality standards pursuant to Article 22b of Regulation (EU) No 600/2014;

(h) to have at least three materially active members or users, each having the opportunity to interact with all the others in respect of price formation.';

(7) Article 48 is amended as follows:

(a) paragraph 5 is amended as follows:

(i) the first subparagraph is replaced by the following:

'Member States shall require a regulated market to be able to temporarily halt or constrain trading in emergency situations or in the event of a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction. Member States shall require a regulated market to ensure that the parameters for halting or constraining trading are appropriately calibrated in a way which takes into account the liquidity of different asset classes and sub-classes, the nature of the market model and the types of users, and is sufficient to avoid significant disruptions to the orderliness of trading.';

(ii) the following subparagraphs are added:

'Member States shall require a regulated market to disclose publicly on its website information about the circumstances leading to the halting or constraining of trading and on the principles for establishing the main technical parameters used to do so.

Member States shall ensure that, where a regulated market does not halt or constrain trading as referred to in the first subparagraph, despite the fact that a significant price movement in a financial instrument or related financial instruments has led to disorderly trading conditions on one or several markets, competent authorities are able to take appropriate measures to re-establish the normal functioning of the markets, including using the supervisory powers referred to in Article 69(2), points (m) to (p).';

(b) paragraph 12 is amended as follows:

(i) in the first subparagraph, the following points are added:

'(h) the principles that regulated markets are to consider when establishing their mechanisms to halt or constrain trading in accordance with paragraph 5, taking into account the liquidity of different asset classes and sub-classes, the nature of the market model and the types of users, and without prejudice to the discretion of regulated markets in setting those mechanisms;

(i) the information that regulated markets are to disclose, including the parameters for halting trading that regulated markets are to report to competent authorities, pursuant to paragraph 5.';

(ii) the second and third subparagraphs are replaced by the following:

'ESMA shall submit those draft regulatory technical standards to the Commission by 29 March 2025.

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(c) paragraph 13 is deleted;

(8) in Article 49(2), the following subparagraph is added:

'In respect of shares with an International Securities Identification Number (ISIN) issued outside the European Economic Area (EEA), or shares which have an EEA ISIN and which are traded on a third-country venue in the local currency or in a non-EEA currency, as referred to in Article 23(1), point (a), of Regulation (EU) No 600/2014 for which the venue that is the most relevant market in terms of liquidity is in a third country, regulated markets may provide for the same tick size that applies on that venue.';

(9) Article 50 is deleted;

(10) Article 57 is amended as follows:

(a) the title is replaced by the following:

'**Position limits in commodity derivatives and position management controls in commodity derivatives and derivatives of emission allowances**';

(b) in paragraph 8, the first subparagraph is amended as follows:

(i) the introductory wording is replaced by the following:

'Member States shall ensure that an investment firm or a market operator operating a trading venue which trades in commodity derivatives or derivatives of emission allowances applies position management controls, including powers for the trading venue to:';

(ii) point (b) is replaced by the following:

'(b) obtain information, including all relevant documentation, from persons about the size and purpose of a position or exposure entered into, information about beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market, including, where appropriate, positions held in derivatives of emission allowances or positions held in commodity derivatives that are based on the same underlying and that share the same characteristics on other trading venues and in economically equivalent OTC contracts through members and participants;';

(11) Article 58 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is amended as follows:

— the introductory wording is replaced by the following:

'Member States shall ensure that an investment firm or a market operator operating a trading venue which trades in commodity derivatives or in derivatives of emission allowances:';

— point (a) is replaced by the following:

'(a) make public:

(i) for trading venues where options are traded, two weekly reports, one of which is to exclude options, with the aggregate positions held by the different categories of persons for the different commodity derivatives or derivatives of emission allowances traded on their trading venue, specifying the number of long and short positions by such categories, changes thereto since the previous report, the percentage of the total open interest represented by each category, and the number of persons holding a position in each category in accordance with paragraph 4;

(ii) for trading venues where options are not traded, a weekly report on the elements set out in point (i);';

(ii) the following subparagraph is added:

'Member States shall ensure that an investment firm or a market operator operating a trading venue which trades in commodity derivatives or in derivatives of emission allowances communicates the reports referred to in point (a) of the first subparagraph to the competent authority and to ESMA. ESMA shall proceed with a centralised publication of the information included in those reports.';

(b) paragraph 2 is replaced by the following:

'Member States shall ensure that investment firms trading in commodity derivatives or in derivatives of emission allowances outside a trading venue provide, on at least a daily basis, the central competent authority referred to in Article 57(6) or – where there is no central competent authority – the competent authority of the trading venue where the commodity derivatives or the derivatives of emission allowances are traded, with a complete breakdown of their positions taken in economically equivalent OTC contracts as well as of those of their clients and the clients of those clients until the end client is reached, in accordance with Article 26 of Regulation (EU) No 600/2014 and, where applicable, of Article 8 of Regulation (EU) No 1227/2011.';

(c) in paragraph 4, the first subparagraph is amended as follows:

(i) the introductory wording is replaced by the following:

'Persons holding positions in a commodity derivative or in a derivative of emission allowance shall be classified by the investment firm or market operator operating that trading venue according to the nature of their main business, taking account of any applicable authorisation, as either:';

(ii) point (e) is replaced by the following:

'(e) in the case of derivatives of emission allowances, operators with compliance obligations under Directive 2003/87/EC.';

(d) in paragraph 5, the fourth subparagraph is replaced by the following:

'In the case of derivatives of emission allowances, the reporting shall not prejudice the compliance obligations under Directive 2003/87/EC.';

(12) Article 70(3) is amended as follows:

(a) in point (a), point (xxx) is deleted;

(b) point (b) is amended as follows:

(i) the following point is inserted:

'(iia) Article 5;';

(ii) point (v) is replaced by the following:

'(v) Article 8(1);

(va) Article 8a(1) and (2);

(vb) Article 8b;';

(iii) point (vii) is replaced by the following:

'(vii) Article 11(1), second subparagraph, first sentence, Article 11(1a), second subparagraph, Article 11(1b) and Article 11(3), fourth subparagraph;

(viia) Article 11a(1), second subparagraph, first sentence, and Article 11a(1), fourth subparagraph;';

(iv) points (ix), (x) and (xi) are replaced by the following:

'(ix) Article 13(1) and (2);

(x) Article 14(1), (2) and (3);

(xi) Article 15(1), first subparagraph, second subparagraph, the first and third sentences, and fourth subparagraph, Article 15(2) and Article 15(4), second sentence;';

(v) point (xiii) is deleted;

(vi) point (xiv) is replaced by the following:

'(xiv) Article 20(1) and (1a) and Article 20(2), first sentence;';

(vii) the following points are inserted:

'(xvia) Article 22a(1) and (5) to (8);

(xvib) Article 22b(1);

(xvic) Article 22c(1);';

(viii) point (xxi) is replaced by the following:

'(xxi) Article 28(1);';

(ix) point (xxiv) is replaced by the following:

'(xxiv) Article 31(3);';

(x) the following point is inserted:

'(xxviia) Article 39a;';

(13) in Article 90, the following paragraph is added:

'5. The Commission shall, after consulting ESMA, the EBA and ACER, submit reports to the European Parliament and to the Council containing a comprehensive assessment of the markets for commodity derivatives, for emission allowances and for derivatives of emission allowances. Those reports shall assess at least for each of the following elements their contribution to the liquidity and proper functioning of Union markets for commodity derivatives, for emission allowances or for derivatives of emission allowances:

(a) the regimes for the position limits and the position management controls, on the basis of data provided by competent authorities to ESMA in accordance with Article 57(5) and (10);

(b) the elements referred to in Article 2(4), second and third subparagraphs, of this Directive and the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level pursuant to Commission Delegated Regulation (EU) 2021/1833 (*), taking into account the ability of persons as referred to in Article 2(1), point (j), of this Directive to enter into transactions for effectively reducing risks directly relating to the commercial activity or treasury financing activity, the application of requirements from 26 June 2026 for investment firms specialised in commodity derivatives or emission allowances or derivatives thereof as set out in Regulation (EU) 2019/2033 and requirements for financial counterparties laid down in Regulation (EU) No 648/2012;

(c) for transactions in markets for commodity derivatives or for derivatives of emission allowances, the key elements to obtain harmonised data, the collection of transaction data by a single collecting entity, and the relevant information on and most appropriate format for transaction data to be made public.

The Commission shall submit:

— the report referred to in the first subparagraph, point (b), of this paragraph by 31 July 2024, and

— the reports referred to in the first subparagraph, points (a) and (c), of this paragraph by 31 July 2025.

Those reports shall, where appropriate, be accompanied by a legislative proposal concerning targeted changes to the market rules for commodity derivatives, emission allowances or derivatives of emission allowances framework.

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(*) Commission Delegated Regulation (EU) 2021/1833 of 14 July 2021 supplementing Directive 2014/65/EU of the European Parliament and of the Council by specifying the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level (OJ L 372, 20.10.2021, p. 1).'.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 29 September 2025. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 28 February 2024.

For the European Parliament	*For the Council*
The President	*The President*
R. METSOLA	M. MICHEL