European Parliament
2019-2024

Committee on Economic and Monetary Affairs

18.10.2023

PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

Subject: **Proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments (COM(2021)0726 – C9-0438/2021 – 2021/0384(COD))**

The interinstitutional negotiations on the aforementioned proposal for a directive have led to a compromise. In accordance with Rule 74(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on Economic and Monetary Affairs for decision by way of a single vote.

DIRECTIVE (EU) 2023/…

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

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,
Having regard to the opinion of the European Economic and Social Committee[1],
Acting in accordance with the ordinary legislative procedure[2],

[2] ***Position of the European Parliament of … (not yet published in the Official Journal) and decision of the Council of ….***

Whereas:

(1) In its 2020 CMU Action Plan[3], the Commission announced its intention to table a legislative proposal to create a centralised data base which was meant to provide a comprehensive view on prices and volume of equity and equity-like financial instruments traded throughout the Union across a multitude of trading venues ('consolidated tape'). On 2 December 2020, in its conclusion on the Commission's CMU Action Plan[4], 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 obstacles to establishing a consolidated tape in the Union.

(2) In its roadmap on 'The European economic and financial system: fostering openness, strength and resilience' of 19 January 2021[5], the Commission confirmed its intention to improve, simplify and further harmonise capital markets' transparency, as part of the review of Directive 2014/65/EU of the European Parliament and of the Council[6] and of Regulation (EU) No 600/2014 the European Parliament and of the Council[7]. As part of efforts to strengthen the international role of the Euro, the Commission also announced that such reform would include the design and implementation of a consolidated tape, in particular for corporate bond issuances to increase the liquidity of secondary trading in euro-denominated debt instruments.

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3 COM/2020/590 final.

4 Council Conclusions on the Commission's CMU Action Plan, 12898/1 of /20 REV 1 EF 286 ECOFIN 1023: https://data.consilium.europa.eu/doc/document/ST-12898-2020-REV-1/en/pdf;

5 COM/2021/32 final.

6 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).

7 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).

(3) Regulation (EU) No 600/2014 was amended by Regulation (EU) XX/XXXX of the European Parliament and of the Council[+] removing the main obstacles that have prevented the emergence of a consolidated tape. That Regulation therefore introduced mandatory contributions of market data to the consolidated tape provider and enhanced the data quality including harmonizing the synchronisation of the business clock. In addition, that Regulation reduced the recourse to possibilities to waive pre-trade transparency for venues and systematic internalisers. Furthermore, it introduced enhancements to the trading obligations and the prohibition of the practice of receiving payment for forwarding client orders for execution. Since Directive 2014/65***/EU*** also contains provisions related to consolidated tape and transparency, the amendments to Regulation (EU) No 600/2014 should be reflected in Directive 2014/65/EU.

[+] ***OJ: Please insert in the text the number of the Regulation contained in document PE-CONS .../... (2021/0385(COD)).***

(4) Article 1(7) of Directive 2014/65/EU requires operators of systems 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 ('RMs'), multilateral trading facilities ('MTFs'), or organised trading facilities ('OTFs'). However, market practice, as evidenced by the European Securities and Markets Authority ('ESMA') in its final report on the functioning of the organised trading facility[8] has shown that the principle of multilateral trading activity requiring a license has not been upheld in the Union, which has led to an uneven playing field between licensed and unlicensed multilateral systems. 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, safeguard a level-playing field, improve the internal market functioning and ensure a uniform application of the requirement that hybrid systems can only perform multilateral trading activities where they are licensed as a regulated market, a multilateral trading facility ('MTF') or an organised trading facility ('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.

8 https://www.esma.europa.eu/sites/default/files/esma70-156-4225_mifid_ii_final_report_on_functioning_of_otf.pdf.

(5) Article 2(1), point (d), point (ii), of Directive 2014/65/EU, exempts persons dealing on own account from the requirement to be licensed 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 to execute transactions for the purpose of 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 licensed as an investment firm as such a requirement would be disproportionate. Regarding direct electronic access to a trading venue,*** Articles 17(5) and 48(7) of Directive 2014/65/EU require that providers of direct electronic access are licensed investment firms or credit institutions. Investment firms or credit institutions that do provide direct electronic access are responsible for ensuring that their clients comply with the requirements laid down in Articles 17(5) and 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 third country persons accessing EU venues via direct electronic access, for which Directive 2014/65/EU does not require a license, and persons established in the Union.

(6) Due to the removal of multilateral systems from the scope of Article 1(7) of Directive 2014/65/EU and into Regulation (EU) ***No*** 600/2014, it is equally logic to move the corresponding definition of ‘multilateral system’ into that Regulation.

(6a) Directive XXX/ requires MTFs or 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.

(6b) Directive 2014/65/EU provides that an investment firm is to be considered to be a systematic internaliser only when it is deemed to perform its activities on an organised, frequent, systematic and substantial basis or when it chooses to opt-in under the systematic internaliser regime. The frequent, systematic and substantial bases are determined by quantitative criteria which have led to excessive burden for investment firms that have to perform the assessment and for ESMA that has to publish data for the calculation, and should therefore be replaced by a qualitative assessment. Considering that Regulation (EU) No 600/2014 is being 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, but it should be possible for an investment firm to opt-in to become a systematic internaliser for non-equity instruments.

(7) Article 27(3) ***and (6)*** of Directive 2014/65/EU ***contain*** the requirement for execution platforms to publish a list of details relating to best execution. Factual evidence and feedback from stakeholders has shown that those reports are rarely read and do not enable investors or any users of those reports to make meaningful comparisons based on the information provided in those reports. As a consequence, Directive (EU) 2021/338 of the European Parliament and of the Council[9] suspended the reporting requirement ***under Article 27(3)*** for two years in order for that requirement to be reviewed. Regulation (EU) XX/XXXX[10] has amended 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 ***European best bid and offer and*** post-trade information regarding ▌ transactions in ***shares and ETFs, and post-trade information regarding transactions in bonds and 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 therefore be deleted.

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9 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).

10 COM 727

(7a) More generally, Article 27 of Directive 2014/65/EU contains provisions related to the obligation to execute orders on terms most favourable to the client ('best execution'). However, different interpretations of that Article by national competent authorities have led to diverging application of best execution requirements and of market practice supervision. That divergence is particularly evident in the different regulation across the Union of practices related to receiving payments for forwarding client orders for execution ('payment for order flows'). Regulation (EU) .../...[+] amending Regulation (EU) No 600/2014 bans the payment for order flows across the Union. However, feedback from regulators and stakeholders has shown that best execution requirements for professional clients could also benefit from further clarification. ESMA should develop draft regulatory technical standards on the criteria that should be taken into account for the purpose of defining and assessing the order execution policy, taking into account the difference between retail and professional clients under Article 27(5) and (7) of Directive 2014/65/EU.

[+] OJ: Please insert in the text the number of the Regulation contained in document PE-CONS .../... (2021/0385(COD)).

(8) The correct functioning of ▌ a consolidated tape depends on the quality of the data the consolidated tape provider receives. Regulation (EU) No 600/2014 sets out requirements for the quality of data that contributors to the consolidated tape should adhere to. 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 those investment firms and market operators have the necessary arrangements in place to do so.

(9) The receipt of high quality data is of the utmost importance for the functioning of the consolidated tape and the internal market. That includes the need for all market data contributors and the consolidated tape provider to timestamp their data in a synchronized manner and thus to synchronise their business clocks. Regulation (EU) XX/XXX[11] has therefore amended Regulation (EU) ***No*** 600/2014 to extend that requirement, which under Directive 2014/65/EU only applied to trading venues and their members, to systematic internalisers, ***designated publishing entities,*** APAs ***amd 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.

[11] COM 727

(10) 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 sanctioned at national level and in accordance with Articles 69 and 70 of Directive 2014/65/EU. Regulation (EU) XX/XXXX[12] has amended Regulation (EU) No 600/2014 to include new rules on the volume cap mechanism, on mandatory contributions of core market data to the ***consolidated*** tape, on data quality standards to which those contributions are subject and on the ban on receiving payments for forwarding client orders for execution. As the supervision of the relevant entities lies with national authorities, those new substantive requirements should be added to the list in Directive 2014/65/EU of provisions for which the Member States should provide sanctions at national level.

[12] COM 727

(10a) Following the energy crisis of 2022 and the resulting higher and more frequent margin calls and extreme volatility, a comprehensive revision of the appropriateness of the overall framework for commodity derivatives markets and derivatives on emission allowances markets is warranted. Such a review should have a strategic focus and consider the liquidity and proper functioning of commodity derivative markets, emission allowances and derivatives on emission allowances markets in the Union to ensure that the framework governing those markets are fit for purpose to facilitate the energy transition, food security and the markets' ability to withstand external shocks. In carrying out its analysis, the Commission should also consider that commodity derivatives markets play an important role in ensuring that market participants can properly risk manage the necessary investments, and that setting the right parameters is very important to ensure that the Union has competitive liquid commodity derivatives markets that ensure the open strategic autonomy of the Union and the delivery of the European Green Deal. With these objectives in mind, the Commission should, firstly, review whether the position limits and position management controls regime has been conducive to the prevention of market abuse and the support for orderly pricing and settlement conditions. That review should also establish to what extent nascent energy markets have been able to develop in the Union.

Secondly, the Commission should review the ancillary activity exemption considering the overall liquidity in, and the orderly functioning of, commodity derivatives markets, emission allowances and derivatives of emission allowances markets. Over the last few years, energy companies have increasingly assumed the role of market makers in the energy commodity markets. Therefore, the Commission should duly take into consideration the overall impact of the ancillary activity exemption by not only looking 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[13] and clearing, margining and bilateral collateralisation obligations as set out in Regulation (EU) No 648/2012 of the European Parliament and of the Council[14]. Thirdly, the Commission should review to what extent transactions in commodity or derivative on emission allowance markets could be harmonized not only in terms of the number of data fields, but also with respect to formats, submission technologies and technical acknowledgement processes and data receivers for commodity derivatives or derivatives on emission allowances markets in Regulation (EU) No 600/2014 and Regulation (EU) No 648/2012 and could be collected in a single collecting entity. This single collection 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.

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13 ***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).***

14 ***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).***

(10b) Directive 2014/65/EU contains rules that require trading venues to implement mechanisms designed to limit excessive volatility in the markets, notably trading halts and price collars. However, the extreme circumstances that energy and commodity derivatives markets have experienced throughout the energy crisis of 2022 have led to further scrutiny of those mechanisms and have shown that there is a lack of transparency around the activation of those mechanisms by the relevant trading venues in the Union, as highlighted in ESMA's answer to the Commission's call for advice to address the excessive volatility in energy derivatives markets. Market participants would benefit from further information and more transparency on the circumstances that lead to trading being halted and on the main principles that regulated markets are to consider for establishing the technical parameters connected to the activation of those mechanisms. ESMA should provide the broad outline within which the regulated markets shall consider the main technical parameters. Due to the importance of ensuring orderly trading, regulated markets should maintain broad discretion of which mechanisms to use and how to parametrise 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 as appropriate.

(10c) The Commission should be empowered to adopt the draft regulatory technical standards developed by ESMA with regard to the criteria to be taken into account when defining and assessing the order execution policy, taking into account the difference between retail and professional clients; the principles that regulated markets are to consider when establishing their mechanisms to halt trading; and the information that trading venues are to disclose on the circumstances leading to trading being halted, including the parameters of circuit breakers that trading venues are to report to competent authorities. The Commission should adopt those draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

(10d) 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.

(10e) 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 who execute transactions on a trading venue which are part of liquidity management or which 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;’;

(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 into 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. In the case of financial instruments that are subject to the trading obligation set out in Articles 23 and 28 of Regulation (EU) No 600/2014, Member States shall require that, following execution of a transaction on behalf of a client, the investment firm shall inform the client 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 who execute client orders to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall 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 on the criteria to be taken into account when defining and assessing the order execution policy under 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 periodicity of assessing and updating the order execution policy;

(c) ways of defining classes of financial instruments under paragraph 5.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [nine months after the date of entry into force of this amending Directive].

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this Article 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 they meet the data quality standards as set out in 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 they meet the data quality standards as set out in 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 if there is 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 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 publicly disclose on its website information on the circumstances leading to trading being halted and on the principles for establishing the main technical parameters used to do so.

Member States shall ensure that, where a trading venue does not use the measures referred to in the first subparagraph despite a significant price movement affecting a financial instrument or related financial instruments leading 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 the powers referred to in Article 69(2) points (m), (n), (o) and (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 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 trading venues shall disclose, including the parameters of circuit breakers that trading venues shall report to competent authorities in accordance with paragraph 5.';

(ii) the second subparagraph is replaced by the following:

'ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after the date of entry into force of this amending Directive].

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 point is added:

'(c) for shares with a non-EEA International Securities Identification Number (ISIN), or shares 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, have the same tick size that applies on that venue.';

(9) Article 50 is deleted;

(10) in Article 57(8), first subparagraph, 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 commodity derivatives, emission allowances or derivatives on emission allowances applies position management controls, including powers for the trading venue to:';

(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:

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

– point (a) is replaced by the following:

'(a) for those trading venues where options are traded, make public two weekly reports, one of which excluding 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;';

(aa) for those trading venues where options are not traded, make public a weekly report on the elements set out in point (a);

(ii) the following subparagraph is inserted after the first subparagraph:

'Member States shall ensure that an investment firm or a market operator operating a trading venue which trades commodity derivatives or derivatives of emission allowances communicates the reports referred to in point (a) of the first subparagraph 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 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 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, first subparagraph, is amended as follows:

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

'4. Persons holding positions in a commodity derivative or 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) Articles 8(1(;’;

(va) Article 8a(1) and (1a);’;

(vb) Article 8b

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

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

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

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

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

(x) Article 14(1), the first sentence of Article 14(2) and Article 14(3);

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

(v) point (xiii) is deleted;

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

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

(vii) the following points are inserted:

'(xvia) Article 22a;

(xvib) Article 22b;

(xvic) Article 22c;';

(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;'.

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

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

(a) the position limit and position management controls regimes relying on data provided by competent authorities to ESMA in accordance with Article 57(5) and (10);

(b) the elements referred to in the second and third subparagraph of Article 2(4) and the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level pursuant to the Commission Delegated Regulation (EU) 2021/1833, taking into account the ability 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 as set out in Regulation (EU) No 648/2012;

(c) the key elements to obtain a harmonized data set for transactions by the commodity derivative market to a single collecting entity. The relevant information on transaction data to be made public and its most appropriate format.

The Commission shall present its reports:

- ***by 31 July 2024 for point b) of the first sub-paragraph of this Article;***
- ***by 31 July 2025 for points a) and c) of the first sub-paragraph of this Article.***

These reports shall be accompanied, if appropriate, with a legislative proposal concerning targeted changes to the market rules for commodity derivatives, emission allowances or derivatives on emission allowances framework.'.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … [***18*** months after the date of entry into force of ***this amending Directive***] at the latest.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions 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 …,

For the European Parliament	*For the Council*
The President	*The President*