

Regulation (EU) No 236/2012 of the European Parliament and
of the Council of 14 March 2012 on short selling and certain
aspects of credit default swaps (Text with EEA relevance)

CHAPTER I

GENERAL PROVISIONS

Article 2

Definitions

- 1 For the purpose of this Regulation, the following definitions apply:
- a 'financial instrument' means an instrument listed in Section C of Annex I to Directive 2004/39/EC;
 - b 'short sale' in relation to a share or debt instrument means any sale of the share or debt instrument which the seller does not own at the time of entering into the agreement to sell including such a sale where at the time of entering into the agreement to sell the seller has borrowed or agreed to borrow the share or debt instrument for delivery at settlement, not including:
 - (i) a sale by either party under a repurchase agreement where one party has agreed to sell the other a security at a specified price with a commitment from the other party to sell the security back at a later date at another specified price;
 - (ii) a transfer of securities under a securities lending agreement; or
 - (iii) entry into a futures contract or other derivative contract where it is agreed to sell securities at a specified price at a future date;
 - c 'credit default swap' means a derivative contract in which one party pays a fee to another party in return for a payment or other benefit in the case of a credit event relating to a reference entity and of any other default, relating to that derivative contract, which has a similar economic effect;
 - d 'sovereign issuer' means any of the following that issues debt instruments:
 - (i) the Union;
 - (ii) a Member State, including a government department, an agency, or a special purpose vehicle of the Member State;
 - (iii) in the case of a federal Member State, a member of the federation;
 - (iv) a special purpose vehicle for several Member States;
 - (v) an international financial institution established by two or more Member States which has the purpose of mobilising funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems; or
 - (vi) the European Investment Bank;

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- e 'sovereign credit default swap' means a credit default swap where a payment or other benefit will be paid in the case of a credit event or default relating to a sovereign issuer;
- f 'sovereign debt' means a debt instrument issued by a sovereign issuer;
- g 'issued sovereign debt' means the total of sovereign debt issued by a sovereign issuer that has not been redeemed;
- h 'issued share capital' in relation to a company, means the total of ordinary and any preference shares issued by the company but does not include convertible debt securities;
- i 'home Member State' means:
 - (i) in relation to an investment firm within the meaning of point (1) of Article 4(1) of Directive 2004/39/EC, or to a regulated market within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC, the home Member State within the meaning of point (20) of Article 4(1) of Directive 2004/39/EC;
 - (ii) in relation to a credit institution, the home Member State within the meaning of point (7) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions⁽¹⁾;
 - (iii) in relation to a legal person not referred to in point (i) or (ii), the Member State in which its registered office is situated or, if it has no registered office, the Member State in which its head office is situated;
 - (iv) in relation to a natural person, the Member State in which that person's head office is situated, or, where there is no head office, the Member State in which that person is domiciled;
- j 'relevant competent authority' means:
 - (i) in relation to sovereign debt of a Member State, or, in the case of a federal Member State, in relation to sovereign debt of a member of the federation, or a credit default swap relating to a Member State or a member of a federation, the competent authority of that Member State;
 - (ii) in relation to sovereign debt of the Union or a credit default swap relating to the Union, the competent authority of the jurisdiction in which the department issuing the debt is situated;
 - (iii) in relation to sovereign debt of several Member States acting through a special purpose vehicle or a credit default swap relating to such a special purpose vehicle, the competent authority of the jurisdiction in which the special purpose vehicle is established;
 - (iv) in relation to sovereign debt of an international financial institution established by two or more Member States, which has the purpose to mobilise funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems, the competent authority of the jurisdiction in which the international financial institution is established;
 - (v) in relation to a financial instrument other than an instrument referred to in points (i) to (iv), the competent authority for that financial instrument as defined in point (7) of Article 2 of Commission Regulation (EC) No 1287/2006⁽²⁾ and determined in accordance with Chapter III of that Regulation;

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- (vi) in relation to a financial instrument that is not covered under points (i) to (v), the competent authority of the Member State in which the financial instrument was first admitted to trading on a trading venue;
 - (vii) in relation to a debt instrument issued by the European Investment Bank, the competent authority of the Member State in which the European Investment Bank is located;
 - k 'market making activities' means the activities of an investment firm, a credit institution, a third-country entity, or a firm as referred to in point (l) of Article 2(1) of Directive 2004/39/EC, which is a member of a trading venue or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the Commission pursuant to Article 17(2) where it deals as principal in a financial instrument, whether traded on or outside a trading venue, in any of the following capacities:
 - (i) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market;
 - (ii) as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade;
 - (iii) by hedging positions arising from the fulfilment of tasks under points (i) and (ii);
 - l 'trading venue' means a regulated market within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC, or a multilateral trading facility within the meaning of point (15) of Article 4(1) of Directive 2004/39/EC;
 - m 'principal venue' in relation to a share means the venue for the trading of that share with the highest turnover;
 - n 'authorised primary dealer' means a natural or legal person who has signed an agreement with a sovereign issuer or who has been formally recognised as a primary dealer by or on behalf of a sovereign issuer and who, in accordance with that agreement or recognition, has committed to dealing as principal in connection with primary and secondary market operations relating to debt issued by that issuer;
 - o 'central counterparty' means a legal entity which interposes itself between the counterparties to the contracts traded within one or more financial markets, becoming the buyer to every seller and the seller to every buyer and which is responsible for the operation of a clearing system;
 - p 'trading day' means a trading day as referred to in Article 4 of Regulation (EC) No 1287/2006;
 - q 'turnover' of a share means turnover within the meaning of point (9) of Article 2 of Regulation (EC) No 1287/2006.
- 2 The Commission shall be empowered to adopt delegated acts in accordance with Article 42 specifying the definitions laid down in paragraph 1 of this Article, in particular specifying when a natural or legal person is considered to own a financial instrument for the purposes of the definition of short sale in point (b) of paragraph 1.

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- (1) [OJ L 177, 30.6.2006, p. 1.](#)
- (2) Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive ([OJ L 241, 2.9.2006, p. 1](#)).

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Changes and effects yet to be applied to :

- Regulation power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 1](#)
- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 1](#)
- Art. 2(2) words substituted by [S.I. 2018/1321 reg. 5\(3\)\(i\)](#)
- Art. 2(2) words substituted by [S.I. 2018/1321 reg. 5\(3\)\(ii\)](#)

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

- Ch. 5 heading words omitted by [S.I. 2018/1321 reg. 11\(1\)](#)
- Ch. 7 heading substituted by [S.I. 2018/1321 reg. 14\(1\)](#)
- s. 2 heading words substituted by [S.I. 2018/1321 reg. 12\(1\)](#)
- Art. 1(1)(a) words substituted by [S.I. 2018/1321 reg. 4\(1\)\(a\)](#)
- Art. 1(1)(b)(c) words substituted by [S.I. 2018/1321 reg. 4\(1\)\(b\)](#)
- Art. 1(1)(c) words substituted by [S.I. 2018/1321 reg. 4\(2\)](#)
- Art. 2(1)(a) words substituted by [S.I. 2018/1321 reg. 5\(2\)\(a\)](#)
- Art. 2(1)(d) substituted by [S.I. 2018/1321 reg. 5\(2\)\(b\)](#)
- Art. 2(1)(i)(j) omitted by [S.I. 2018/1321 reg. 5\(2\)\(c\)](#)
- Art. 2(1)(k) words inserted by [S.I. 2018/1321 reg. 5\(2\)\(d\)\(ii\)](#)
- Art. 2(1)(k) words substituted by [S.I. 2018/1321 reg. 5\(2\)\(d\)\(i\)](#)
- Art. 2(1)(k) words substituted in earlier amending provision [S.I. 2018/1321, reg. 5\(2\)\(d\)\(ii\)](#) by [S.I. 2020/1301 reg. 3Sch. para. 9\(a\)\(i\)](#)
- Art. 2(1)(l) substituted by [S.I. 2018/1321 reg. 5\(2\)\(f\)](#)
- Art. 2(1)(p) substituted by [S.I. 2018/1321 reg. 5\(2\)\(g\)](#)
- Art. 2(1)(q) substituted by [S.I. 2018/1321 reg. 5\(2\)\(h\)](#)
- Art. 2(1)(r)-(x) inserted by [S.I. 2018/1321 reg. 5\(2\)\(i\)](#)
- Art. 2(1)(s)(ii)(iii) words substituted in earlier amending provision [S.I. 2018/1321, reg. 5\(2\)\(i\)](#) by [S.I. 2020/1301 reg. 3Sch. para. 9\(a\)\(ii\)](#)
- Art. 2(1)(ka) inserted by [S.I. 2018/1321 reg. 5\(2\)\(e\)](#)
- Art. 7(3)(b) words substituted by [S.I. 2018/1321 reg. 8\(3\)\(c\)\(iii\)\(aa\)](#)
- Art. 7(3)(b) words substituted by [S.I. 2018/1321 reg. 8\(3\)\(c\)\(iii\)\(bb\)](#)
- Art. 7(3)(c) words substituted by [S.I. 2018/1321 reg. 8\(3\)\(c\)\(iv\)](#)
- Art. 16(4)(b) omitted by [S.I. 2018/1321 reg. 10\(1\)\(d\)\(i\)\(bb\)](#)
- Art. 16(4)(c) words substituted by [S.I. 2018/1321 reg. 10\(1\)\(d\)\(i\)\(cc\)](#)
- Art. 17(6A) inserted by [S.I. 2018/1321 reg. 10\(2\)\(e\)](#)
- Art. 17(6A) words substituted in earlier amending provision [S.I. 2018/1321, reg. 10\(2\)\(e\)](#) by [S.I. 2020/1301 reg. 3Sch. para. 9\(c\)\(ii\)](#)
- Art. 18(1)(a) words omitted by [S.I. 2018/1321 reg. 11\(2\)\(a\)\(ii\)\(bb\)](#)
- Art. 18(1)(a) words substituted by [S.I. 2018/1321 reg. 11\(2\)\(a\)\(ii\)\(aa\)](#)
- Art. 19(1)(a) words omitted by [S.I. 2018/1321 reg. 11\(3\)\(a\)\(ii\)\(bb\)](#)
- Art. 19(1)(a) words substituted by [S.I. 2018/1321 reg. 11\(3\)\(a\)\(ii\)\(aa\)](#)
- Art. 20(1)(a) words omitted by [S.I. 2018/1321 reg. 11\(4\)\(a\)\(ii\)\(bb\)](#)
- Art. 20(1)(a) words substituted by [S.I. 2018/1321 reg. 11\(4\)\(a\)\(ii\)\(aa\)](#)
- Art. 21(1)(a) words omitted by [S.I. 2018/1321 reg. 11\(5\)\(a\)\(ii\)\(bb\)](#)
- Art. 21(1)(a) words substituted by [S.I. 2018/1321 reg. 11\(5\)\(a\)\(ii\)\(aa\)](#)
- Art. 25(2)(b) words substituted by [S.I. 2018/1321 reg. 11\(8\)\(b\)](#)