

Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (Text with EEA relevance)

## CHAPTER I

### SCOPE AND DEFINITIONS

#### *Article 8*

#### **Derivatives under [<sup>F1</sup>paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order]<sup>F2</sup>...**

In addition to derivative contracts expressly referred to in [<sup>F3</sup>paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order], a derivative contract shall be subject to the provisions in [<sup>F4</sup>that Part] where it meets the criteria set out in [<sup>F4</sup>that Part] and in Article 7(3) of this Regulation and it relates to any of the following:

- (a) telecommunications bandwidth;
- (b) commodity storage capacity;
- (c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means with the exception of transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity;
- (d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources, except where the contract is already within the scope of [<sup>F5</sup>paragraph 4 of Part 1 of Schedule 2 to the Regulated Activities Order];
- (e) a geological, environmental or other physical variable, except if the contract is relating to any [<sup>F6</sup>emission allowances referred to in paragraph 11 of Part 1 of Schedule 2 to the Regulated Activities Order];
- (f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;
- (g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;
- (h) an index or measure based on actuarial statistics.

#### **Textual Amendments**

- F1** Words in [Art. 8](#) heading substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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**Changes to legislation:** There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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- F2** Words in Art. 8 heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 8 substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(c)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 8 substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(c)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 8(d) substituted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Art. 8(e) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(e)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to :**

- Regulation power to amend or revoke conferred by [2023 c. 29 s. 1517](#)
- Regulation power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 3](#)
- Regulation power to modify conferred by [2023 c. 29 s. 1317](#)
- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 3](#)

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

- Art. 3(1B) omitted by [S.I. 2022/1297 reg. 2\(3\)](#)
- Art. 3(1ZA) inserted by [S.I. 2022/1297 reg. 2\(2\)\(b\)](#)