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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

on the stand-alone suspension of the trading obligation for derivatives in accordance with Regulation (EU) No 600/2014 of the European Parliament and of the Council

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

on the stand-alone suspension of the trading obligation for derivatives in accordance with Regulation (EU) No 600/2014 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 648/2012¹, and in particular Article 32a(1) thereof,

Whereas:

- (1) Article 28 of Regulation (EU) No 600/2014 requires financial counterparties and non-financial counterparties that are subject to the clearing obligation under Title II of Regulation (EU) No 648/2012 of the European Parliament and of the Council² to conclude transactions with other such financial counterparties or other such non-financial counterparties in derivatives pertaining to a class of derivative that has been declared subject to the trading obligation in accordance with Article 32 of Regulation (EU) No 600/2014 only on regulated markets, multilateral trading facilities (MTFs), organised trading facilities (OTFs), or third-country trading venues recognised as equivalent under Article 28 of that Regulation (the ‘derivative trading obligation’). It follows that the derivative trading obligation prohibits those counterparties from concluding transactions in those derivatives on a third-country trading venue that is not recognised as equivalent under Article 28 of Regulation (EU) No 600/2014. Regulation (EU) 2024/791 of the European Parliament and of the Council³ amended Regulation (EU) No 600/2014 by, *inter alia*, introducing a new Article 32a, which allows the Commission to suspend, by way of an implementing act, the derivative trading obligation with respect to certain financial counterparties, upon the request of a competent authority of a Member State, and provided that the conditions set out in that Article are met.
- (2) On 8 November 2024, the Commission received a request from the Autorité des Marchés Financiers (AMF) to suspend the derivative trading obligation pursuant to Article 32a(1), point (a), of Regulation (EU) No 600/2014, with respect to three

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¹ OJ L 173, 12.6.2014, p. 84, ELI: <http://data.europa.eu/eli/reg/2014/600/oj>.

² 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, ELI: <http://data.europa.eu/eli/reg/2012/648/oj>).

³ 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>).

financial counterparties within its jurisdiction: BNP Paribas SA, Société Générale SA and Crédit Agricole CIB.

- (3) On 14 March 2025, the Commission received a request from the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) to suspend the derivative trading obligation pursuant to Article 32a(1), point (a), of Regulation (EU) No 600/2014, with respect to one financial counterparty within its jurisdiction: Deutsche Bank AG.
- (4) Pursuant to Article 32a(1), point (a), of Regulation (EU) No 600/2014, the competent authority is to demonstrate that a financial counterparty within its jurisdiction regularly acts as a market maker, within the meaning of Article 4, point (7), of Directive 2014/65/EU of the European Parliament and of the Council⁴, in an OTC derivative subject to the derivative trading obligation. To that end, the AMF and BaFin provided written evidence confirming that the requesting financial counterparties are members of certain EU MTFs and of certain US swap execution facilities (SEFs) recognised as equivalent under Article 28 of Regulation (EU) No 600/2014, and that they provide quotes in response to clients' requests for quotes (RFQs) for derivatives subject to the derivative trading obligation. The AMF and BaFin also provided data on the trading activity of the requesting financial counterparties on certain EU MTFs and on certain US SEFs recognised as equivalent under Article 28 of Regulation (EU) No 600/2014 indicating that, in the years 2021 to 2024, they regularly received RFQs for derivatives subject to the derivative trading obligation and regularly executed transactions against their proprietary capital in those instruments on the basis of the quotes that they provided in response to clients' RFQs. After having reviewed the evidence presented by the AMF and BaFin, the Commission concluded that the AMF and BaFin demonstrated that the requesting financial counterparties within their jurisdiction hold themselves out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling OTC derivatives subject to the derivative trading obligation against their proprietary capital at prices defined by them and, therefore, regularly act as market makers in an OTC derivative subject to the derivative trading obligation.
- (5) Pursuant to Article 32a(1), point (a), of Regulation (EU) No 600/2014, the competent authority is to demonstrate that a financial counterparty within its jurisdiction regularly receives RFQs for the derivatives subject to the derivative trading obligation from a non-EEA counterparty which has no active membership on a EEA trading venue. Since the requesting financial counterparties are not allowed to conclude transactions in derivatives subject to the derivative trading obligation on trading venues of third country jurisdictions that are not recognised as equivalent under Article 28 of Regulation (EU) No 600/2014, they are, to date, unable to receive RFQs for those derivatives from a non-EEA counterparty within those non-equivalent jurisdictions. In particular, following the United Kingdom's withdrawal from the Union, requesting financial counterparties have been unable to receive RFQs for derivatives subject to the derivative trading obligation from non-EEA counterparties on trading venues in the United Kingdom. In view of that material impossibility, the AMF and BaFin assessed the trading activity of the requesting financial counterparties on trading venues in the United Kingdom before 2021. The AMF and BaFin provided evidence showing that, in the three years prior to the effective date of the United

⁴ 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. 349-496, ELI: <http://data.europa.eu/eli/dir/2014/65/oj>).

Kingdom's withdrawal from the Union, the requesting financial counterparties regularly received RFQs and executed transactions on the basis of the RFQs received in derivatives subject to the derivative trading obligation on certain trading venues in the United Kingdom.

- (6) The AMF and BaFin also assessed more recent trading activity of the requesting financial counterparties on trading venues in the United Kingdom and on US SEFs that are recognised as equivalent under Article 28 of Regulation (EU) No 600/2014. First, the AMF and BaFin provided evidence showing that the requesting financial counterparties remained active on certain trading venues in the United Kingdom after 2021, given that they continued to receive RFQs and execute transactions on the basis of the RFQs received in derivatives not subject to the derivative trading obligation. Second, the AMF and BaFin provided evidence showing that, in the years 2021 to 2024, the requesting financial counterparties regularly received RFQs and executed transactions on the basis of RFQs received in derivatives subject to the derivative trading obligation on certain US SEFs recognised as equivalent under Article 28 of Regulation (EU) No 600/2014, including with respect to non-EEA counterparties with whom the requesting financial counterparties did not interact on EEA trading venues. Furthermore, the AMF and BaFin provided evidence showing that the requesting financial counterparties committed to implement measures, following the suspension of the derivative trading obligation, to ensure that, when concluding transactions under that suspension, they would only respond to RFQs from non-EEA counterparties that have no active membership on an EEA trading venue.
- (7) The evidence presented by the AMF and BaFin shows that it is reasonable to assume that, should the suspension of the derivative trading obligation be granted pursuant to Article 32a(1), point (a), of Regulation (EU) No 600/2014, the requesting financial counterparties would regularly receive RFQs for the derivatives subject to the derivative trading obligation from non-EEA counterparties which have no active membership on an EEA trading venue. In view of the fact that requesting financial counterparties are, to date, unable to receive RFQs for derivatives subject to the derivative trading obligation from a non-EEA counterparty within a jurisdiction that is not recognised as equivalent under Article 28 of Regulation (EU) No 600/2014, and considering that the suspension of the derivative trading obligation should be possible where the activities of an EEA financial counterparty with a non-EEA counterparty are unduly affected by the scope of the derivative trading obligation, the Commission concluded that the evidence presented by the AMF and BaFin demonstrates that the requesting financial counterparties within their jurisdiction regularly receive RFQs for the derivatives subject to the derivative trading obligation from a non-EEA counterparty which has no active membership on a EEA trading venue.
- (8) On 8 November 2024, the Commission also received a request from the AMF to suspend the derivative trading obligation pursuant to Article 32a(1), point (b), of Regulation (EU) No 600/2014 with respect to BNP Paribas SA.
- (9) Pursuant to Article 32a(1), point (b), of Regulation (EU) No 600/2014, the competent authority is to demonstrate that a financial counterparty within its jurisdiction regularly acts as a market maker in a credit default swap subject to the derivative trading obligation. The AMF presented written evidence confirming that the requesting financial counterparty is a member of certain EU MTFs and of certain US SEFs recognised as equivalent under Article 28 of Regulation (EU) No 600/2014, and that it responds to clients' RFQs for derivatives subject to the derivative trading obligation, including credit default swaps. The AMF also provided data on the trading

activity of the requesting financial counterparty on certain EU MTFs and on certain US SEFs recognised as equivalent under Article 28 of Regulation (EU) No 600/2014, indicating that, in the years 2021 to 2024, it regularly received RFQs for credit default swaps subject to the derivative trading obligation and regularly executed transactions against its proprietary capital in those instruments on the basis of the quotes that it provided in response to clients' RFQs. After having reviewed the evidence submitted by the AMF, the Commission concluded that the AMF demonstrated that the requesting financial counterparty within its jurisdiction holds itself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling credit default swaps subject to the derivative trading obligation against its proprietary capital at prices defined by that counterparty and that, therefore, it regularly acts as a market maker in a credit default swap subject to the derivative trading obligation.

- (10) Pursuant to Article 32a(1), point (b)(i), of Regulation (EU) No 600/2014, the competent authority is to demonstrate that the requesting financial counterparty within its jurisdiction intends to trade credit default swaps subject to the derivative trading obligation on own account on a trading venue open only to counterparties that are CCP clearing members, as defined in Article 2, point (14), of Regulation (EU) No 648/2012 ('dealer-to-dealer' venue). The AMF provided the list of trading venues where the requesting financial counterparty intends to trade credit default swaps subject to the derivative trading obligation on own account, confirmation from the requesting financial counterparty that all members of those trading venues are CCP clearing members, and a commitment from the requesting financial counterparty to notify the AMF of the CCP clearing member status of any new members on those trading venues. After having reviewed the evidence presented by the AMF, the Commission concluded that the AMF demonstrated that the requesting financial counterparty intends to trade credit default swaps subject to the derivative trading obligation on own account on a dealer-to-dealer venue.
- (11) Pursuant to Article 32a(1), point (b)(ii), of Regulation (EU) No 600/2014, the competent authority is to demonstrate that the requesting financial counterparty within its jurisdiction intends to trade on own account credit default swaps subject to the derivative trading obligation with a counterparty which is a market maker and which has no active membership on an EEA dealer-to-dealer venue that offers trading in the OTC derivatives subject to the derivative trading obligation. The AMF received confirmation from the requesting financial counterparty that all members of the dealer-to-dealer venues with whom the requesting financial counterparty intends to trade have active market maker status. The AMF also provided a commitment from the requesting financial counterparty to notify the AMF of the market maker status of any new participants in those venues, and written confirmation that, to the best of the AMF knowledge, there is currently no dealer-to-dealer trading venue in the EEA that offers trading in credit default swaps subject to the derivative trading obligation. After having reviewed the evidence presented by the AMF, the Commission concluded that the AMF demonstrated that the requesting financial counterparty intends to trade credit default swaps subject to the derivative trading obligation on own account with a counterparty which is a market maker and which has no active membership on an EEA dealer-to-dealer venue that offers trading in the OTC derivatives subject to the derivative trading obligation.
- (12) Pursuant to Article 32a(1), point (b)(iii), of Regulation (EU) No 600/2014, the competent authority is to demonstrate that the requesting financial counterparty within

its jurisdiction clears the credit default swaps referred to in that provision in a CCP authorised or recognised pursuant to Regulation (EU) No 648/2012. The AMF provided a list of CCPs authorised or recognised pursuant to Regulation (EU) No 648/2012 where the requesting financial counterparty intends to clear those credit default swaps. After having reviewed the evidence presented by the AMF, the Commission concluded that the AMF demonstrated that the requesting financial counterparty will clear credit default swaps in a CCP authorised or recognised pursuant to Regulation (EU) No 648/2012.

- (13) In accordance with Article 32a(1) of Regulation (EU) No 600/2014, the Commission consulted the European Securities and Markets Authority (ESMA). On 9 October 2025, ESMA submitted its opinion to the Commission, concurring with the assessment performed by the relevant competent authorities that the requesting financial counterparties satisfy the conditions laid down in that Article.
- (14) When assessing whether to suspend the derivative trading obligation, the Commission also considered whether such suspension could have a distortive effect on the clearing obligation under Title II of Regulation (EU) No 648/2012. Given that the clearing obligation will continue to apply with respect to the financial counterparties that make use of the suspension of the derivative trading obligation, irrespective of whether the derivatives that those financial counterparties trade are subject to the derivative trading obligation, the Commission considered that the suspension of the derivative trading obligation would not have a distortive effect on the clearing obligation under Title II of Regulation (EU) No 648/2012.
- (15) Considering that the AMF and BaFin demonstrated that the requesting financial counterparties within their jurisdictions fulfil the conditions laid down in Article 32a(1), point (a), of Regulation (EU) No 600/2014, and that the suspension of the derivative trading obligation would not have a distortive effect on the clearing obligation under Title II of Regulation (EU) No 648/2012, it is appropriate to suspend the derivative trading obligation for the purposes of that Article with respect to BNP Paribas SA, Société Générale SA, Crédit Agricole CIB, and Deutsche Bank AG. Given that the evidence presented by the AMF and BaFin shows that the conditions laid down in Article 32a(1), point (a), of Regulation (EU) No 600/2014 are fulfilled with respect to trading venues in the United Kingdom, it is appropriate to suspend the derivative trading obligation only with respect to the United Kingdom.
- (16) Considering that the AMF demonstrated that the requesting financial counterparty within its jurisdiction fulfils the conditions laid down in Article 32a(1), point (b), of Regulation (EU) No 600/2014, and that the suspension of the derivative trading obligation would not have a distortive effect on the clearing obligation under Title II of Regulation (EU) No 648/2012, it is appropriate to suspend the derivative trading obligation for the purposes of that Article with respect to BNP Paribas SA. Given that the evidence presented by the AMF shows that the conditions laid down in Article 32a(1), point (b), of Regulation (EU) No 600/2014 are fulfilled with respect to trading venues in the United Kingdom, it is appropriate to suspend the derivative trading obligation only with respect to the United Kingdom.
- (17) Pursuant to Article 32a(4) of Regulation (EU) No 600/2014, the implementing act suspending the derivative trading obligation is to be accompanied by the evidence presented by the competent authorities requesting the suspension. The evidence provided by the competent authorities to demonstrate compliance with the conditions laid down in Article 32a(1) of Regulation (EU) No 600/2014 includes trading data that

constitute proprietary business data and written exchanges that contain personal data. Therefore, it is necessary to present that evidence in a way that protects financial counterparties from undue commercial risks and safeguards personal data, while also ensuring consistency and enabling the assessment of the evidence in light of the conditions laid down in Article 32a(1) of that Regulation.

- (18) To allow the Commission to regularly review whether the grounds for the suspension of the derivative trading obligation continue to apply, every five years, the competent authorities of the financial counterparties should provide the Commission with updated evidence on the grounds for the suspension of the derivative trading obligation.
- (19) To allow the Commission to promptly assess whether the suspension of the derivative trading obligation should be revoked, the competent authorities of the financial counterparties should have effective supervisory arrangements in place to promptly identify breaches of compliance with the conditions set out in Article 32a(1), points (a) and (b), of Regulation (EU) No 600/2014 and immediately inform the Commission about those identified breaches.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Suspension of the derivative trading obligation pursuant to Article 32a(1), points (a) and (b), of Regulation (EU) No 600/2014

1. For the purposes of Article 32a(1), point (a), of Regulation (EU) No 600/2014, in view of the evidence presented in Section 1 of the Annex to this Regulation, the derivative trading obligation is suspended with respect to the following financial counterparties and the following specific market:
 - (a) financial counterparties:
 - (i) BNP Paribas SA;
 - (ii) Crédit Agricole CIB;
 - (iii) Deutsche Bank AG;
 - (iv) Société Générale SA;
 - (b) specific market:
United Kingdom.
2. For the purposes of Article 32a(1), point (b), of Regulation (EU) No 600/2014, in view of the evidence presented in Section 2 of the Annex to this Regulation, the derivative trading obligation is suspended with respect to the following financial counterparty and the following specific market:
 - (a) financial counterparty:
BNP Paribas SA;
 - (b) specific market:
3. United Kingdom.

Article 2

Review of the grounds for the suspension of the derivative trading obligation

1. The Commission shall review whether the grounds for the suspension of the derivative trading obligation continue to apply every five years from [*OP please insert the date = the date of entry into force of this Regulation*].

For the purposes of carrying out the review referred to in the first subparagraph, the competent authorities of the financial counterparties referred to in Article 1 shall provide the Commission with updated evidence on the grounds for the suspension of the derivative trading obligation at the latest six months before the date by which the Commission is to carry out that review.

2. Without prejudice to paragraph 1 of this Article, where the competent authorities of the financial counterparties referred to in Article 1 deem that the conditions set out in Article 32a(1), points (a) or (b), of Regulation (EU) No 600/2014 are no longer complied with, they shall notify the Commission without undue delay.

For the purposes of the first paragraph, the competent authorities shall regularly monitor the compliance of the financial counterparties referred to in Article 1 of this Regulation with the conditions set out in Article 32a(1), points (a) or (b), of Regulation (EU) No 600/2014.

3. Following the review carried out in accordance with paragraph 1 of this Article, or following the notification by a competent authority pursuant to paragraph 2 of this Article, or after having otherwise obtained knowledge that a financial counterparty referred to in Article 1 no longer satisfies the grounds for the suspension of the derivative trading obligation, the Commission may revoke the suspension of the derivative trading obligation with respect to that financial counterparty.
4. Before revoking the suspension of the derivative trading obligation pursuant to paragraph 3, the Commission shall notify the competent authority of the financial counterparty concerned of its intention to revoke the suspension of the derivative trading obligation and the reasons thereof. Within six weeks from the date of the notification, the competent authority of the financial counterparty concerned may submit to the Commission a reasoned statement with any relevant information for the purposes of assessing the grounds for the suspension of the derivative trading obligation.

Article 3

Entry into force

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

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

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN

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