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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**Exemption for the Central Bank of The United Kingdom ('Bank of England') under the  
Markets in Financial Instruments Regulation (MiFIR)**

## 1. INTRODUCTION

The Regulation on Markets in Financial Instruments (hereinafter MiFIR)<sup>1</sup> and the Directive on Markets in Financial Instruments (MiFID II)<sup>2</sup> were published in the Official Journal on 12 June 2014, entered into force on 2 July 2014 and have been applicable since 3 January 2018.

MiFID II/MiFIR introduce a market structure which aims to ensure that trading, wherever appropriate, takes place on regulated platforms and that trading is made transparent to ensure efficient and fair price formation.

In this framework, MiFIR grants an exemption from pre- and post-trade transparency requirements with regard to non-equity financial instruments in respect of a transaction where the counterparty is a member of the European System of Central Banks (ESCB) and where that transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that member of the ESCB is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt. Moreover, MiFIR empowers the Commission to extend the scope of this exemption to third-country central banks where the prerequisite conditions are fulfilled.

For this purpose the European Commission commissioned an external study to the Centre for European Policy Studies (CEPS) and the University of Bologna on "Exemptions for third-country central banks and other entities under the Market Abuse Regulation (MAR) and the Markets in Financial Instrument Regulation (MiFIR)" (the "study")<sup>3</sup>. The study is based on a survey and desk research. It analyses the pre- and post-trade transparency rules that apply when third-country central banks trade in non-equity financial instruments, as well as the extent to which these central banks trade these instruments in the Union.

## 2. THE REPORT'S LEGAL BASIS: MiFIR ARTICLE 1(9)

Article 1(6) of MiFIR contains an exemption from pre- and post-trade transparency rules for transactions where the counterparty is a member of the European System of Central Banks (ESCB) and where that transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that member of the ESCB is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt.

In addition, Article 1(9) MiFIR empowers the Commission to: "[...] *adopt delegated acts in accordance with Article 50 to extend the scope of paragraph 6 to other central banks.*

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> <https://www.ceps.eu/publications/study-exemptions-third-country-central-banks-and-debt-management-offices-under-mifir>

*To that end, the Commission shall, by 1 June 2015, submit a report to the European Parliament and to the Council assessing the treatment of transactions by third-country central banks which for the purposes of this paragraph includes the Bank for International Settlements. The report shall include an analysis of their statutory tasks and their trading volumes in the Union. The report shall:*

*(a) identify provisions applicable in the relevant third countries regarding the regulatory disclosure of central bank transactions, including transactions undertaken by members of the ESCB in those third countries, and*

*(b) assess the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions.*

*If the report concludes that the exemption provided for in paragraph 6 is necessary in respect of transactions where the counterparty is a third-country central bank carrying out monetary policy, foreign exchange and financial stability operations, the Commission shall provide that that exemption applies to that third-country central bank.”*

In a Commission report<sup>4</sup> adopted on 9 June 2017, the Commission concluded that it is appropriate to grant an exemption from MiFIR pre- and post-trade transparency requirements in accordance with Article 1(9) MiFIR to the third-country central banks of the following jurisdictions: Australia, Brazil, Canada, Hong Kong SAR, India, Japan, Mexico, Singapore, the Republic of Korea, Switzerland, Turkey and the United States – and the Bank for International Settlements. Delegated Regulation (EU) 2017/1799, adopted on 14 June 2017, granted an exemption from MiFIR pre- and post-trade transparency requirements in accordance with Article 1(9) MiFIR to the third-country central banks of the aforementioned countries.

In parallel, the Commission assesses the appropriateness of granting an exemption from MiFIR pre- and post-trade transparency requirements under Article 1(9) MiFIR to the People’s Bank of China. Member States are consulted in the Expert Group of the European Securities Committee on the draft report and draft Delegated Regulation.

The Bank of England was not considered in the above-mentioned report and delegated regulation due to its status as a central bank of a Member State of the EU. However, in light of the United Kingdom’s approaching change of status to a third country it is now appropriate to present to the European Parliament and to the Council a report pursuant to Article 1(9) of MiFIR analysing the appropriateness of extending the exemption from the scope of MiFIR to the Bank of England.

### **3. ANALYSIS OF THE SITUATION FOR THE BANK OF ENGLAND**

#### **Criteria used for the assessment**

The mandate provided by article 1(9) MiFIR (analysis of the identified jurisdictions) is based on two key criteria both of which were crucial for the Commission's assessment:

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<sup>4</sup> COM(2017) 298 final

- a. Provisions applicable in the relevant third countries regarding the regulatory disclosure of central banks transactions, including transactions undertaken by a member of the ESCB in those third countries. This includes the market transparency regime applicable to central bank transactions ("market transparency") and/or the transparency of the operational framework of the central bank ("operational transparency"); and
- b. The potential impact of the regulatory disclosure requirements in the Union may have on third country central bank transactions. In this context, the volume of transactions that the central bank executed with EU counterparties or in EU-listed financial instruments is assessed.

For the purposes of the assessment, the fulfilment of these two criteria was considered essential since they capture the factors set out in Article 1(9) MiFIR. In this regard, "market transparency" relates to transaction-specific transparency relating to individual securities, while the "operational transparency" refers to broader transparency rules that govern the operations of a central bank. Therefore, considering the MiFIR objectives and scope, an analysis of the regulatory requirements relating to market transparency for transactions and transparency of the operational framework was considered necessary in order to assess the appropriateness of granting an exemption to third country central banks in accordance with Article 1(9)(a) MIFIR. Furthermore, the transaction volume between the central bank of the relevant third country and the EU is of importance as it is an indicator of the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions in accordance with Article 1(9)(b) MIFIR.

Additionally, taking into account the requirements and objectives under MiFIR, the following criteria have also been considered:

- (i) the existence of a notification procedure whereby a third-country central bank notifies its EU counterparty that a transaction is exempt;
- (ii) the ability of the third-country central bank to distinguish between transactions for the key policy purposes identified by MiFIR and transactions executed only for 'pure' investment purposes; and
- (iii) the existence of a similar exemption available to third-country central banks in the jurisdiction under review.

The above additional criteria were assessed taking into account the requirements and objectives of MiFIR. In particular, the assessment considered whether the third-country central bank had a procedure in place to notify its EU counterparty that a transaction is exempt. Under MiFIR, exemptions under Article 1(6) MIFIR cannot be granted to central banks when they execute operations for pure investment purposes. Therefore, the assessment considered whether third-country central banks can distinguish between transactions executed for regulatory and investment purposes. Finally, in light of the market impact of disclosure requirements and its potential repercussion on the effectiveness of monetary policies, the availability of a statutory exemption for central banks trading on third-country trading venues is assessed.

For a detailed description of the criteria, please refer to the study by CEPS.

**Summary of the analysis for the Bank of England (BoE)**

The Commission has concluded that, the Bank of England has a legal framework in place that allows for a sufficient level of transparency<sup>5</sup>. Furthermore, the trading activity in the EU originating from the United Kingdom is substantial enough to justify granting an exemption from pre- and post-trade transparency requirements to the BoE.

Below is a short summary of the analysis for the BoE in relation to the above-mentioned criteria.

*Key criteria*

In terms of operational transparency, the BoE provides information about items in its balance sheet, announces its daily open market operations and it provides aggregate information on its transactions after these transactions take place, by means of electronic news services<sup>6</sup>.

The European Commission has received data on trading activity of the BoE on EU financial markets and with EU counterparties. The trading volumes of the BoE with EU counterparties are high.

*Additional criteria*

An exemption from transparency requirements is available for foreign central banks trading in the United Kingdom.

The BoE can distinguish between transactions for policy purposes and transactions for other purposes (especially “investment” purposes), which have a marginal role.

Finally, there is a notification procedure in place to inform EU counterparties that transactions are not subject to transparency requirements.

**Overview of the criteria**

<b>Key criteria</b>	<b>Market transparency</b>	High
	<b>Operational transparency</b>	High

<sup>5</sup> The purpose of this report is not to assess whether the above jurisdiction has trade transparency rules which can be deemed equivalent to those applicable under MIFIR. The conclusions in this report are without prejudice to any such assessment.

<sup>6</sup> Data in Official Rates and Ranges by Maintenance Period and Sterling Monetary Framework assets and liabilities by Maintenance Period are available monthly from June 2006. Daily data in Daily Flows - Open Market Operations by Maintenance Period are available from May 2006. Data in Bank of England Asset Purchase Facility available weekly as at close of business on a Thursday from February 2009 to 16 September 2016, and as at close of business on a Wednesday from 22 September 2016. Data in Bank of England Asset Purchase Facility - Term Funding Scheme are available from September 2016. Publication of data will usually occur on the Monday following an MPC decision on the Interactive Database, and on the 21st working day of each calendar month. Bank of England Asset Purchase Facility and Bank of England Asset Purchase Facility - Term Funding Scheme are updated weekly. Data in Bank of England Discount Window Facility lending are published quarterly. The data available are not seasonally adjusted.

	<b>Necessity</b>	Yes
<b>Other criteria</b>	<b>Distinction transaction purpose</b>	Yes
	<b>Notification procedure</b>	Yes
	<b>Foreign CBs exemption</b>	[Yes]
	<b>Execution type</b>	Bilateral (50-100%) Venues (10-50%)
	<b>Exemption</b>	Yes

**4. CONCLUSIONS**

On the basis of the information obtained, the Commission concludes that it is appropriate to grant an exemption from MiFIR pre- and post-trade transparency requirements in accordance with Article 1(9) MIFIR to the Bank of England.

This conclusion is without prejudice to possible changes in the future, having regard to new evidence submitted by the Bank of England, changes of legislation in the UK or changed factual circumstances. These events may trigger the need for a review of the list of exempted third-country central banks.