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Delegations will find attached document COM(2017) 298 final.

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

**Exemptions for third-country central banks and other entities 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 2)<sup>2</sup> were published in the Official Journal on 12 June 2014, entered into force on 2 July 2014 and will be applicable as of 3 January 2018.

MiFID 2/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 that benefits regulated markets, market operators and investment firms 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 by 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 market in Financial Instrument Regulation (MiFIR)" (the "study"). The study is based on a survey and research and contains an analysis of the pre- and post-trade transparency rules that apply when third countries' central banks trade in securities, as well as the extent to which these central banks trade in securities within 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.*"

*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*

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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).

*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.*

### **3. JURISDICTIONS CONSIDERED**

The report covers the following countries: 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 (hereinafter BIS), which according to Article 1(9) MiFIR is to be considered as a third-country central bank for the purpose of that paragraph. This list is without prejudice to possible amendments and deletions of relevant countries to be assessed in the future.

The relevant criteria for assessing the jurisdictions should be based on economic indicators, the size and degree of interconnection between countries' financial sector with that of the Union as well as the soundness of the legal environment that prevails in the third-country jurisdiction.

Concerning in particular the size and degree of interconnection, the Commission used the list published by the IMF containing the jurisdictions that serve as domicile to the most systemically important financial institutions for which the IMF's Financial Sector Assessment Program (FSAP) is mandatory. The IMF methodology combines the size and interconnectedness of each country's financial sector and hence takes into consideration the financial markets dimension. According to the IMF, this group of countries covers almost 90% of the global financial system and 80% of global economic activity and includes the majority of the G20 countries and of members of the Financial Stability Board (FSB). Institutions domiciled in EU Member States are not covered by the study. Moreover, two additional criteria are relevant for the selection of the relevant jurisdictions: to be able to be eligible for the assessment to grant the exemption in Article 1(9) a jurisdiction must not be included in the list of non-cooperative jurisdictions by the Financial Action Task Force (FATF) and the jurisdictions should be a signatory of IOSCO Multilateral Memorandum of Understanding (MMoU).

#### 4. ANALYSIS OF INDIVIDUAL JURISDICTIONS

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:

- a. Rules on regulatory disclosure of central banks transactions: 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. Necessity of an exemption: the volume of transactions that the central bank executed with EU counterparties or in EU-listed financial instruments.

For the purposes of the assessment, the fulfilment of these two criteria was considered compulsory 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 governs 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 following from the operational framework was considered necessary in order to assess the appropriateness of granting an exemption to third countries central banks in accordance with Article 1(9)(a) MiFIR. Furthermore, the transaction volume between the third country of the relevant central bank 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 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, under MiFIR, exemptions under Article 1(6) MiFIR cannot be granted to central banks when they execute operations for pure investment purposes. Therefore, the study analysed whether third-country central banks distinguish between transactions executed for regulatory and investment purposes. Furthermore, the study analysed whether third-country central banks have a notification procedure for exempt transactions or at least whether they consider introducing such procedure in relation to trading

with EU financial counterparties, something which increases the level of transparency and is therefore provided for by MiFIR. Finally, the availability of a statutory exemption for central banks trading on third-country trading venues can affect the cost-effectiveness analysis on the appropriateness of an exemption.

After having assessed these criteria, the Commission reached the conclusion that it is essential that third-country central banks can distinguish between transactions executed for regulatory and investment purposes, since otherwise any exemption under Article 1(9) would not be sufficiently framed. By contrast, and after further consideration, the absence of notification procedures at the time of drawing up this report for exempt transactions is not considered sufficiently material so as to consider that the exemption under Article 1(9) should not be available because the jurisdictions that presently do not have such procedures in place have indicated that they are ready to implement it once the MiFIR regime is in place. Finally, the existence of statutory exemptions in the jurisdiction assessed for central banks transactions trading on third-country execution venues is not considered indispensable to qualify for an exemption, since not explicitly required under Article 1(9) MiFIR.

A general overview of the assessment is provided in Annex 1<sup>3</sup>. The Commission has concluded that, in light of their market and/or operational transparency frameworks, the above-mentioned jurisdictions have legal frameworks in place which allow for a sufficient level of transparency<sup>4</sup>. Furthermore, the trading activity in the EU emanating from these jurisdictions is substantial enough to justify an extension to these jurisdictions of the exemption from pre- and post-trade transparency requirements. Additionally, the Commission concluded that it was appropriate to grant the exemption to the BIS whose ability to carry out its important public interest functions and to assist the international central banking community should not be prejudiced. Unlike central banks, the BIS is explicitly mentioned as an entity which may be included if necessary. Unlike the assessment in relation to central banks, this conclusion was reached on the basis of a qualitative assessment.

Below is a short summary of the analysis of the selected countries in relation to the above-mentioned criteria. For a detailed description and in depth analysis please refer back to the study by CEPS.

### **The Reserve Bank of Australia (RBA)**

#### *Key criteria*

Non-equity instruments are excluded from the scope of rules provide for transparency in trading. In terms of operational transparency, the RBA provides information about items in its balance sheet, announces its daily open market operations and it provides some aggregate

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<sup>3</sup> The People's Republic of China (the People's Bank of China) was not included in the list as it did not provide sufficient information relating to its trading activity in the EU for the Commission to make an assessment.

<sup>4</sup> The purpose of this report is not to assess whether the above jurisdictions have 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. It is sufficient for the purposes of this assessment that the jurisdiction in question has a disclosure framework in place.

information on its transactions after these transactions take place, by means of electronic news services.

The RBA has a high trading volume with EU counterparties or in EU-listed financial instruments.

#### *Additional criteria*

There is exemption from transparency requirements for foreign central banks.

The RBA is deemed able to distinguish between transactions for policy purposes and transactions for other purposes (as “investment” purposes).

Finally, although the institution has no procedure to notify its counterparties of the existence of an exemption for trading with EU financial counterparties, it declared to be ready to implement such procedure once the MiFIR regime is in place.

### **The Central Bank of Brazil (BCB)**

#### *Key criteria*

Mandatory rules that regulate transparency in trading of financial instruments cover some non-equity instruments, including debentures, commercial paper and derivatives. Government bonds and negotiable instruments guaranteed by a financial institution are the main exemption from market transparency rules. On operational transparency, the national central bank announces the details of open market operations on Sisbacen and its website where it also provides information on the results of the auctions, including those related to foreign exchange.

BCB has high trading volumes with EU counterparties or in EU-listed financial instruments.

#### *Additional criteria*

There is no exemption from transparency requirements for foreign central banks.

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

Finally, the institution has a procedure in place to notify its counterparties of the existence of an exemption when trading with EU financial counterparties.

### **The Bank of Canada (BoC)**

#### *Key criteria*

As far as market transparency is concerned, mandatory rules for trading in financial instruments cover some non-equity instruments, such as bonds, commercial paper and derivatives. Government bonds, however, are expressly exempted, as well as foreign securities. Operational transparency measures include the BoC publishing in advance information ahead of transactions of Term Repo for Balance Sheet Management Purposes. Aggregate results of these transactions are also published in the national central bank’s website.

The BoC trading volumes with EU counterparties or in EU-listed financial instruments is high.

*Additional criteria*

An exemption from transparency requirements is available for foreign central banks.

The BoC can distinguish between transactions for policy purposes and transactions for other purposes (especially “investment” purposes).

Finally, although the institution currently has no procedure in place to notify its counterparties of the existence of an exemption when trading with EU financial counterparties, it is ready to implement it once the MiFIR regime is in place.

**The Peoples' Bank of China (PBoC)**

*Key criteria*

PBoC has no transparency requirements for non-equity instruments, and market participants are not expected to disclose and report transaction details. Operational transparency is attained through public announcements of open-market operations (OMO) and results of short-term liquidity operations (SLO).

The European Commission is awaiting data on PBoC's trading activity on EU financial markets and with EU counterparties. Consequently the underlying economic rationale for granting exemption could not be assessed at this time.

*Additional criteria*

Since the institution only fulfils one out of the three key criteria, CEPS has put extra attention to the three additional criteria:

- foreign central banks do not benefit from a general exemption from transparency requirements,
- the ability of the institution to distinguish between transaction executed for investment purposes and transactions executed for policy purposes has not been demonstrated,
- no notification procedures to inform EU counterparties that transactions are not subject to transparency requirements have been notified.

Due to the lack of information on transactions executed with EU counterparties or EU-listed financial instruments, CEPS was unable to conclude on the appropriateness and necessity of an exemption under Article 1(9) of MiFIR for the PBoC at this time.

**The Hong Kong Monetary Authority (HKMA)**

*Key criteria*

Concerning market transparency, Hong Kong has no transparency requirements for trading in non-equity instruments. In terms of operational transparency the national central bank discloses general items of its balance sheet, and changes in foreign reserves, rather than

transactional information. However, it provides specific detailed information on issuances of Exchange Fund Bills and Notes.

The HKMA has high trading volumes with EU counterparties or in EU-listed financial instruments.

#### *Additional criteria*

An exemption from transparency requirements is not available for foreign central banks.

The HKMA can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role.

Finally, HKMA has a procedure in place to notify its counterparties of the existence of an exemption when trading with EU financial counterparties.

### **The Reserve Bank of India (RBI)**

#### *Key criteria*

With regard to market transparency, OTC transactions on non-equity instruments (usually conducted over the phone) are reported on the secondary market module of the Negotiated Dealing System. Information on traded prices of securities is available on the RBI and the Clearing Corporation of India Ltd. (CCIL) websites. In terms of operational transparency the RBI publishes an auction calendar, and, for Open Market Operations (OMOs) and liquidity instruments, it discloses these details of operations in advance, as well as the aggregate results of the operation ex post. It also discloses statistical information on OMOs on a weekly basis, and on FX policy in its monthly bulletin (transactional information on FX transactions is not disclosed).

The trading volume with EU counterparties or in EU-listed financial instruments is low.

#### *Additional criteria*

The RBI does not report FX transactions by foreign central banks, and there is generally no obligation to report transactions with foreign central banks. The RBI can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role.

Finally, although the institution has no procedure in place to notify its counterparties of the existence of an exemption when trading with EU financial counterparties, it is ready to implement it once the MiFIR regime is in place.

### **The Bank of Japan (BoJ)**

#### *Key criteria*

Mandatory rules on market transparency include some reporting requirements for OTC derivatives, but market operators are only obliged to report to the Ministry and trade repositories, not the public. Self-regulatory organizations, however, have issued specific requirements to publish reference prices on non-equity financial instruments. In terms of

operational transparency the BoJ does not publish information in advance, but it publishes aggregate auction results after each transaction takes place.

The trading volume with EU counterparties or in EU-listed financial instruments is low.

#### *Additional criteria*

Foreign central banks can rely on an exemption from transparency requirements, pursuant to a general clause of confidentiality, which applies to cases where the disclosure would cause harm to relationships with third countries.

The BoJ can distinguish between transactions for policy purposes and transactions for ‘pure’ investment purposes, which have a marginal role.

Finally, although the institution has no procedure in place to notify its counterparties of the existence of an exemption when trading with EU financial counterparties, it is ready to implement it once the MiFIR regime is in place.

### **The Bank of Mexico (Banxico)**

#### *Key criteria*

Banxico has no mandatory rules requiring on transparency of trading in non-equity instruments. However, self-regulatory rules include quotation obligations. Concerning operational transparency, Banxico publishes the main information on the Information Bulletin in advance of auctions, including estimated amount and type of operation.

Banxico’ trading volume with EU counterparties or in EU-listed financial instruments is low.

#### *Additional criteria*

An exemption from transparency requirements is not available for transactions by foreign central banks. Banxico can distinguish between transactions for policy purposes and transactions for ‘pure’ investment purposes, which have a marginal role.

Finally, Banxico has a procedure in place to notify its counterparties of the existence of an exemption when trading with EU financial counterparties.

### **The Monetary Authority of Singapore (MAS)**

#### *Key criteria*

As regards market transparency, the Guidelines on the Regulation of Markets issued by MAS in application of the Securities and Futures Act stipulates an obligation to provide both pre-trade (best bid and offer prices) and post-trade (executed transactions) information. These rules and guidelines apply to exchanges and recognized market operators, not dealers. Concerning operational transparency MAS communicates to market participants the terms of auctions, and auction results.

MAS has a high trading volume with EU counterparties or in EU-listed financial instruments.

#### *Additional criteria*

MAS does not grant an exemption from transparency requirements for domestic transactions by foreign central banks. MAS can distinguish between transactions for policy purposes and transactions for ‘pure’ investment purposes, which have a marginal role.

Finally, although MAS has no procedure in place to notify its counterparties of the existence of an exemption when trading with EU financial counterparties, it is ready to implement it once the MiFIR regime is in place.

### **The Bank of Korea (BoK)**

#### *Key criteria*

No market transparency requirements for non-equity instruments are set out in mandatory rules. However, self-regulatory market rules contain transparency obligations of reference prices for the non-equity instruments in which the BoK normally trades. Concerning operational transparency, BoK publishes aggregate information of items of its balance sheet. On foreign exchange management, the BoK publishes aggregate information on the investment tranche of its foreign assets.

BoK has a high trading volume with EU counterparties or in EU-listed financial instruments.

#### *Additional criteria*

An exemption from transparency requirements is not available for domestic transactions by foreign central banks.

BoK can distinguish between transactions for policy purposes and transactions for ‘pure’ investment purposes, which have a marginal role.

Finally, although BoK has no procedure in place to notify its EU counterparties of the existence of an exemption when trading with EU financial counterparties, it is ready to implement it once the MiFIR regime is in place.

### **The Swiss National Bank (SNB)**

#### *Key criteria*

As far as market transparency, there are reporting requirements for non-equity instruments, and the SIX Repo platform, through which the SNB executes a great volume of its transactions, is also available for repo transactions in the interbank market, and subject to pre- and post-trade transparency requirements. On operational transparency the SNB releases to the public the details of its Open Market Operations (OMOs) and Standing Facilities.

SNB has a high trading volume with EU counterparties or in EU-listed financial instruments.

#### *Additional criteria*

An exemption from transparency requirements is not available for domestic transactions by foreign central banks, but it is currently under discussion. Moreover, SNB can distinguish

between transactions for policy purposes and transactions for ‘pure’ investment purposes, which have a marginal role.

Finally, although SNB has no procedure in place to notify its counterparties of the existence of an exemption when trading with EU financial counterparties, it is ready to implement it once the MiFIR regime is in place.

### **The Central Bank of the Republic of Turkey (CBRT)**

#### *Key criteria*

Turkey has transparency requirements for non-equity instruments (except OTC derivatives) contained in mandatory rules and self-regulatory rules. The CBRT is a member of Borsa Istanbul, and its trading volumes on non-equity instruments through this platform are disclosed by the exchange, together with those of the rest of the members. Concerning operational transparency the CBRT releases aggregate details of OMOs, such as repo and reverse repo through auctions and quotations, outright purchases through auctions and quotations, as well as on liquidity bills. Borsa Istanbul releases CBRT trading volumes executed through its platform. The CBRT discloses information on reserve management activity in its Annual Report (information on investment benchmark, generic information of the composition of the portfolio) and in some monthly reports.

The trading volume with EU counterparties or in EU-listed financial instruments is high.

#### *Additional criteria*

An exemption from transparency requirements is not available for domestic transactions by foreign central banks. CBRT can distinguish between transactions for policy purposes and transactions for ‘pure’ investment purposes, which have a marginal role.

Finally, although CBRT has no procedure in place to notify its EU counterparties of the existence of an exemption when trading with EU financial counterparties, it is ready to implement it once the MiFIR regime is in place.

### **The United States Federal Reserve System – Federal Reserve Bank of New York (FRBNY)**

#### *Key criteria*

The United States has extensive transparency requirements for non-equity instruments contained in self-regulatory rules (Trade Reporting and Compliance Engine by FINRA). Government securities are excluded from transparency requirements (although persons transacting in US Treasury securities as well as US agency debentures, US dollar-denominated asset-backed and mortgage-backed securities are subject to regulatory position reporting requirements). On operational transparency the FRBNY releases extensive information about the details of its transactions both before and after they are concluded.

FRBNY has low trading volume with EU counterparties or in EU-listed financial instruments.

#### *Additional criteria*

An exemption from transparency requirements is not available in principle for transactions by foreign central banks, but they can rely on the exclusion for government bonds and foreign currency securities. OTC derivatives transactions with foreign central banks are not categorically excluded (as OTC derivatives with US authorities are).

The FRBNY can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role.

Finally, the FRNBY has no procedure in place to notify its EU counterparties of the existence of an exemption when trading with EU financial counterparties.

## **The Bank for International Settlements (BIS)**

### *Key criteria*

Although the BIS is incorporated in Switzerland the domestic market transparency regime does not apply to BIS transactions. In terms of operational transparency, BIS releases information in aggregate terms. The counterparties of the BIS include central banks, monetary authorities and international public institutions.

The trading volume with EU counterparties or in EU-listed financial instruments is high.

### *Additional criteria*

The exemption for foreign central banks is not applicable in the case of the BIS, since the domestic law (Switzerland) does not apply to their transactions.

BIS can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role.

Finally, BIS has no procedure in place to notify its counterparties of the existence of an exemption when trading with EU financial counterparties, it would be ready to implement it once the MiFIR regime is in place.

## **5. 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 third-country central banks listed in the annex to this report.

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