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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 30.1.2019 amending Delegated Regulation (EU) 2016/522 as regards the exemption of the Bank of England and the United Kingdom Debt Management Office from the scope of Regulation (EU) No 596/2014

Delegations will find attached document C(2019) 792 final.

Encl.: C(2019) 792 final



Brussels, 30.1.2019
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COMMISSION DELEGATED REGULATION (EU) .../...

of 30.1.2019

amending Delegated Regulation (EU) 2016/522 as regards the exemption of the Bank of England and the United Kingdom Debt Management Office from the scope of Regulation (EU) No 596/2014

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1. General background and objectives

Regulation (EU) No 596/2014¹ (commonly referred to as ‘MAR’) was adopted by the European Parliament and the Council on 16 April 2014 and entered into application on 3 July 2016. MAR establishes a common regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation, as well as measures to prevent market abuse. MAR framework aims at ensuring the integrity of financial markets in the Union and enhancing investor protection and market confidence. In particular, the MAR framework is aimed at ensuring that regulation keeps pace with market developments, as well as at strengthening the fight against market abuse across commodity and related derivative markets, reinforcing the investigative and administrative sanctioning powers of regulators and harmonising certain key elements, such as reporting and notification requirements.

Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive)² complements MAR by requiring all Member States to provide for harmonised criminal offences of insider dealing and market manipulation, and, in particular, to impose maximum criminal penalties for the most serious market abuse offences.

1.2. Legal background and legal elements

In order to specify the requirements set out in MAR, the Commission is empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (“TFEU”) and to specify therein certain elements where the co-legislators have deemed it necessary to grant respective empowerments to the European Commission.

Article 6(1) of MAR establishes an exemption from its scope for transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy by a Member State, the members of the ESCB, a ministry, agency or special purpose vehicle of one or several Member States, or by a person acting on its behalf, or, in the case of a Member State that is a federal state, a member making up the federation.

Furthermore, Article 6(5) of MAR empowers the Commission to adopt delegated acts in order to extend this exemption to certain public bodies and central banks of third countries. In line with that provision, the Commission adopted the Delegated Regulation (EU) 2016/522³ on 17 December 2015, extending the exemption from the scope of MAR to certain public bodies and central banks of those third-country jurisdictions. In light of the forthcoming withdrawal

¹ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

² OJ L 173, 12.6.2014, p. 179.

³ Commission Delegated regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions (OJ L 88/1, 5.4.2016, L 88/1).

of the United Kingdom from the European Union and its status change to a third country, it is appropriate to review the list of exempted public bodies and central banks of third countries set out in the Commission Delegated Regulation (EU) 2016/522. To that effect and in accordance with Article 6(5) subparagraph 2 of MAR, the Commission presented to the European Parliament and to the Council a report assessing the treatment of the United Kingdom central bank and public bodies charged with or intervening in the management of the public debt.⁴ The report concludes that, at this juncture, the Bank of England and the United Kingdom Debt Management Office should be added to the list of exempted entities under MAR.

The United Kingdom has, by letter to the Commission of 28 January 2019, given assurances that it will, with effect as of when Union law ceases to apply in the United Kingdom, exempt from the application of its domestic law equivalent to MAR the members of the ESCB and other Union or Member States' bodies performing monetary, exchange rate or debt management policy, in a manner comparable to the way in which the Commission has done so. The United Kingdom has, by the same letter to the Commission, also given assurances as regards the status, rights and obligations of the members of the ESCB in the domestic law of the United Kingdom.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The European Commission based its findings and conclusions on the external study carried on by Centre for European Policy Studies (CEPS) and University of Bologna "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 builds upon a survey based on a questionnaire addressed to central banks from third-country jurisdictions. It contains an analysis of the market abuse frameworks, risk management standards and internal rules of conduct applicable to central banks and debt management offices of 13 third-country jurisdictions. The assessment of third-country regimes is carried out against a "European benchmark", which is based on the Union's market abuse framework as well as on the risk management standards and internal rules of conduct applicable to the European Central Bank and the central banks and debt management offices of eleven Member States considered, including the United Kingdom. Therefore, the assessment undertaken in that study in relation to the Bank of England and United Kingdom Debt Management Office provided sufficient information for the Commission's analysis of the treatment of these two entities as set out in its report to the European Parliament and the Council.

The Commission services consulted the Expert Group of the European Securities Committee, consisting of Member State representatives.

⁴ Report from the Commission to the European Parliament and the Council on the exemption for the Bank of England and the United Kingdom Debt Management Office under the Market Abuse Regulation (MAR) [COM(2019) 68].

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 specifies the amendments to be made to Regulation (EU) 2016/522.

Article 2 provides that the Regulation shall enter into force on the day following that of its publication in the Official Journal and shall apply from the day following that on which Regulation (EU) No 596/2014 ceases to apply to and in the United Kingdom.

COMMISSION DELEGATED REGULATION (EU) .../...

of 30.1.2019

amending Delegated Regulation (EU) 2016/522 as regards the exemption of the Bank of England and the United Kingdom Debt Management Office from the scope of Regulation (EU) No 596/2014

(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 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC¹, and in particular Article 6(5) thereof,

Whereas:

- (1) Transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy by a Member State, the members of the ESCB, a ministry, agency or special purpose vehicle of one or several Member States, or by a person acting on its behalf, or, in the case of a Member State that is a federal state, a member making up the federation are exempt from the scope of application of Regulation (EU) No 596/2014 pursuant to Article 6(1) thereof.
- (2) Such an exemption from the scope of Regulation (EU) No 596/2014 may be extended, in accordance with Article 6(5) of that Regulation, to certain public bodies and central banks of third countries.
- (3) The list of exempted central banks of third countries set out in Commission Delegated Regulation (EU) 2016/522² should be updated, including with a view to extend, whenever necessary, the scope of the exemption laid down in Article 6(1) of Regulation (EU) No 596/2014 to other central banks and certain public bodies of third countries. The Commission monitors and assesses relevant legislative and regulatory developments in third countries and may undertake a review of the exemptions at any time.

¹ OJ L 173, 12.6.2014, p. 1.

² Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions (OJ L 88, 5.4.2016, p. 1)

- (4) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.
- (5) The withdrawal agreement as agreed between the negotiators contains arrangements for the application of provisions of Union law to and in the United Kingdom beyond the date the Treaties cease to apply to the United Kingdom. If that agreement enters into force, Regulation (EU) No 596/2014, including the exemption provided for in Article 6(1) of that Regulation, will apply to and in the United Kingdom during the transition period in accordance with that agreement and will cease to apply at the end of that period.
- (6) The withdrawal of the United Kingdom from the Union would, in the absence of any special provisions, have the effect that the Bank of England and the United Kingdom Debt Management Office will no longer benefit from the existing exemption unless they are included in the list of exempted third-country central banks and debt management offices.
- (7) In light of information obtained from the United Kingdom, the Commission prepared and presented to the European Parliament and to the Council a report assessing the international treatment of the Bank of England and the United Kingdom Debt Management Office. That report³ concluded that it is appropriate to grant an exemption from the scope of Regulation (EU) No 596/2014 to United Kingdom's central bank and debt management office once the United Kingdom is a third country. Accordingly, the Bank of England and the United Kingdom Debt Management Office should be included in the list of exempted public entities set out in Delegated Regulation (EU) 2016/522.
- (8) The authorities of the United Kingdom have provided assurances on the status, rights and obligations of ESCB members, including their intention to grant to the members of the ESCB and other Union and Member States' bodies performing monetary, exchange rate or public debt management policy an exemption comparable to the one provided for in Article 6(1) of Regulation (EU) No 596/2014.
- (9) Therefore, Delegated Regulation (EU) 2016/522 should be amended accordingly.
- (10) The Commission continues to monitor on a regular basis the treatment of those central banks and public bodies exempted from the market abuse requirements laid down in the list in the Annex I to Commission Delegated Regulation (EU) 2016/522. That list may be updated in light of the development of the regulatory arrangements in those third countries and taking into account any relevant new sources of information. Such reassessment could lead to the removal of certain third countries from the list of exempted entities

³ Report from the Commission to the European Parliament and the Council on the Exemption for the Bank of England and the United Kingdom Debt Management Office under the Market Abuse Regulation (MAR) [COM(2019) 68].

(11) This Regulation should enter into force as a matter of urgency and should apply from the day following that on which Regulation (EU) No 596/2014 ceases to apply to and in the United Kingdom,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Delegated Regulation (EU) 2016/522 is replaced by the text in the Annex to this Regulation.

Article 2

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

It shall apply from the day following that on which Regulation (EU) No 596/2014 ceases to apply to and in the United Kingdom.

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

Done at Brussels, 30.1.2019

For the Commission
The President
Jean-Claude JUNCKER