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Delegations will find attached document COM(2019) 62 final.

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

**on the International Treatment of Central Banks and Public Entities Managing Public
Debt with regard to OTC Derivatives Transactions**

1. INTRODUCTION

The Regulation on OTC derivatives, central counterparties and trade repositories (EMIR) of 4 July 2012 requires, *inter alia*, the central clearing of all standardised OTC derivatives contracts, the reporting of all derivatives contracts to trade repositories and the implementation of risk-mitigation techniques for those trades which are not centrally cleared.

According to Article 1(4) of EMIR, the Union's central banks and Union public bodies charged with or intervening in the management of the public debt are exempted from EMIR and are therefore not subject to these obligations.

Under Article 1(6) of EMIR, the European Commission is empowered to amend the list of exempted entities by way of delegated acts if it concludes, after analysing the international treatment of central banks and of public bodies managing the public debt in other jurisdictions' legal frameworks and informing the European Parliament and the Council of the results, that the exemption of the monetary responsibilities of those third-country central banks and public bodies charged with or intervening in the management of the public debt from the clearing and reporting obligation and the obligation to apply risk-mitigation techniques is necessary.

2. THE COMMISSION'S PREVIOUS ASSESSMENTS

The Commission has carried out two reviews of the international treatment of central banks and other public bodies charged with or intervening in the management of the public debt with regards to OTC derivatives transactions.

The first review concerned the legal frameworks in Japan, Switzerland, the United States, Australia, Canada and Hong Kong and concluded in 2013¹ that Japan and the United States fulfilled the conditions for the central banks and public bodies responsible for the management of the public debt in those two jurisdictions to be added to the list of exempted entities in Article 1(4) of EMIR².

The second review concerned the legal frameworks of Australia, Canada, Hong Kong, Mexico, Singapore and Switzerland and concluded in 2017³ that all those jurisdictions fulfilled the conditions for the central banks and public bodies responsible for the management of the public debt in those jurisdictions to be added to the list of exempted entities in Article 1(4) of EMIR⁴.

3. THE CURRENT ASSESSMENT

This assessment is triggered by the United Kingdom's notification on 29 March 2017 of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. When Union law ceases to apply to and in the United Kingdom, the exemption for Union Central Banks and public bodies charged with or intervening in the management of the

¹ The results of the review were the subject of a report adopted on 22 March 2013, COM(2013)158 final.

² Commission Delegated Regulation (EU) No 1002/2013 of 12 July 2013 amending Regulation (EU) No 648/2012, OJ L 279, 19.10.2013, p. 2.

³ The results of the review were the subject of a report adopted on 2 March 2017, COM(2017)104 final.

⁴ Commission Delegated Regulation (EU) 2017/979 of 2 March 2017, OJ L148, 10.6.2017, p.1.

public debt in Article 1(4)(a) of EMIR would no longer apply to the United Kingdom central bank or public debt management bodies.

Until the United Kingdom's withdrawal from the Union, EMIR, including its provisions on the clearing and reporting obligations and risk-mitigation techniques, is directly applicable in the United Kingdom. As part of the European Union (Withdrawal) Act 2018, the United Kingdom on 26 June 2018 incorporated the provisions of EMIR into UK domestic law with effect from the date of the United Kingdom's withdrawal from the Union. To address failures or deficiencies arising from the incorporation of EMIR into UK domestic law, the United Kingdom will amend⁵ or has already amended⁶ the Financial Services and Markets Act 2000 (the "FSMA") and the UK domestic law incorporating EMIR, e.g. transferring responsibilities and tasks conferred on the Commission or the European Securities and Markets Authority ("ESMA") to the Treasury or other UK authorities. The assessment in this report is based on this legal framework.

4. PROGRESS OF OTC DERIVATIVES MARKETS REFORMS

Clearing obligation

According to the draft UK domestic law incorporating EMIR, the obligation to clear OTC derivatives transactions would be maintained. The clearing obligation would in principle cover all OTC derivative transactions, with similar exemptions as those applicable under EMIR.

Reporting obligation

Under the draft UK domestic law incorporating EMIR, the obligation to report all OTC derivative transactions would be maintained, including the rules describing which of the counterparties has the responsibility to report the transaction and what information is to be reported.

Risk-mitigation techniques

The draft UK domestic law incorporating EMIR would maintain in place the rules concerning the use of risk-mitigation techniques required for non-centrally cleared OTC derivative transactions, including the rules on timely confirmation of trades, portfolio reconciliation and procedures for dispute resolution.

5. INTERNATIONAL TREATMENT OF CENTRAL BANKS AND PUBLIC DEBT MANAGEMENT BODIES

Clearing obligation

According to the draft UK domestic law incorporating EMIR⁷ the UK and certain foreign

⁵ The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 adopted on 13 November 2018 (SI 2018 No. 1184); The trade repositories (Amendment and Transitional provision) (EU Exit) Regulations 2018 adopted on 6 December 2018 (SI 2018 No. 1318)

⁶ The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018, draft published for consultation on 22 October 2018.

⁷ The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018, draft published for consultation on 22 October 2018.

central banks and other public bodies charged with or intervening in the management of the public debt would be exempted from the application of the clearing obligation. The Treasury would be able to extend this exemption to additional foreign jurisdictions by regulation. In addition, the exemption from the clearing obligation would apply to the Bank for International Settlements and certain multilateral development banks and other public sector entities owned by central governments.

Reporting obligation

As for the clearing obligation, the United Kingdom intends to exempt the UK and certain foreign central banks and other public bodies charged with or intervening in the management of the public debt from the reporting obligation. It would be possible to extend the exemption to additional foreign jurisdictions. In addition, the exemption from the reporting obligation would apply to the Bank for International Settlements.

Risk-mitigation techniques

According to the draft UK domestic legislation, the UK and certain foreign central banks and other public bodies charged with or intervening in the management of the public debt would be exempted from the obligation to apply risk-mitigation techniques to non-centrally cleared OTC derivatives transactions. The Treasury would be able to extend the exemption to additional foreign jurisdictions. The exemption would apply also to the Bank for International Settlements and to certain multilateral development banks and other public sector entities owned by central governments.

6. CONCLUSION

The legislative framework implementing the OTC derivative reforms agreed in Pittsburgh in 2009 will be in place in the United Kingdom after its withdrawal from the Union if the announced legislation comes into force. The draft UK domestic legislative framework incorporating EMIR exempts the UK and certain third-country central banks and public bodies charged with or intervening in the management of public debt from the clearing and reporting obligations and the obligation to apply risk-mitigation techniques. The draft UK legislative framework also includes provisions which enable the extension of the exemption to the central banks and public debt management bodies of other foreign countries.

Adding the UK central bank and public debt management bodies to the list of entities exempted from the scope of EMIR, will exempt their monetary responsibilities from the scope of EMIR and promote a level-playing field in the application of EMIR reforms with regard to transactions with central banks across jurisdictions. This will also contribute to greater international coherence and consistency.

The Commission therefore concludes that Article 1(4) of EMIR should be amended to exempt from the scope of EMIR the UK central bank and other public bodies charged with or intervening in the management of public debt.

The comparative analysis in this report is not exhaustive. It is based on the UK domestic law incorporating EMIR, parts of which are not yet fully adopted.

The Commission will continue to review on a regular basis the international treatment of central banks and public bodies as regards OTC derivatives in third countries, including in the third countries listed in Article 1(4) of EMIR. The list of exempted entities may be updated in light of the development of the regulatory arrangements in third countries and taking into account any relevant new sources of information. Such reassessment could also lead to removal of third countries from the list of exempted entities.