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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 14.3.2019 amending Delegated Regulation (EU) 2017/1799 as regards the exemption of the People's Bank of China from the pre- and post-trade transparency requirements in Regulation (EU) No 600/2014

Delegations will find attached document C(2019) 2082 final.

Encl.: C(2019) 2082 final



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

of 14.3.2019

amending Delegated Regulation (EU) 2017/1799 as regards the exemption of the People's Bank of China from the pre- and post-trade transparency requirements in Regulation (EU) No 600/2014

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1. General background and objectives

Regulation (EU) No 600/2014¹ (commonly referred to as ‘MiFIR’) has become applicable on 3 January 2018 and together with Directive 2014/65/EU² (‘MiFID II’) replace Directive 2004/39/EC³ (MiFID I). MiFIR and MiFID II provide a harmonised legal framework governing, amongst others, the requirements applicable to investment firms, trading venues, data reporting services providers and third-country firms providing investment services or activities in the Union.

The overarching aim of MiFID II and MiFIR is to level the playing field in financial markets and to enable the markets to work for the benefit of the economy, supporting jobs and growth.

MiFIR and MiFID II aim to enhance the efficiency, resilience and integrity of financial markets. In particular, they aim to achieve greater transparency through introducing a pre- and post-trade transparency regime for non-equities and by strengthening and broadening the existing equities trade transparency regime.

1.2. Legal background and legal elements

In order to specify the requirements set out in MiFIR, 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 empowerments to the European Commission. Article 1(9) of MiFIR empowers the Commission to adopt delegated acts to extend the exemption from the pre- and post-trade transparency requirements under MiFIR to third-country central banks concerning transactions in pursuit of monetary, exchange rate or public debt management policy.

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 legal treatment of the third-country central banks in relation to pre-

¹ 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).

² 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).

³ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

and post-trade transparency, the transparency of their operational framework and the degree of trading activity within the Union. The draft original Commission Delegated Regulation (EU) 2017/1799 was published for a 4-week feedback consultation that closed on 4 May 2017. No comments were submitted in the public consultation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1(6) of Regulation (EU) No 600/2014 contains an exemption from pre- and post-trade transparency requirements 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.

According to Article 1(9) of Regulation (EU) No 600/2014, the Commission is empowered to adopt delegated acts in order to extend this exemption to certain central banks of third countries. The Commission Delegated Regulation (EU) 2017/1799 fulfils the empowerment stemming from Regulation (EU) No 600/2014 specifying the central banks of third countries that benefit from the exemption available to members of the ESCB under Article 1(6) of Regulation (EU) No 600/2014.

Recital (3) of the Commission Delegated Regulation (EU) 2017/1799 envisages that the list of exempted central banks of third countries set out in the Commission Delegated Regulation (EU) 2017/1799 should be reviewed, as deemed appropriate, including with a view to extend, where appropriate, the exemptions to other central banks of third countries that have not yet been included in the list.

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

of 14.3.2019

amending Delegated Regulation (EU) 2017/1799 as regards the exemption of the People's Bank of China from the pre- and post-trade transparency requirements in Regulation (EU) No 600/2014

(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 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012⁴, and in particular Article 1(9) thereof,

Whereas:

- (1) Transactions where members of the European System of Central Banks (ESCB) are counterparties are exempt from the trade transparency requirements in accordance with Article 1(6) of Regulation (EU) No 600/2014 insofar as those transactions are in pursuit of monetary, foreign exchange or financial stability policy.
- (2) Such an exemption from the scope of Regulation (EU) No 600/2014 may be extended, in accordance with Article 1(9) of that Regulation, to central banks of third countries as well as to the Bank for International Settlements.
- (3) The list of exempted central banks of third countries set out in Delegated Regulation (EU) 2017/1799 should be updated, including with a view to extend, where appropriate, the scope of the exemption laid down in Article 1(6) of Regulation (EU) No 600/2014 to other central banks of third countries, or to remove such public entities from the list. The Commission monitors and assesses relevant developments in third countries and may undertake a review of the additional exemption, at any time.
- (4) In light of information received from the People's Republic of China, the Commission prepared and presented to the European Parliament and to the Council a report assessing the international treatment of the People's Bank of China. That report⁵ concluded that it is appropriate to grant an exemption from pre- and post-trade transparency requirements in Regulation (EU) No 600/2014 to the central bank of the People's Republic of China. Accordingly, the list of exempted public entities set out in

⁴ OJ L 173, 12.6.2014, p. 84.

⁵ Report from the Commission to the European Parliament and the Council on the exemption for the Central Bank of The People's Republic of China under the Markets in Financial Instruments Regulation (MiFIR) [COM(2019) 143 of 14.03.2019].

Delegated Regulation (EU) 2017/1799 should be amended to include the People's Bank of China.

- (5) The measures provided for in this Regulation are in accordance with the opinion of the Expert Group of the European Securities Committee.

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Delegated Regulation (EU) 2017/1799 is replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth 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, 14.3.2019

For the Commission
The President
Jean-Claude JUNCKER