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#### NOTE

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From:	Ms Christine LAGARDE, the President of the European Central Bank (ECB)
On:	1 June 2022
To:	General Secretariat of the Council

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Subject:	OPINION OF THE EUROPEAN CENTRAL BANK of 1 June 2022 on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising trading obligations and prohibiting receiving payments for forwarding client orders (CON/2022/19)
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Delegations will find attached the document mentioned above, and its technical annex.

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 1 June 2022**

**on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising trading obligations and prohibiting receiving payments for forwarding client orders**

**(CON/2022/19)**

**Introduction and legal basis**

On 3 February and 4 February 2022 the European Central Bank (ECB) received requests from the European Parliament and the Council of the European Union for an opinion on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising trading obligations and prohibiting receiving payments for forwarding client orders<sup>1</sup> (hereinafter the 'proposed regulation') and on a proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments<sup>2</sup> (hereinafter the 'proposed directive').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation and the proposed directive contain provisions affecting (a) the basic task of the European System of Central Banks (ESCB) to define and implement the monetary policy of the Union pursuant to Article 127(2) of the Treaty, and (b) the ESCB's task to contribute to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system as referred to in Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

**General observations**

**1. Objectives of the proposed regulation**

- 1.1 The ECB welcomes the main objective of the proposed regulation to amend Regulation (EU) 600/2014 of the European Parliament and of the Council<sup>3</sup> (hereinafter 'MiFIR') in order to enhance market data transparency across European Union (EU) trading venues by creating a new regulatory framework for the production of a 'consolidated tape' for trade data, including a new process for selecting a single consolidated tape provider for each asset class.

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<sup>1</sup> COM (2021) 727 final.

<sup>2</sup> COM (2021) 726 final.

<sup>3</sup> Regulation (EU) 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).

- 1.2 The proposed regulation also includes significant changes to the EU pre- and post-trade transparency rules for equity and non-equity financial instruments, such as greater harmonisation of rules for deferring publication of transaction details, updates to the obligations regarding EU share and derivative trading, a ban on payments for order flow and other changes to the EU regime for securities and derivatives trading. The proposed amendments aim to further support the integration of European capital markets and to further harmonise relevant financial market supervisory rules across the Union. The ECB strongly supports the general aim of further supporting capital markets integration, in particular through the proposed enhancements to market data transparency. Deeper and more integrated capital markets are needed from several perspectives. Not only can they mobilise the resources needed to support the euro area economy, but they will also make the financial system generally more resilient. Moreover, the integration of European capital markets can be expected to improve the transmission of the single monetary policy to all parts of the euro area, and to facilitate market participants' access to green finance and to funding for the transition towards a digital economy. To that end, the ECB reiterates the importance of promptly adopting the further initiatives under the European Commission's 2020 Capital Markets Union (CMU) action plan as well as fully implementing them, where that is legally required, at the national level.
- 1.3 Enhancing the transparency of market data will contribute to the development of EU capital markets, with the wider availability of price and liquidity information to investors and issuers creating more investment and funding opportunities and reducing the cost of raising capital for issuers. At the same time it is recalled that higher levels of transparency may enable certain traders in certain circumstances to take greater advantage of information on existing orders in the market through their ability to trade faster on that information using the latest technology.
- 1.4 The ECB is specifically interested in these legislative proposals in view of the ESCB's participation in the non-equity (bond, including sovereign bond) markets in the performance of the ESCB's monetary policy and other Treaty-mandated tasks, and in view of the need to safeguard the confidentiality of such sensitive transactions. Therefore, the ECB would additionally like to comment on other provisions of MiFIR<sup>4</sup> which, although not the subject of the proposed regulation, affect ESCB central banks and their market transactions in financial instruments (see paragraph 7).

## 2. Objectives of the proposed directive

As the proposed directive sets out only limited amendments to Directive 2014/65/EU of the European Parliament and of the Council<sup>5</sup> (hereinafter 'MiFID II') that largely flow from the proposed changes to MiFIR, the ECB does not see a need to opine on that proposal.

<sup>4</sup> See Article 1(6), (7) and (9) and Article 26(5) of MiFIR.

<sup>5</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, p. 349).

## Specific observations

### 3. Consolidated Tape

- 3.1 The ECB welcomes the introduction of the proposed enhanced regime for the 'consolidated tape' (CT) and the competitive bid process for the selection of a consolidated tape provider (CTP) for each asset class. As previously noted by the ECB, proper transparency can only be appropriately ensured with the establishment of one single CTP<sup>6</sup> for each relevant asset class. The CT has several benefits for investors, and these support the CMU objectives of making capital market financing more accessible to investors and reducing fragmentation of the EU capital markets. It should help increase transparency and investors' access to market data, thus reducing liquidity and trade execution risks, and market fragmentation. It may also substantially reduce transaction costs for investors. Enabling investors to have a real-time overview of trading activity at a reasonable cost should increase the use of the EU capital markets by corporate and retail investors for financing and investment.
- 3.2 The proposed enhanced regime is technically and operationally complex and includes a revenue remuneration scheme. In order to guide the balance between quality and the level of its investment in producing the consolidated data-set for the given asset class, it is therefore crucial that the CTP can rely on the quality, completeness and prompt delivery of the data provided to it by market data contributors (investment firms, trading venues, approved publication arrangements and systematic internalisers). In this regard the ECB understands that under the proposal the CTP will only be responsible for consolidating the core market data and disseminating it commercially to the market and that the quality of the contributed data, which remains wholly the responsibility of the market data contributors, will be regulated by the Commission on the basis of a delegated act, based on the advice of an expert stakeholder group and of the European Securities and Markets Authority (ESMA).
- 3.3 Should the CTP concession need to be terminated by ESMA for any reason, to make the option of re-tendering the contract credible, the technical standards to be developed by ESMA could require the CTP to make its technical connection parameters for market data contributors and its data dictionaries public so that they are available to other entities wishing to compete for the contract.
- 3.4 The ECB understands that the proposals on the CT do not affect the confidentiality of ESCB 'monetary, foreign exchange or financial stability policy' transactions, which continue to be exempt from disclosure under Article 1(6) of MiFIR. Accordingly the 'market data' to be specified by the Commission pursuant to the proposed Article 22b(2) and the 'core market data' that CTPs would sell to users would not include data from ESCB policy transactions (such as on price, volume and time of conclusion).

### 4. Pre-trade transparency regime for equities: 'dark trading'

The ECB welcomes the proposed regulation's streamlining of the pre-trade transparency regime for equities, by replacing the double volume cap with a single volume cap set at 7 % of the total volume of

<sup>6</sup> See paragraph 5.2 of Opinion CON/2012/21 of the European Central Bank of 22 March 2012 on: (i) a proposal for a directive on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council; (ii) a proposal for a regulation on markets in financial instruments and amending Regulation (EMIR) on OTC derivatives, central counterparties and trade repositories; (iii) a proposal for a directive on criminal sanctions for insider dealing and market manipulation; and (iv) a proposal for a regulation on insider dealing and market manipulation (market abuse) (OJ C 161, 7.6.2012, p. 3). All ECB opinions are available on EUR-Lex.

trades that are executed in the relevant financial instrument in the Union under the reference price waiver or the negotiated trade waiver<sup>7</sup>. This simplifies the transparency regime and makes the monitoring of the levels of dark trading less complex. The proposed lower EU-wide volume cap intends to compensate for the abolition of the venue specific threshold, so the overall proposal aims to increase the level of pre-trade transparency in equities. At the same time, it is noted that the interaction between the abolition of the venue specific volume cap and the lowering of the EU-wide cap is complex, as these proposed changes are expected to have diverging effects on transparency. The ECB suggests therefore that the pre-trade transparency regime for equities, in particular the calibration of the volume cap, should be kept under review.

## **5. Prohibition of payment for order flow**

The Commission proposal<sup>8</sup> includes a further restriction of payment for order flow (PFOF). The ECB considers that PFOF can impede market efficiency and the transparency of European capital markets.

## **6. Ending open access for exchange-traded derivatives**

While in principle supportive of measures that strengthen EU clearing markets, it is important to consider the possible implications that the removal of the open access provision could have for competition, innovation and market integration, and to carefully balance potentially competing objectives.

## **7. Other MiFIR provisions and their impact on ECB/ESCB market transactions**

The MiFIR provisions which mainly affect ECB/ESCB market transactions are not the subject of the proposed regulation. The ECB takes this opportunity, however, to propose that the formulation of certain MiFIR provisions could be further improved in the light of the ECB/ESCB's experience with conducting market operations on EU trading venues.

### **7.1 *Exemption from MiFIR transparency requirements for ESCB transactions carried out pursuant to the Statute of the ESCB***

The ECB considers that the current formulation of the exemption of ESCB policy transactions from the pre- and post-trade transparency requirements<sup>9</sup> pursuant to Article 1(6) of MiFIR should be amended, so that instead of the exemption being stated to apply to ESCB central banks' transactions 'in performance of monetary, foreign exchange and financial stability policy', which would then need to be further defined in Commission Delegated Regulation (EU) 2017/583<sup>10</sup>, the exemption would be broadened so that it would apply expressly to all of the activities carried out by Eurosystem central banks pursuant to Chapter IV of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'). The ECB considers that only the

<sup>7</sup> Article 1(4) of the proposed regulation amending Article 5 of MiFIR.

<sup>8</sup> Article 1(26) of the proposed regulation inserting a new Article 39a.

<sup>9</sup> Articles 8, 10, 18 and 21 of MiFIR.

<sup>10</sup> Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (OJ L 87, 3.3.2017, p. 229).

types of investment transactions entered into by ESCB central banks that are set out in Article 15, points (a) and (c), of Delegated Regulation (EU) 2017/583 must be disclosed by the counterparty of the ESCB central bank. Those types of transactions should be expressly laid out in the revised Article 1(7) of MiFIR, instead of, as currently, in Delegated Regulation (EU) 2017/583.

*7.2 Commission empowerment to extend the exemption from MiFIR transparency requirements to other central banks*

If all Eurosystem transactions pursuant to Chapter IV of the Statute of the ESCB would benefit from the above broadened exemption pursuant to Article 1(6) of MiFIR, irrespective of which other central banks or institutions use these services, the Commission's power under Article 1(9) of MiFIR to extend the scope of the exemption 'to other central banks' would become redundant. Moreover, there would no longer be any need to mandate ESMA to develop draft regulatory technical standards to specify the 'monetary, foreign exchange and financial stability policy operations'. Accordingly Article 1(8) and (9) of MiFIR could be deleted.

*7.3 Exemption of transactions by ESCB central banks from operators of trading venues' reporting requirements under Article 26(5) of MiFIR*

Article 26(5) of MiFIR requires operators of trading venues to report to their competent authority any transactions in financial instruments traded on their platforms and executed through their systems by certain firms. The current reporting mechanism for trading venues under this provision is well established, with operational arrangements in place for the smooth reporting of data from such transactions. Trading venues have records for reporting purposes of the detailed data of ESCB transactions executed through the trading venue's systems. In this regard the ECB understands that Union legislators did not intend that the reporting requirement under Article 26(5) of MiFIR should cover ESCB central banks' transactions. This understanding is based on the fact that central banks benefit from explicit exemptions from MiFIR reporting obligations and, in addition, are not "firms", but rather entities carrying out market operations on the basis of their public mandates, including under the Treaty. For the sake of legal certainty, Article 26 (5) should be further clarified in this respect.

*7.4 Maintaining full exemption of ESCB securities financing transactions from the supervisory reporting obligation*

The ECB notes that while ESCB securities financing transactions (SFTs) are fully exempted from Regulation (EU) 2015/2365 of the European Parliament and of the Council<sup>11</sup> and its disclosure and reporting obligations<sup>12</sup>, Commission Delegated Regulation (EU) 2017/590 provides that SFTs<sup>13</sup> to which an ESCB central bank is a counterparty are to be considered transactions for the purposes of Article 26 of MiFIR<sup>14</sup>. As a consequence, those transactions are subject to the reporting obligations of Article 26 of MiFIR. Delegated Regulation (EU) 2017/590 thereby impacts reporting obligations in respect of such transactions by ESCB central banks under MiFIR. This effective subordination of

<sup>11</sup> Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

<sup>12</sup> Article 2(2), point (a), and Article 2(3) of Regulation (EU) 2015/2365.

<sup>13</sup> As defined in Article 3(11) of Regulation (EU) 2015/2365.

<sup>14</sup> See Article 2(5), second subparagraph, of Commission Delegated Regulation 2017/590.

Level 1 Union legislation to Level 2 Union legislation contradicts the well-established legal principle of *lex superior derogat legi inferiori*<sup>15</sup>, whereby implementing and delegated Union acts may not contravene secondary Union legislation. The ECB takes the opportunity of this opinion to highlight that this contradiction should be corrected in Delegated Regulation (EU) 2017/590, although it is not in itself a subject of the proposals on which the ECB has been consulted.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 1 June 2022



*The President of the ECB*

Christine LAGARDE

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<sup>15</sup> The legal principle that a legal act which is higher in the hierarchy of legal norms overrides a legal act which is lower in that hierarchy.

**Technical working document**

**produced in connection with ECB Opinion CON/2022/19<sup>1</sup>**

**on a proposal for a regulation of the European Parliament and of the Council amending  
Regulation (EU) 600/2014 as regards enhancing market data transparency, removing  
obstacles to the emergence of a consolidated tape, optimising the trading obligations, and  
prohibiting receiving payments for forwarding client orders**

**Drafting proposals**

<b>Text proposed by the Commission</b>	<b>Amendments proposed by the ECB<sup>2</sup></b>
Amendment 1 Recital XX of the proposed regulation (new)	



No text	<p><b>‘(XX) It is appropriate to amend the provisions exempting European System of Central Banks (ESCB) policy transactions from the pre- and post-trade transparency requirements in order to exempt all transactions carried out by Eurosystem members of the ESCB pursuant to Chapter IV of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the “Statute of the ESCB”), whilst requiring only transactions involving investment of an ESCB member’s own funds or investment portfolios to be publicly disclosed. As all Eurosystem transactions pursuant to Chapter IV of the Statute of the ESCB should be exempt from transparency requirements, regardless of which central bank is a counterparty to the transaction, it is not necessary for the</b></p>
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- 1 This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published in the Legal framework section of the ECB’s website alongside the opinion itself.
- 2 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
	<b>Commission to retain the delegated power to extend the exemption to other central banks.'</b>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The ECB considers that the exemption of ESCB policy transactions from the trade transparency requirements pursuant to Article 1(6) of Regulation (EU) No 600/2014 of the European Parliament and of the Council<sup>3</sup> (hereinafter 'MiFIR') should be amended to expressly cover all Eurosystem activities involving transactions in financial instruments that are concluded pursuant to Chapter IV of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'). This would improve legal certainty for counterparties and no longer require Eurosystem central banks to notify counterparties which transactions are policy transactions and thus exempt from disclosure. It would also preserve a consistent legal treatment of ESCB market transactions carried out in performance of the public mandate of the ESCB under the Treaty and the Statute of the ESCB.</i></p> <p><i>As all transactions in financial instruments concluded by the Eurosystem acting pursuant to Chapter IV of the Statute of the ESCB would be exempt, regardless of which central bank is a counterparty to the transaction, it would not be necessary for the European Commission to retain its delegated power to extend the exemption to other central banks.</i></p> <p><i>See paragraph 7.1 and 7.2 of the ECB Opinion.</i></p>	

Amendment 2	
Article 1(6) of MiFIR (new)	
No text	<p><b>‘6. Articles 8, 10, 18 and 21 shall not apply to regulated markets, market operators and investment firms in respect of a transaction where one of the following apply:</b></p> <p><b>(a) the counterparty is a member of the European System of Central Banks (ESCB) and is a member of the Eurosystem acting under Chapter IV of the Statute of the European System of Central Banks and of the European Central Bank;</b></p> <p><b>(b) the counterparty is a member of the ESCB but is not a member of the Eurosystem and the transaction is</b></p>

<sup>3</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).

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
	<p>entered into in performance of monetary, foreign exchange, including operations carried out to hold or manage official foreign reserves, and/or financial stability policy which that member of the ESCB is legally empowered to pursue;</p> <p>(c) the counterparty is a member of the ESCB and the transaction is being carried out for the purposes of financial stability policy.'</p>
<p style="text-align: center;"><u>Explanation</u></p> <p>Currently under Article 1(6) of MiFIR, regulated markets, market operators and investment firms are exempted from the pre- and post-trade transparency requirements in Articles 8, 10, 18 and 21 of MiFIR that apply to specified non-equity transactions, where the counterparty is a member of the European System of Central Banks (ESCB) and where the transaction is entered into by the ESCB member 'in the performance of monetary, foreign exchange and financial stability policy which that member of the ESCB is legally empowered to pursue', provided it has 'given prior notification to its counterparty that the transaction is exempt'. Furthermore, the requirements that must be met for the transactions to be considered 'monetary, foreign exchange and financial stability policy' transactions are set out in Commission Delegated Regulation (EU) 2017/583<sup>4</sup>. Article 1(6) is an important safeguard for the confidentiality of ECB/ESCB operations, since it requires counterparties to not publicly disclose certain sensitive ESCB transactions, which if they were disclosed, could enable market participants to predict the nature, direction and volume of Eurosystem policy operations in the market, potentially undermining the effectiveness of those operations. Pursuant to Article 1(6) the ECB/ESCB has been notifying its regulated investment firm counterparties for Eurosystem operations in writing as regards which of its transactions are entered into 'in performance of monetary, foreign exchange and financial stability policy' and are therefore exempt from the pre- and post-trade transparency requirements under the abovementioned MiFIR articles. Article 1(7) however expressly provides that this exemption does not apply in respect of transactions that are entered into by an ESCB member in performance of its investment operations.</p> <p>The ECB considers that Article 1(6) should be amended. Instead of '... a transaction entered into by an ESCB member in performance of monetary, foreign exchange and financial stability policy', which then needs to be further defined in the Delegated Regulation (EU) 2017/583, the exemption should apply more broadly, by expressly including all of the activities carried out by Eurosystem central banks pursuant</p>	

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Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (OJ L 87, 31.3.2017, p. 229).

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
<p>to Chapter IV of the Statute of the ESCB. Thus, the exemption would also cover Eurosystem central banks acting under Article 24 of the Statute of the ESCB and entering into operations for their administrative purposes or for their staff.</p> <p>Additionally, it is necessary for the amendment to expressly include an exemption for ESCB transactions carried out for the purposes of financial stability policy, since otherwise the question may arise as to whether some central bank operations, such as emergency liquidity assistance (ELA), are provided pursuant to the Statute of the ESCB.</p> <p>The amendment to Article 1(6) has several benefits.</p> <p>First, it would remove the artificial distinction between certain ESCB activities that are exempted from disclosure and others that are not. By replacing the wording 'in performance of monetary, foreign exchange and financial stability policy' with the more generic reference to activities of Eurosystem members acting pursuant to Chapter IV of the Statute of the ESCB, consistent legal treatment of ESCB activities on the market will be ensured and legal certainty for counterparties will be increased as regards the scope of transactions covered by the exemption from disclosure. This will remove the need to re-categorise the ESCB policy tasks as presently provided for by Article 14 of Delegated Regulation (EU) 2017/583. It would also no longer be necessary to notify counterparties which transactions the Eurosystem members are entering into in performance of their policy mandates.</p> <p>Second, the amendment would remove the difficulty which exists in some cases to distinguish investment from policy purposes, as some transactions may have both purposes.</p> <p>Third, it may not always be straightforward for the competent authority to detect a situation where the ESCB's counterparty should not have disclosed a particular transaction to the market, even if it had been duly notified by the ECB/ESCB not to do so.</p> <p>Last, but not least, adding a reference to Chapter IV of the Statute of the ESCB would establish more clearly that Eurosystem reserve management services (ERMS) and fiscal agent transactions (Article 23 of the Statute of the ESCB) fall within the range of ESCB transactions that are exempted from disclosure, irrespective of which other central banks or institutions use these services. This is also important in view of the significance of ERMS in supporting the international role of the euro. Currently Article 14(b) of Delegated Regulation (EU) 2017/583 exempts from disclosure ESCB exchange operations, including the reserve management services, but only if 'provided by a member of the ESCB to central banks in other countries to which the exemption has been extended in accordance with Article 1(9) of [MiFIR]'. Hence the counterparties of the central banks to whom the exemption has not been extended would still be required to publicly disclose the details of those ERMS transactions pursuant to the MiFIR transparency regime. This provision sits uncomfortably with Guideline (EU) 2021/564 of the European Central Bank (ECB/2021/9)<sup>5</sup>, which does not permit ESCB members providing ERMS to disclose</p>	

<sup>5</sup> Guideline (EU) 2021/564 of the European Central Bank (ECB/2021/9) of 17 March 2021 on the Eurosystem's provision of reserve management services in euro to central banks and countries located outside the euro area and to international organisations and repealing Guideline (EU) 2020/1284 of the European Central Bank (OJ L 119, 7.4.2021, p. 121).

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
<p><i>confidential information about such services to third parties. In the ECB's view Article 14(b) of the Delegated Regulation (EU) 2017/583 does not therefore sufficiently safeguard the confidentiality of ERMS transactions. However, by exempting ERMS transactions as such from disclosure directly under Article 1(6) of MiFIR, a consistent legal treatment of ESCB activities in the context of the exemptions from transparency requirements would be maintained.</i></p> <p><i>For the purpose of the exemption, however, it is necessary to retain a reference to transactions carried out for financial stability policy purposes, as is currently set out in Article 14(c) of Delegated Regulation (EU) 2017/583. Otherwise the question may arise as to whether certain central bank operations, such as ELA, are provided pursuant to the Statute of the ESCB.</i></p> <p><i>The only types of ESCB transactions to which the exemption under Article 1(6) would not apply, which are currently laid down in Article 15, points (a) and (c), of Delegation Regulation (EU) 2017/583, should instead be separately and expressly set out in an amended Article 1(7) of MiFIR.</i></p> <p><i>See paragraph 7.1 of the ECB Opinion.</i></p>	
<p style="text-align: center;">Amendment 3</p> <p style="text-align: center;">Article 1(7) of MiFIR (new)</p>	
<p>No text</p>	<p><b>'7. Paragraph 6 shall not apply in respect of transactions entered into by any member of the ESCB when performing an investment operation that is unconnected with that member's performance of any of the policy tasks referred to in paragraph 6, which are:</b></p> <p style="padding-left: 40px;"><b>(a) transactions entered into for the management of its own funds; or</b></p> <p style="padding-left: 40px;"><b>(b) transactions entered into for its investment portfolio pursuant to obligations under national law.'</b></p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The ECB proposes to expressly introduce an exhaustive list of types of investment transactions entered into by ESCB members that should be subject to disclosure by the counterparty. For the sake of transparency it is preferable to have this list set out in the Level 1 regulation, instead of a Level 2 legal act, as is currently the case.</i></p> <p><i>See paragraph 7.1 of the ECB Opinion.</i></p>	

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
<p style="text-align: center;">Amendment 4</p> <p style="text-align: center;">Article 1(8) of MiFIR (new)</p>	
No text	<p><del>8. ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards to specify the monetary, foreign exchange and financial stability policy operations and the types of transactions to which paragraphs 6 and 7 apply.</del></p> <p><del>ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.</del></p> <p><del>Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.'</del></p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>Consistent with Amendments 2 and 3, proposing to amend Articles 1(6) and (7), there would no longer be the need to mandate ESMA to develop draft regulatory technical standards to specify the monetary, foreign exchange and financial stability policy operations. Accordingly, Article 1(8) would become redundant, and can be deleted.</i></p> <p><i>See paragraph 7.2 of the ECB Opinion.</i></p>	
<p style="text-align: center;">Amendment 5</p> <p style="text-align: center;">Article 1(9) of MiFIR (new)</p>	
No text	<p><del>'9. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to extend the scope of paragraph 6 other central banks.</del></p> <p><del>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:</del></p>

Text proposed by the Commission	Amendments proposed by the ECB <sup>2</sup>
	<p><del>(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</del></p> <p><del>(b) assess the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions.</del></p> <p><del>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/or financial stability operations, the Commission shall provide that that exemption applies to that third-country central bank.'</del></p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>In order not to compromise the ECB/ESCB's obligations to keep confidential the ERMS transactions that the Eurosystem central banks carry out for third-country central banks, Amendment 2 would exempt all central banks to which the Eurosystem central banks provide ERMS involving the purchase or sale of financial instruments covered by Directive 2014/65/EU of the European Parliament and of the Council<sup>6</sup> (hereinafter 'MiFID II') from the disclosure requirements under Articles 8, 10, 18 and 21 of MiFIR. Based on such exemption, it would thus no longer be necessary for the Commission to be empowered to extend the scope of the exemption under Article 1(6) to 'other central banks'. Accordingly, Article 1(9) of MiFIR would become redundant, and can be deleted.</i></p> <p><i>See paragraph 7.2 of the ECB Opinion.</i></p>	

<sup>6</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, p. 349).