



Brussels, 12.6.2017
C(2017) 3890 final

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

of 12.6.2017

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council as regards the exemption of certain third countries central banks in their performance of monetary, foreign exchange and financial stability policies from pre- and post-trade transparency requirements

(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’) is due to 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 an updated 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.

MiFIR and MiFID II aim to enhance the efficiency, resilience and integrity of financial markets, notably by:

- Achieving greater transparency through the introduction of a pre- and post-trade transparency regime for non-equities and strengthening and broadening of the existing equities trade transparency regime;
- Bringing more trading onto regulated venues through the creation of a new category of platforms to trade derivatives and bonds - the Organised Trading Facilities - and of a trading obligation for shares on regulated venues;
- Fulfilling the Union’s G20 commitments on derivatives through the mandatory trading of derivatives on regulated venues, introduction of position limits and reporting requirements for commodity derivatives, broadening the definition of investment firm to capture firms trading commodity derivatives as a financial activity;
- Facilitating access to capital for SMEs through the introduction of the SME Growth Market label;
- Strengthening the protection of investors through the enhancement of the rules on inducements, a ban on inducements for independent advice and new product governance rules;
- Keeping pace with technological developments through regulating high-frequency trading (HFT) by imposing requirements on trading venues and on firms using HFT;
- Introducing provisions on non-discriminatory access to trading and post-trading services in trading of financial instruments notably for exchange-traded derivatives;
- Strengthening and harmonising sanctions and ensuring effective cooperation between the relevant competent authorities.

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).

Finally, the overarching aim of the MiFID II/MiFIR regulatory package 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.

This Commission Delegated Regulation aims at specifying the list of third-country central banks, in their performance of monetary, foreign exchange and financial stability policies, the counterparties of which are exempted from pre- and post-trade transparency requirements for non-equity instruments.

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, in relation to 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 is built 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- and post-trade transparency, the transparency of their operational framework and the degree of trading activity within the Union. The draft delegated act 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.

This Delegated Regulation fulfils the empowerment stemming from Regulation (EU) No 600/2014 specifying the central banks of third countries which benefit from the exemption available to members of the ESCB under Article 1(6) of Regulation (EU) No 600/2014.

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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 these 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, in accordance with Article 1(9) of Regulation (EU) No 600/2014, be extended, when they fulfil the relevant requirements, to central banks of third countries as well as to the Bank for International Settlements, which for the purpose of this exemption is considered akin to a third-country central bank by virtue of Article 1(9) of Regulation (EU) No 600/2014. For this purpose, the Commission prepared and presented to the European Parliament and to the Council a report assessing the international treatment of central banks in third countries. The report included an analysis of the treatment of central banks, including members of the ESCB, within the legal framework of third countries, and the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions. The report concluded with regard to the analysis that the exemption of a number of third-country central banks from the trade transparency obligations of Regulation (EU) No 600/2014 was necessary, and hence concluded on the appropriateness of the extension of the exemption also to the central banks of those third countries.
- (3) The list of exempted central banks of third countries set out in this Regulation 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 or to remove such public entities from the list.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Expert Group of the European Securities Committee,

⁴ OJ L 173, 12.6.2014, p. 84.

HAS ADOPTED THIS REGULATION:

Article 1

Exempted central banks of third countries

(Article 1(9) of Regulation (EU) No 600/2014)

Article 1(6) and 1(7) of Regulation (EU) No 600/2014 shall apply to the Bank for International Settlements and the central banks of third countries listed in Annex 1 of this Regulation.

Article 2

Entry into force

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, 12.6.2017

For the Commission
The President
Jean-Claude JUNCKER

