



Brussels, 30.1.2019
C(2019) 793 final

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

of 30.1.2019

**amending Delegated Regulation (EU) 2017/1799 as regards the exemption of the Bank of
England 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’), replaces 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.

The withdrawal of the United Kingdom from the Union on 29 March 2019 is an exceptional situation, which may create unnecessary burdens for the European System of Central Banks. To prevent such burdens, it is justified and in the interests of the Union and its Member States to ensure the capacity of both the EU and the UK central banks to implement their monetary policy.

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.

In light of the forthcoming withdrawal 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 central banks of third countries set out in the Commission Delegated Regulation (EU) 2017/1799. To that effect and in accordance with Article 1(9) of Regulation (EU) No 600/2014, the Commission presented to the European Parliament and to the Council a report assessing the

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).

treatment of the Bank of England.⁴ The report concludes that, at this juncture, the Bank of England should be added to the list of exempted entities under MiFIR.

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 MiFIR the members of the ESCB performing monetary, foreign exchange rate or financial stability 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, 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 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 Commission services consulted the Expert Group of the European Securities Committee, consisting of Member State representatives.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 specifies the amendments to be made to Regulation (EU) 2017/1799.

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 600/2014 ceases to apply to and in the United Kingdom.

⁴ Report from the Commission to the European Parliament and the Council on the exemption for the Central Bank of The United Kingdom ('Bank of England') under the Markets in Financial Instruments Regulation (MiFIR) [COM(2019) 69].

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(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 648/2012¹, 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 Commission Delegated Regulation (EU) 2017/1799² 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.
- (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 600/2014, including the exemption provided for in Article 1(6) of that Regulation, will apply to and in the United Kingdom during the

¹ OJ L 173, 12.6.2014, p. 84.

² Commission Delegated Regulation (EU) 2017/1799 of 12 June 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 (OJ L 259, 7.10.2017, p. 11).

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 will no longer benefit from the existing exemption unless it is included in the list of exempted third-country central banks.
- (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. That report³ 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 United Kingdom. Accordingly, the Bank of England should be included in the list of exempted central banks set out in Delegated Regulation (EU) 2017/1799.
- (8) The authorities of the United Kingdom have provided reassurances on the status, rights and obligations of ESCB members, including their intention to grant to the members of the ESCB in pursuit of monetary, foreign exchange and financial stability policy an exemption comparable to the one provided for in Article 1(6) of Regulation (EU) No 600/2014.
- (9) Therefore, Commission Delegated Regulation (EU) 2017/1799 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 trade transparency requirements laid down in the list in the Annex to Commission Delegated Regulation (EU) 2017/1799. 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.
- (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 600/2014 ceases to apply to and in the United Kingdom,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I 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 day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the day following that on which on which Regulation (EU) No 600/2014 ceases to apply to and in the United Kingdom.

³ Report from the Commission to the European Parliament and the Council on the exemption for the Central Bank of The United Kingdom ('Bank of England') under the Markets in Financial Instruments Regulation (MiFIR) [COM(2019) 69].

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