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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Exemption for the Bank of England and the United Kingdom Debt Management Office under the Market Abuse Regulation (MAR)

1. INTRODUCTION

Article 6(1) of Regulation (EU) No 596/2014 on market abuse (hereinafter: "MAR")[1] exempts transactions, orders or behaviour by Member States, including members making up the federation in the case of a Member State that is a federal state, members of the European System of Central Banks (ESCB), ministries and other agencies and special purpose vehicles of one or several Member States or persons acting on their behalf from the application of MAR insofar as they are undertaken in pursuit of monetary, exchange rate or public debt management policies.

Pursuant to Article 6(5) of MAR, such an exemption for operations undertaken in the public interest from the scope of MAR may be extended, by virtue of a Commission's delegated act adopted in accordance with Article 35 of MAR, to certain public bodies and central banks of third countries. In that context and according to the second paragraph of Article 6(5) of MAR, the Commission was required, by 3 January 2016, to prepare and present to the European Parliament and to the Council a report assessing the international treatment of public bodies charged with, or intervening in, public debt management and of central banks in third countries.

For this purpose the Commission commissioned an external study from the Centre for European Policy Studies (CEPS) and the University of Bologna on "Exemptions for third-country central banks and other entities under the Market Abuse Regulation (MAR) and the Markets in Financial Instruments Regulation (MiFIR)".[2] The study is based on a survey and desk research. It analyses market abuse frameworks and risk management standards applicable to central banks and debt management offices (hereinafter: "DMO") of 13 third-country jurisdictions. These jurisdictions were chosen as matter of priority based on, among other criteria, their qualification as systemically important financial sectors. To assess the necessity and appropriateness of granting an exemption under Article 6(5) of MAR, the study evaluates a set of market abuse rules and risk management standards against the "European benchmark", which is based on corresponding rules and standards applicable in the European Union and its Member States.

The Commission presented its report required under Article 6(5) of MAR[3] to the co-legislators on 16 December 2015. In accordance with the conclusions of that report, the Commission adopted the Delegated Regulation (EU) 2016/522[4] on 17 December 2015,

[1] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

[2] https://www.ceps.eu/publications/study-exemptions-third-country-central-banks-and-debt-management-offices-under-mifir

[3] Report from the Commission to the European Parliament and the Council on the International Treatment of Public Bodies Charged with, or Intervening in, Public Debt Management and of Central Banks in Third Countries under Regulation (EU) No 596/2014 on Market Abuse [COM(2015) 647 final].

[4] Commission Delegated regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions (OJ L 88/1, 5.4.2016,).

extending the exemption from the scope of MAR to specified public bodies and central banks of those third-country jurisdictions analysed in its report.

2. THE REPORT'S LEGAL BASIS: ARTICLE 6(5) OF MAR

Article 6(5) subparagraph 2 of MAR required that by 3 January 2016 the Commission prepares and presents to the European Parliament and to the Council a report assessing the international treatment of public bodies charged with, or intervening in, public debt management and of central banks in third countries.

In terms of content of the report, Article 6(5) subparagraph 3 of MAR sets out that that the Commission's report should include a comparative analysis of the treatment of public bodies charged with, or intervening in, public debt management and central banks within the legal framework of third countries and the risk management standards applicable to the transactions entered into by those bodies and central banks. Furthermore, Article 6(5) subparagraph 3 of MAR provides that if the report concludes, in particular in regard to the comparative analysis, that the exemption of the monetary responsibilities of those third-country central banks from the obligations and prohibitions of MAR is necessary, the Commission should extend the abovementioned exemption also to the central banks of those third countries.

In December 2016, the Commission adopted the report required under Article 6(5) of MAR as well as the Delegated Regulation 2016/522 that listed entities covered by the extension of the exemption from the scope of application of MAR.

The United Kingdom’s treatment of debt management offices and central banks within its legal framework as well as the risk management standards applicable to the transactions entered into by those entities was not considered in the above-mentioned report and delegated regulation due to its status of a Member State. However, in light of the United Kingdom’s approaching change of status to a third country it is now appropriate to present to the European Parliament and to the Council a report pursuant to Article 6(5) of MAR analysing the appropriateness of extending the exemption from the scope of MAR to relevant entities of that country.

3. ANALYSIS OF THE APROPRIATNESS OF THE EXTENSION OF EXEMPTION TO THE UNITED KINGDOM

3.1. Criteria used for the assessment

Given the significant volume of transactions within scope of MAR that originate from the United Kingdom, there is a clear case for assessing the appropriateness of extending the Article 6 exemption to its central bank and, if applicable, its public bodies charged with, or intervening in, public debt management. Entities clearly falling in the scope of this assessment are the Bank of England and the United Kingdom Debt Management Office.

The analysis is based, firstly, on the assessment of a set of market abuse rules applicable in the United Kingdom. These include, in particular, rules on:

(i) insider dealing and unlawful disclosure of information;
(ii) market manipulation
(iii) exemption from market abuse regulation

Secondly, the analysis includes an assessment of risk management standards, which include internal arrangements, systems and procedures aimed at preventing that staff members carry out transactions or orders, or engage in behaviour, directly or indirectly, on their own account. These include, among others rules of conduct on the following issues:

(i) use of confidential information by staff members
(ii) transactions in assets and financial instruments by staff members
(iii) staff independence and conflicts of interest
(iv) enforcement of rules of conduct

The analysis relies on the conclusions of the study undertaken by the CEPS. Although the study examines the above-mentioned rules applicable in the United Kingdom in the context of its status as a Member State, it nevertheless provides all the information necessary to assess in a comprehensive manner the appropriateness of extending the Article 6(1) exemption to the Bank of England and the United Kingdom Debt Management Office.

For a detailed description of all the elements considered in the analysis, please refer back to the study by CEPS.

3.2. Summary of the analysis for the United Kingdom

<u>Market abuse regime</u>

MAR rules are currently directly applicable in the United Kingdom as it is a Member State. Since MAR is at the core of the Union's market abuse framework it follows that the United Kingdom provides for appropriate rules on insider dealing, unlawful disclosure of inside information and all forms of market manipulation as well as on exemptions from the market abuse regime. However, since the United Kingdom is in the process of withdrawing from the European Union, it is appropriate to consider foreseeable future changes it might make to its market abuse regime. In that regard, from the explanatory information accompanying the draft

statutory instrument "The Market Abuse (Amendment) (EU Exit) Regulations 2018."[5] it appears there is a clear intention by the government of the United Kingdom not to make any policy changes to its market abuse regime, as established by MAR, in the near future, other than where appropriate to reflect the country's new position outside the EU, and to smooth the transition.

Risk management standards

The Bank of England applies extensive risk management rules with regards to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy. These rules subject staff members to a duty of professional secrecy and prohibit disclosure of inside information as well as its use for personal gain. Furthermore, there are internal conduct rules laying down restrictions on transactions in assets and financial instruments by staff members, rules governing conflicts of interest as well as clear rules on reporting lines in case of application of any of rules of conduct. Finally, the Bank of England has disciplinary procedures in place sanctioning failure to comply with the said rules.

The United Kingdom Debt Management Office has a robust system of conduct rules applying to its staff members. Most of them are contained in the Civil Service Management Code. As other civil servants, staff members of the Office are required to maintain professional secrecy and avoid using inside information to advance their private financial interests. Staff members may not invest in shareholdings and other securities if such investments are contrary to the nature of their work. Furthermore, applicable rules on conflict of interest prevent them from being involved in any decisions which could affect the value of their investments. The Office has in place disciplinary procedures for breaches of staff rules as well for other situations in which actions of staff members disrupt or damage the performance or reputation of the organisation.

4. CONCLUSIONS

On the basis of the information obtained and the analysis carried out, the Commission concludes that it is appropriate to grant an exemption from MAR requirements to the central bank and DMO of the United Kingdom, namely the Bank of England and the United Kingdom Debt Management Office once the United Kingdom becomes a third country.

Finally, this conclusion is without prejudice to possible changes in the future, having regard to changes of third-countries' legislation or changed factual circumstances which may trigger the need for a review of the list of exempted third country central banks and DMOs.

[5] https://www.gov.uk/government/publications/draft-market-abuse-amendment-eu-exit-regulations-2018