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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**Exemption for the Central Bank of The People's Republic of China under the Markets
in Financial Instruments Regulation (MiFIR)**

1. INTRODUCTION

The Regulation on Markets in Financial Instruments (hereinafter MiFIR)¹ and the Directive on markets in financial instruments (MiFID II)² were published in the Official Journal on 12 June 2014, entered into force on 2 July 2014 and have been applicable since 3 January 2018.

MiFID II/MiFIR introduce a market structure which aims to ensure that trading, wherever appropriate, takes place on regulated platforms and that trading is made transparent to ensure efficient and fair price formation.

In this framework, MiFIR grants an exemption from pre- and post-trade transparency requirements with regard to non-equity financial instruments that benefits regulated markets, market operators and investment firms in respect of a transaction 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. Moreover, MiFIR empowers the Commission to extend the scope of this exemption to third-country central banks where the prerequisite conditions are fulfilled.

For this purpose the European Commission commissioned an external study to 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 market in Financial Instrument Regulation (MiFIR)" (the "study")³. The study is based on a survey and desk research. It analyses the pre- and post-trade transparency rules that apply when third-country central banks trade in non-equity financial instruments, as well as the extent to which these central banks trade these instruments in the Union.

In a Commission report⁴ adopted on 9 June 2017, the Commission concluded that it is appropriate to grant an exemption from MiFIR pre- and post-trade transparency requirements in accordance with Article 1(9) MiFIR to the third-country central banks of the following jurisdictions: Australia, Brazil, Canada, Hong Kong SAR, India, Japan, Mexico, Singapore, the Republic of Korea, Switzerland, Turkey and the United States – and the Bank for International Settlements. The Delegated Regulation (EU) 2017/1799, adopted on 14 June 2017, granted an exemption from MiFIR pre- and post-trade transparency requirements in accordance with Article 1(9) MiFIR to the third-country central banks of the aforementioned countries.

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

⁴ COM(2017) 298 final

2. THE REPORT'S LEGAL BASIS: MiFIR ARTICLE 1(9)

The Central Bank of the People's Republic of China (the People's Bank of China, PBoC) did not provide sufficient information, notably relating to its trading activity in the EU, for the Commission to make an assessment at the time of the Commission Regulation (EU) 2017/1799. In August 2018, the People's Bank of China provided the data necessary to complete the assessment under Article 1(9) MiFIR. In light of the additional material received from the People's Bank of China this report assesses the appropriateness of granting an exemption from MiFIR pre- and post-trade transparency requirements in accordance with Article 1(9) MiFIR to the People's Bank of China.

Article 1(6) of MiFIR contains an exemption from pre- and post-trade transparency rules 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.

In addition, Article 1(9) MiFIR empowers the Commission to: *"[...] adopt delegated acts in accordance with Article 50 to extend the scope of paragraph 6 to other central banks.*

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:

(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

(b) assess the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions.

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 financial stability operations, the Commission shall provide that that exemption applies to that third-country central bank."

3. ANALYSIS OF THE SITUATION FOR THE PEOPLE'S BANK OF CHINA

Criteria used for the assessment

The mandate provided by article 1(9) MiFIR (analysis of the identified jurisdictions) is based on two key criteria both of which were crucial for the Commission's assessment:

- a. Rules on regulatory disclosure of central banks transactions: the market transparency regime applicable to central bank transactions ("market transparency") and/or the transparency of the operational framework of the central bank ("operational transparency"); and
- b. Necessity of an exemption: the volume of transactions that the central bank executed with EU counterparties or in EU-listed financial instruments.

For the purposes of the assessment, the fulfilment of these two criteria was considered essential since they capture the factors set out in Article 1(9) MiFIR. In this regard, "market transparency" relates to transaction-specific transparency relating to individual securities, while the "operational transparency" refers to broader transparency rules that governs the operations of a central bank. Therefore, considering the MiFIR objectives and scope, an analysis of the regulatory requirements relating to market transparency for transactions and transparency of the operational framework was considered necessary in order to assess the appropriateness of granting an exemption to third country central banks in accordance with Article 1(9)(a) MIFIR. Furthermore, the transaction volume between the central bank of the relevant third country and the EU is of importance as it is an indicator of the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions in accordance with Article 1(9)(b) MIFIR.

Additionally, taking into account the requirements and objectives under MiFIR, the following criteria have also been considered:

- (i) the existence of a notification procedure whereby a third-country central bank notifies its EU counterparty that a transaction is exempt;
- (ii) the ability of the third-country central bank to distinguish between transactions for the key policy purposes identified by MiFIR and transactions executed only for 'pure' investment purposes; and
- (iii) the existence of a similar exemption available to third-country central banks in the jurisdiction under review.

The above additional criteria were assessed taking into account the requirements and objectives of MiFIR. In particular, the assessment considered whether the third-country central bank had a procedure in place to notify its EU counterparty that a transaction is exempt. Under MiFIR, exemptions under Article 1(6) MIFIR cannot be granted to central banks when they execute operations for pure investment purposes. Therefore, the assessment considered whether third-country central banks can distinguish between transactions executed for regulatory and investment purposes. Finally, in light of the market impact of disclosure requirements and its potential repercussion on the effectiveness of monetary policies, the availability of a statutory exemption for central banks trading on third-country trading venues is assessed.

For a detailed description of the criteria, please refer back to the study by CEPS.

Summary of the analysis for the Peoples' Bank of China (PBoC)

The Commission has concluded that, the People's Republic of China has a legal framework in place that allows for a sufficient level of transparency⁵. Furthermore, the trading activity in the EU originating from the People's Republic of China is substantial enough to justify granting an exemption from pre- and post-trade transparency requirements to the PBoC.

Below is a short summary of the analysis for the PBoC in relation to the above-mentioned criteria.

Key criteria

The PBoC has real-time transparency requirements for exchanges listing corporate bonds and other securities. For over the counter (OTC) transactions, market participants have no disclosure obligations. However, the China Foreign Exchange Trade System (CFETS), also known as National Interbank Funding Center, has access to all transaction information and may disclose this information to the public. Operational transparency is attained through public announcements of open-market operations (OMO) and results of short-term liquidity operations (SLO).

The European Commission has received data on trading activity of the PBoC on EU financial markets and with EU counterparties. The trading volumes of the PBoC with EU counterparties are high.

Additional criteria

An exemption from transparency requirements is not available for foreign central banks trading in China.

The PBoC can distinguish between transactions for policy purposes and transactions for other purposes (especially "investment" purposes), which have a marginal role.

Finally, there is a notification procedure in place to inform EU counterparties that transactions are not subject to transparency requirements.

Overview of the criteria

Key criteria	Market transparency	Medium
	Operational transparency	Medium
	Necessity	Yes

⁵ The purpose of this report is not to assess whether the above jurisdiction has trade transparency rules which can be deemed equivalent to those applicable under MIFIR. The conclusions in this report are without prejudice to any such assessment. It is sufficient for the purposes of this assessment that the jurisdiction in question has a disclosure framework in place.

Other criteria	Distinction transaction purpose	Yes
	Notification procedure	Yes
	Foreign CBs exemption	No
	Execution type	Bilateral (50-100%) Venues (10-50%)
	Exemption	Yes

4. CONCLUSIONS

On the basis of the information obtained, the Commission concludes that it is appropriate to grant an exemption from MiFIR pre- and post-trade transparency requirements in accordance with Article 1(9) MIFIR to the PBoC.

This conclusion is without prejudice to possible changes in the future, having regard to new evidence submitted by central banks in third countries, changes of third countries' legislation or changed factual circumstances. These events may trigger the need for a review of the list of exempted third-country central banks.