



Brussels, 30.1.2019
COM(2019) 63 final

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

**on the International Treatment of Central Banks and Public Entities Managing the
Public Debt with regard to Securities Financing Transactions**

1. INTRODUCTION

Regulation (EU) 2015/2365 on the transparency of securities financing transactions and of reuse (SFTR) was adopted on 25 November 2015 and entered into force on 12 January 2016. SFTR aims at increasing the transparency of securities financing transactions (SFTs) by requiring:

- all SFTs to be reported to central databases known as trade repositories (reporting obligation),
- information on the use of SFTs by investment funds to be disclosed to investors in the regular reports and pre-investment documents issued by the funds,
- minimum transparency conditions to be met when collateral is reused, such as disclosure of the risks and the obligation to acquire prior consent (reuse transparency requirements).

According to Article 2(2)(a) of SFTR, the Union's central banks and Union public bodies charged with or intervening in the management of public debt are exempted from the reporting obligation and reuse transparency requirements under SFTR.

At the time of adoption of SFTR, there were uncertainties on the treatment of foreign central banks in the application of SFT related reforms in other jurisdictions. The European Parliament and the Council therefore postponed a decision on the application of SFTR to third-country central banks until more clarity could be reached on this issue.

Article 2(4) of SFTR empowers the Commission to adopt a delegated act to extend the list of exempted entities under SFTR. As a pre-requisite for such an exemption, the European Commission is required under the same Article of SFTR to analyse the international treatment of central banks and of public bodies managing public debt in other jurisdictions' legal framework and to inform the European Parliament and the Council of its analysis. If the report concludes that the exemption of the monetary responsibilities of third-country central banks from the reuse transparency requirements is necessary, the European Commission shall adopt an according delegated act.

2. THE REPORT'S LEGAL BASIS: SFTR ARTICLE 2 REQUIREMENTS

SFTR Article 2(2) provides that "*Articles 4 and 15 do not apply to: (a) members of the European System of Central Banks (ESCB) and other Member States' bodies performing similar functions, and other Union public bodies charged with, or intervening in, the management of the public debt; (b) the Bank for International Settlements*".

With regard to foreign central banks and foreign public bodies managing public debt, Article 2(4) empowers the Commission to adopt delegated acts to amend the list of exempted entities in Article 2(2) and, to that end, requires the Commission to "*present to the European Parliament and the Council a report assessing the international treatment of central banks and of public bodies charged with or intervening in the management of the public debt*".

Article 2(4) also specifies that "*The report shall include a comparative analysis of the treatment of central banks and of those bodies within the legal framework of a number of third countries. Provided that the report concludes, in particular in regard to the comparative analysis and potential effects, that the exemption of the monetary responsibilities of those third-country central banks and bodies from Article 15 is necessary, the Commission shall adopt a delegated act adding them to the list set out in paragraph 2 of this Article.*"

3. JURISDICTION CONSIDERED: UNITED KINGDOM

SFTR requires the Commission to conduct a comparative analysis of the treatment of central banks and public bodies managing public debt in "*a number of third countries*". Given the United Kingdom's intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union, when Union law ceases to apply to an in the United Kingdom, the exemption for members of the European System of Central Banks (ESCB) and public bodies charged with or intervening in the management of public debt in Article 2(2)(a) of Regulation (EU) No 2015/2365¹ ("SFTR") will no longer apply to the United Kingdom central bank or public debt management bodies. Against this background, this report restricts the analysis of the treatment of central banks and public bodies managing public debt to the United Kingdom. Further countries will be analysed in a future report.

The approach to focus on the United Kingdom in a first step is supported by the fact that the European Union (Withdrawal) Act 2018 adopted by the United Kingdom converts into UK domestic law the existing body of directly applicable EU law, including SFTR. Furthermore, the UK government published a draft statutory instrument², which will make amendments to retained EU law, and existing UK law, related to securities financing transactions, to be laid under the European Union (Withdrawal) Act 2018. The draft statutory instrument mirrors the SFTR provision in the sense that the Bank of England and United Kingdom public debt management bodies are exempted from the reporting obligation and the reuse transparency requirements. Likewise, the draft statutory instrument contains a provision to extend this list in a manner comparable to the according SFTR provision.

4. CONCLUSIONS

In the light of the above, the draft UK domestic legislative framework incorporating SFTR exempts the UK central bank and public bodies charged with or intervening in the management of public debt from the reporting obligation for SFTs and the reuse transparency requirements. The draft UK legislative framework also includes provisions which enable the extension of the exemption to the central banks and public debt management bodies of foreign countries.

¹ Regulation (EU) No 2015/2365 of the European Parliament and of the Council on transparency of securities financing transactions and of reuse, OJ L 337, 23.12.2015, p. 1–34

² <https://www.gov.uk/government/publications/draft-transparency-of-securities-financing-transactions-and-of-reuse-amendment-eu-exit-regulations-2019>

Adding the UK central bank and public debt management bodies to the list of entities exempted from the reporting obligation and the reuse transparency requirements under SFTR, will prevent interference with the conduct of their monetary responsibilities and promote a level-playing field in the application of SFT reforms with regard to transactions with central banks across jurisdictions. This will also contribute to greater international coherence and consistency.

The Commission therefore concludes that Article 2(2) of SFTR should be amended to exempt from certain SFTR requirements the UK central bank and other public bodies charged with or intervening in the management of public debt.

The comparative analysis in this report is not exhaustive. It is based on UK domestic law incorporating SFTR, parts of which are not yet fully adopted.

The Commission will continue to review on a regular basis the international treatment of central banks and public bodies as regards the SFT reporting obligation and the reuse transparency requirements in third countries, including in third countries listed in Article 2(2) of SFTR. The list of exempted entities may be updated in light of the development of the regulatory arrangements in third countries and taking into account any relevant new sources of information. Such reassessment could also lead to removal of third countries from the list of exempted entities.