

Deutsche Börse Group

HM Treasury - Call for Evidence: Overseas Framework

10 March 2021

A. General remarks

Deutsche Börse Group (DBG) is an international exchange organisation and a financial market infrastructure provider. It offers its customers a wide range of products, services and technologies covering the entire value chain of financial markets.

As part of the long-term Brexit preparations, DBG's entities have received different authorisations from the UK authorities to continue serving UK clients. We therefore appreciate the opportunity to provide feedback on this Call for Evidence.

The following feedback hereunder is given on behalf of all entities of DBG that have obtained a registration under the overseas framework, namely:

- Börse Frankfurt Zertifikate AG (BFZ AG),
- Deutsche Börse AG (market operator of the Frankfurt Stock Exchange (FWB)),
- Eurex Frankfurt AG (Eurex),
- Eurex Repo GmbH (Eurex Repo),
- European Energy Exchange AG (EEX) and
- 360 Treasury Systems AG (360T).

If the feedback is given only in the name of one entity specifically, this is clearly highlighted.

DBG welcomes the current overseas regimes as they allow us to continue offering our services to UK clients. The Recognised Overseas Investment Exchange (ROIE) in particular is appropriate from our perspective as it reflects high international regulatory standards. While we have no concrete suggestions concerning the Overseas Persons Exclusion (OPE) regime, we believe it may be beneficial to review the scope of the OPE.

B. DBG responses in detail

I. Questions for all firms

- 1. Please describe your business model, entities, and the types of financial services activity your firm (or group, where relevant) undertakes in relation to the UK, or will undertake after the end of the transition period.**

Deutsche Börse Group (DBG) is an international exchange organisation and a financial market infrastructure provider. It offers its customers a wide range of products, services and technologies covering the entire value chain of financial markets.

As part of the long-term Brexit preparations, DBG's entities have received different authorisations from the UK authorities to continue serving UK clients.

All of DBG's regulated market operators (Börse Frankfurt Zertifikate AG, Deutsche Börse AG, Eurex Frankfurt AG, European Energy Exchange AG) have been granted the Recognised Overseas Investment Exchange (ROIE) status by the Financial Conduct Authority (FCA).

Eurex Repo as an MTF operator makes use of the Overseas Persons Exclusion (OPE).

360T as an MTF operator and MiFID investment firm has applied to use the Temporary Permissions Regime (TPR).

- 2. Do you think that the route of access to the UK market provided for by the overseas framework adequately advances the principles set out in paragraph 1.7?**

DBG welcomes the current overseas regimes as they allow us to continue offering our services to UK clients after the transition period.

In particular, the ROIE regime is appropriate with its emphasis on equivalent regulatory standards on the one hand and reliance on regulatory co-operation on the other hand. In our view, the ROIE is in line with international standards as it is similar to regimes in other jurisdictions.

While we have no concrete suggestions concerning the OPE, we believe it may be beneficial to review the scope of the OPE, especially in its demarcation from the ROIE regime. As we understand it, firms with very similar business activities could theoretically operate under either the ROIE or under the OPE regime, primarily depending on whether or not they have a place of business in the UK. Therefore, such a firm could be subject to different regulatory oversight with different levels of requirements. A pre-condition for being afforded ROIE status is the proof that the regulatory environment in the firm's home jurisdiction is sufficiently equivalent to the regulatory framework in the UK. Under the OPE, the regulatory framework in the firm's home jurisdiction is not relevant and a firm may operate under the OPE in the UK without being even required to notify the UK authorities.

In order to achieve even greater alignment with international standards and further support the overarching principles set out in chapter 1.7 of this Call for Evidence, it may be beneficial to review the scope of application to align it more closely with the obligations set out in MiFIR. For example, firms using the OPE could be required to notify and report to the FCA.

3. Are there any specific risks that the current regimes for overseas firms do not adequately address?

Please see our answer provided to Question 2.

4. Are there specific complexities around the regime you think need to be addressed?

DBG did not encounter specific complexities worth mentioning.

5. Please could you comment on the overlap between article 47 of MiFIR and the OPE. If an article 47 decision was issued, how may this affect your decisions to undertake activity in the UK?

If an Article 47 decision were to be issued, this alone would most likely have no impact on our decision to conduct our activities in the UK. Our affected entities would take into account the MiFIR framework, make their business decisions based on the respective details and seek to comply with the respective requirements.

However, we would suggest that when the OPE expires after the three-year period, a regulatory framework is established that focuses on the treatment of third country investment firms and third country credit institutions.

6. Are there national exclusions/exemptions in other jurisdictions that provide benefits comparable to those provided by the UK's regime?

From a DBG perspective, there are several jurisdictions offering third country access frameworks comparable to the ROIE. However, the OPE seems to be rather unique, especially with the given scope as explained in our answer to Question 2.

7. What changes do you think should be made to the operation of the OPE, and what would be the advantages and disadvantages?

Please see our answer provided to Question 2.

8. Which aspects of the overseas framework are relevant to the conduct of your business, how easy they are to use and how well do they suit the nature of your business?

Please see our answer provided to Question 1.

The ROIE scheme in particular defines a clear legal basis for our service offering in the UK and provides our UK clients with the comfort that we comply with national regulatory standards. Furthermore, it establishes a level playing field with the incumbent market infrastructures. A key aspect is however the concept of substituted compliance.

9. Please comment on your current and future use of the OPE, ROIE and FPO exemptions specifically, as well as any other specific regimes under the access framework, setting out in particular:

a) Your primary location.

BFZ AG: BFZ AG is a market operator of the regulated market FWB (for structured products) with a registered office at: Mergenthalerallee 61, 65760 Eschborn, Germany.

Eurex: Eurex is a regulated market organised under German public law. The administrating and operating institution of Eurex Deutschland is Eurex Frankfurt AG, with its registered office at: Mergenthalerallee 61, 65760 Eschborn, Germany.

Eurex Repo: Eurex Repo is an MTF operator and MiFID investment firm with a registered office at: Mergenthalerallee 61, 65760 Eschborn, Germany.

EEX: EEX is a regulated market organised under German public law with its business address at: Augustusplatz 9, 04109 Leipzig, Germany.

FWB: FWB is a regulated market organised under German public law. The administrating and operating institution of FWB is Deutsche Börse AG at Mergenthalerallee 61, 65760 Eschborn, Germany.

b) The type of client/counterparty you interact with in the UK.

BFZ AG: BFZ AG does not interact with clients/counterparties in the UK.

Eurex: Eurex's trading members in the UK comprises banks, proprietary trading firms and brokers and dealers. Furthermore, we interact with buy-side firms such as asset managers or hedge funds, which are however not Eurex members in most cases.

Eurex Repo: Eurex Repo's members in the UK are primarily banks.

EEX: EEX offers a broad range of commodity derivatives. Future products with power, emission allowances, freight, oil, metals (iron ore, steel), biomass and dairy products and European processing potatoes as underlying are tradable or can be registered at EEX. Accordingly, EEX's clients as trading members are investment firms, energy utilities and brokers.

FWB: FWB's trading members in the UK comprises banks, proprietary trading firms, HFT firms and brokers.

c) **The type of activity conducted and through which regime (please be as specific as possible).**

BFZ AG: BFZ AG does not conduct any activity in the UK and is planning to do so only in exceptional cases, if at all (currently under the ROIE status).

Eurex: The ROIE status ensures that the Frankfurt-based exchange will be able to continue operating its services related to derivatives trading in the UK. Eurex Frankfurt AG provides a fully automated trading platform for the conclusion of transactions, in particular, standardized futures and options contracts. Eurex offers a global access to a broad range in benchmark and alternative products providing multi-asset class trading opportunities. Our diverse product offering comprises futures and options based on interest rates as well as equity and equity indexes and additional asset classes ranging dividends, ETFs, volatility, inflation, volatility and credit as well as weather, property and commodities. Eurex operates a branch office in London, focusing on product development as well as sales and client services activities for UK market participants.

Eurex Repo: Eurex Repo GmbH is a European marketplace for international secured funding and financing. It offers integrated markets for electronic trading, clearing, collateral management and settlement of repo and securities lending transactions. Its GC Pooling Market is an European market for standardized secured funding with central clearing. Having no place of business in the UK, the OPE allows Eurex Repo to continue to serve its clients that access the MTF from the UK.

EEX: EEX operates a branch office in London primarily to support existing customers and to develop new business. Business development encompasses the on-boarding of new Exchange Participants as well as the development of new derivative products that meet market demand. The London office is however not involved in any market operations. In total, 13 employees are currently working in the EEX London office. The recognition as an ROIE is essential for EEX to continue to serve the UK financial market.

FWB: The ROIE status ensures that the Frankfurt-based exchange will be able to continue operating its services related to equities, equity-like and bonds trading in the UK. FWB provides a fully automated trading platform for the conclusion of transactions. DBG operates a branch office in London, focusing on sales and client services activities for UK market participants.

d) **Whether you have regulatory permission in your home state.**

BFZ AG and FWB: BFZ AG and FWB are exchanges regulated under the German Exchange Act and a regulated market within the context of Art. 4 no 18 MiFID II.

Eurex: Eurex is an exchange regulated under the German Exchange Act and a regulated market within the context of Art. 4 no 18 MiFID II.

Eurex Repo: Eurex Repo GmbH is a licensed MTF in accordance with the German banking law (§ 1 Abs. 1a Satz 2 Nr. 1b KWG).

EEX: EEX is an exchange regulated under the German Exchange Act and a regulated market within the context of Art. 4 no 18 MiFID II.

- e) **Whether, and if so how, your use of these regimes enables you to manage business between different group entities, for example for risk management, or is used in conjunction with other group entities or structures as an alternative means of access or to expand the range of services that may be offered?**

Eurex: The use of the ROIE regime does not directly impact our business between different group entities. Transactions concluded on Eurex are cleared (and risk managed) by Eurex Clearing AG, a 100% subsidiary of Eurex Frankfurt AG.

For the clearing of their transactions executed on Eurex, all Eurex exchange members need to maintain a relationship to a clearing member of Eurex Clearing or obtain a clearing membership. Market participants established in non-EU countries can however only obtain a direct clearing membership, if Eurex Clearing has the required approvals to onboard clients from these countries. In case of the UK, Eurex Clearing makes use of the Temporary Recognition Regime (TRR) for non-UK CCPs to offer direct clearing membership to UK firms.

- f) **How your use of these regimes may change in the future?**

BFZ AG: BFZ AG does not conduct any business with clients/counterparties in the UK anymore. In the future, BFZ AG is planning to do so only in exceptional cases, if at all. BFZ AG holds currently ROIE status. Usage of the OPE might become the more appropriate regime for BFZ AG in the future.

Eurex: No changes in the use of the schemes are intended within the current regulatory framework.

FWB: No changes in the use of the schemes are currently intended within the current regulatory framework.

Specifically, if the OPE is used:

- g) **Volume of business of different types connected to the OPE per annum.**

Eurex Repo: 15 of 154 clients access Eurex Repo from the UK. The volume transacted by these UK clients' accounts for 11% (YtD) of the total Eurex Repo volume in 2021.

- h) **Benefits accruing from the OPE, including capital treatment or access to clients.**

i) How important is the existence of the OPE for your current business model, booking arrangements and your use of the UK as a risk management hub? Please explain its advantages and any disadvantages.

j) The type of approach used. Please be specific about using 'with or through' or 'legitimate approach'. If using a 'legitimate approach', please also be specific about the legal basis on which you rely not to breach the financial promotion regime.

Eurex Repo: 'With or through' approach is used. All UK clients of Eurex Repo are authorised or exempt persons.

k) Whether you could rely on different approaches to the one your firm uses. If so, which approaches would be available to you? This includes not only relying on 'with or through' instead of a 'legitimate approach', as well as different legal bases for making a legitimate approach.

Eurex Repo: No other approach is considered by Eurex Repo to operate under the OPE.

l) If there are several different approaches available to you, could you comment on why you have chosen the approach you rely on?

Eurex Repo: Please see our answer provided to Question k.

m) Does the OPE raise any practical challenges for you, either generally or more specifically in terms of ensuring your firm's compliance with it from a systems and controls point of view?

Eurex Repo: Eurex Repo did not encounter major challenges worth mentioning.

n) Are there specific aspects of the OPE which give rise to uncertainty, for example over its application in some circumstances, and how might these be remedied?

Eurex Repo: Not in the specific case it is used by Eurex Repo.

o) To what extent is your use of the OPE driven by tax residence considerations and/or any other non-regulatory considerations?

Eurex Repo: Not in the specific case it is used by Eurex Repo.

- p) If you are an overseas firm, do you use the OPE as a basis for undertaking business with other entities within your group, and if so, how do you use it?

Eurex Repo: No.

- q) If you are a firm authorised in the UK, what business benefits do you get from dealing directly with overseas firms which rely on the OPE?

Eurex Repo: Not applicable.

- r) How important is the intragroup exemption for your current business model, booking arrangements and your use of the UK as a risk management hub? Please explain its advantages and any disadvantages

Eurex Repo: Not relevant.

II. Questions for insurers and insurance intermediaries

10. Should the list of jurisdictions in regulation 10 of, and Schedule 2 to, the FPO be amended?

11. Should the insurance products to which FPO exemptions apply be amended?

III. Questions for trading venues

12. Do you think the routes of access to the UK market for all types of trading venue adequately advance the principles set out in paragraph 1.7?

Please see our answers provided to Questions 1 and 2.

13. Are there any specific risks that the current regimes of market access for trading venues do not adequately address?

DBG did not encounter specific risks worth mentioning.

14. Are there specific complexities around the regime of market access for trading venues that you think need addressing?

DBG did not encounter specific complexities worth mentioning.

15. Do you think that it is appropriate to include investment firm MTFs and OTFs in a general market access regime for the cross-border provision of investment services by investment firms, or should they be part of a separate regime for trading venues?

From a DBG point of view, it is beneficial not to include MTFs in a separate regime for trading venues. Under the current MiFID II/MiFIR rules, there has always been a systematic distinction between operators of trading venues and operators of MTFs, which should be maintained. Therefore, MTFs should rather be included in a general market access regime for the cross-border provision of investment services by investment firms.

16. Do you think that the current scope of the ROIE regime is appropriate from a market participant's point of view?

Although DBG is a financial market infrastructure provider and may not be the correct addressee of this question, we assume so as it allows our UK trading participants to remain members and we have not received any specific issue in this regard to date.

A benefit of the ROIE status, is that, following recognition, the involvement which UK authorities need to have in the daily affairs of an overseas recognised body are substantially reduced. The reason being is that they are able to rely to a significant extent upon the supervisory and regulatory arrangements in the country where the applicant's head office is situated. Overall, the regime seems to strike the right balance between regulatory oversight by the FCA and reliance on substituted compliance, including via the co-operation arrangements.

17. Does the ROIE regime strike the right balance between regulatory oversight by the FCA and reliance on substituted compliance?

DBG considers it a benefit of the ROIE status that, following recognition, the involvement which UK authorities need to have in the day-to-day affairs of an overseas recognised body are substantially reduced, since they are able to rely to a significant extent upon the supervisory and regulatory arrangements in the country where the applicant's head office is situated. Overall, the regime seems to strike the right balance between regulatory oversight by the FCA and reliance on substituted compliance via the co-operation arrangements. Please also see our answers provided to Questions 1 and 16.

18. Are there any other aspects of the ROIE regime that you think need to be changed in the light of market developments and the evolution of trading technologies?

19. There is an overlap between the ROIE regime and the OPE. Firms are invited to comment on their choice of access route and the reasons why they chose it.

The ROIE was perceived as the most resilient and robust framework for safeguarding efficient Brexit preparation and ensuring that Eurex and FWB would continue memberships with UK-based trading participants post-Brexit.

Nevertheless, it shall be noted that this was the only option available at that time, given Eurex's and FWB's permanent place of business in the UK via a representative office, which inhibited both venues from utilising the OPE regime. Without this permanent place of business in the UK, Eurex/FWB could have theoretically also chosen the OPE regime making use of the 'with or through' approach, given that all (direct) Eurex/FWB clients in the UK are authorised or exempt persons.