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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Recommendation for a Decision of the European Parliament and of the Council amending Article 22 of the Statute of the European System of Central Banks and of the European Central Bank – Outcome of the European Parliament's proceedings (Strasbourg 2 to 5 July 2018)

I. INTRODUCTION

The rapporteurs, Gabriel MATO (EPP, ES) and Danuta HÜBNER (EPP, PL), presented a report consisting of 11 amendments (amendments 1-11) to the proposal for a Decision on behalf of the Committee on Economic and Monetary Affairs.

In addition, Greens/EFA tabled 2 amendments (amendments 12 and 13).

II. VOTE

When it voted on 4 July 2018, the plenary adopted amendments 1-11 to the proposal for a Decision. No other amendments were adopted. The amendments adopted are set out in the annex.

At the end of the vote, the proposal was referred back to the Committee, pursuant to Rule 59(4)(4) of the European Parliament's Rules of Procedure, thereby not bringing the Parliament's first reading to a close and opening the negotiations with the Council.

Statute of the European System of Central Banks and of the European Central Bank *I**

Amendments adopted by the European Parliament on 4 July 2018 on the draft decision of the European Parliament and of the Council amending Article 22 of the Statute of the European System of Central Banks and of the European Central Bank (10850/2017 – ECB/2017/18 - C8-0228/2017 – 2017/0810(COD))¹

(Ordinary legislative procedure: first reading)

¹ The matter was referred back for interinstitutional negotiations to the committee responsible, pursuant to Rule 59(4), fourth subparagraph (A8-0219/2018).

Amendment 1

Draft decision

Recital 1

Draft by the European Central Bank

(1) The basic tasks to be carried out through the European System of Central Banks (ESCB) include the definition and implementation of the monetary policy of the Union and the promotion of the smooth operation of payment systems. Safe and efficient financial market infrastructures, in particular clearing systems, are essential for the fulfilment of these basic tasks.

Amendment

(1) The basic tasks to be carried out through the European System of Central Banks (ESCB) include the definition and implementation of the monetary policy of the Union and the promotion of the smooth operation of payment systems, ***which is essential in order to maintain financial stability***. Safe and efficient financial market infrastructures, in particular clearing systems, are essential for the fulfilment of these basic tasks.

Amendment 2

Draft decision

Recital 3

Draft by the European Central Bank

(3) On 4 March 2015, the General Court delivered its judgment in United Kingdom v ECB, Case T-496/11⁷, which held that the ECB does not have the competence necessary to regulate the activity of clearing systems. The General Court stated that Article 129(3) of the Treaty enables the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and on a recommendation from the ECB, to amend Article 22 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’). ***The*** Court concluded that “it would be for the ECB, should it consider that the grant to it of a power to regulate infrastructures clearing transactions in securities is necessary for proper performance of the task referred to

Amendment

(3) On 4 March 2015, the General Court delivered its judgment in United Kingdom v ECB, Case T-496/11⁷, which held that “the ECB does not have the competence necessary to regulate the activity of clearing systems, ***so that, in so far as the Policy Framework imposes on CCPs involved in the clearing of securities a requirement to be located within the euro area, it must be annulled for lack of competence***”. The General Court stated that Article 129(3) of the Treaty enables the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and on a recommendation from the ECB, to amend Article 22 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’). ***Therefore, the***

in the fourth indent of Article 127(2) TFEU, to request the EU legislature to amend Article 22 of the Statute, by the addition of an explicit reference to securities clearing systems.”

⁷ ECLI: EU:T:2015:133.

Court concluded that “it would be for the ECB, should it consider that the grant to it of a power to regulate infrastructures clearing transactions in securities is necessary for proper performance of the task referred to in the fourth indent of Article 127(2) TFEU, to request the EU legislature to amend Article 22 of the Statute, by the addition of an explicit reference to securities clearing systems.”

⁷ ECLI: EU:T:2015:133.

Amendment 3

Draft decision

Recital 3 a (new)

Draft by the European Central Bank

Amendment

(3a) Although securities clearing systems are a typology of payment systems, more clarity on the issue is required in the light of the General Court’s judgment of 4 March 2015 in Case T-496/11 and therefore, by means of a review of Article 22 of the Statute of the European System of Central Banks and of the European Central Bank, the issue of competence over such systems needs to be made clear.

Amendment 4

Draft decision

Recital 4

Draft by the European Central Bank

Amendment

(4) Significant developments at both global and European level are expected to increase the risk that disturbances affecting clearing systems, in particular central counterparties (CCPs), threaten the smooth operation of payment systems and implementation of the single monetary policy, ultimately affecting the Eurosystem’s primary objective of

(4) Significant developments at both global and European level are expected to increase the risk that disturbances affecting clearing systems, in particular central counterparties (CCPs), threaten the smooth operation of payment systems and implementation of the single monetary policy, ultimately affecting ***financial stability, including*** the Eurosystem’s

maintaining price stability.

primary objective of maintaining price stability.

Amendment 5

Draft decision Recital 5

Draft by the European Central Bank

(5) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland notified the European Council of its intention to withdraw from the European Union. The withdrawal of the United Kingdom will lead to a fundamental change in how certain systemically important euro-denominated clearing activities are regulated, overseen and supervised, thereby adversely affecting the Eurosystem's ability to monitor and manage risks to the smooth operation of payment systems, and implementation of the Eurosystem's monetary policy.

Amendment

deleted

Amendment 6

Draft decision Recital 6

Draft by the European Central Bank

(6) Central clearing is becoming increasingly cross-border in nature and systemically important. Given their diverse membership and the pan-European nature of the financial services they provide, CCPs are of key importance to the Union as a whole, and in particular to the euro area. This is reflected in Regulation (EU) No 648/2012 of the European Parliament and of the Council⁸, which establishes collective supervisory arrangements in the form of colleges, composed of the relevant national and Union authorities, including the Eurosystem in its role as central bank

Amendment

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of issue for the euro.

of issue for the euro, *the currency of the Union*.

⁸ *Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).*

Amendment 7

Draft decision

Recital 7

Draft by the European Central Bank

(7) In order to address these issues, on 13 June 2017 the Commission presented its legislative proposal to ensure financial stability and the safety and soundness of CCPs that are of systemic relevance for financial markets across the Union. In order to ensure that the Eurosystem as central bank of issue for the euro can carry out the role envisaged by the legislative proposal, it is of utmost importance that it has the relevant powers under the Treaty and the Statute of the ESCB. In particular, the Eurosystem should have regulatory powers to adopt binding assessments and require remedial action, in close cooperation with other Union authorities. Moreover, where necessary to protect the stability of the euro, the ECB should also have the regulatory powers to adopt additional requirements for CCPs involved in the clearing of significant amounts of euro-denominated transactions.

Amendment

(7) In order to address these issues, on 13 June 2017 the Commission presented its legislative proposal to ensure financial stability and the safety and soundness of CCPs that are of systemic relevance for financial markets across the Union. In order to ensure that the Eurosystem as central bank of issue for the euro can carry out the role envisaged by the legislative proposal, it is of utmost importance that it has the relevant powers under the Treaty and the Statute of the ESCB. In particular, the Eurosystem should have regulatory powers to adopt binding assessments and require remedial action, in close cooperation with other Union authorities. Moreover, where necessary to protect the stability of the euro, the ECB should also have the regulatory powers to adopt additional requirements for CCPs involved in the clearing of significant amounts of euro-denominated transactions. ***Those requirements should protect the integrity of the Single Market and ensure that in the supervision of third country CCPs, Union law and the jurisprudence of the Court of Justice of the European Union have primacy.***

Amendment 8

Draft decision Recital 8

Draft by the European Central Bank

(8) Article 22 of the Statute of the ESCB is part of Chapter IV ‘Monetary functions and operations of the ESCB’. The tasks conferred therein should accordingly only be used for monetary policy purposes.

Amendment

(8) Article 22 of the Statute of the ESCB is part of Chapter IV ‘Monetary functions and operations of the ESCB’. The tasks conferred therein should accordingly only be used for monetary policy purposes. ***With regard to clearing systems for financial instruments, requirements that may be applied on the basis of that Article should include reporting requirements and requirements imposed on the clearing system to cooperate with the ECB and national central banks in their assessment of the resilience of the system to adverse market developments. Such requirements should also include the opening by the system of an overnight deposit account with the ESCB in accordance with relevant access criteria and requirements of the ESCB. In addition, they should include requirements necessary to address situations in which a clearing system for financial instruments poses an imminent risk of substantial harm to Union financial institutions or markets or to the financial system of the Union or one of its Member States, such as requirements relating to liquidity risk controls, settlement arrangements, margins, collateral or interoperability arrangements. With regard to third-country clearing systems for financial instruments of systemic importance, Regulation (EU) No ... /... [Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs***

and requirements for the recognition of third-country CCPs] provides for the possibility for the ECB to propose additional requirements on such systems.

Amendment 9

Draft decision

Recital 8 a (new)

Draft by the European Central Bank

Amendment

(8a) The new powers of the ECB regarding clearing systems for financial instruments on the basis of amended Article 22 of the Statute of the ESCB and of the ECB will be exercised alongside the powers exercised by other Union institutions, agencies and bodies on the basis of provisions relating to the establishment or functioning of the internal market provided for in Part III of the TFEU, including those contained in acts adopted by the Commission or by the Council pursuant to the powers conferred upon them. In that context, in order to ensure that the respective powers of each entity are respected and to prevent conflicting rules and inconsistencies between the decisions taken by different Union institutions, agencies and bodies, the powers conferred under the amended Article 22 of the Statute of the ESCB and of the ECB should be exercised having due regard to the general framework for the internal market established by the co-legislators and in a manner which is fully consistent with the legal acts of the European Parliament and the Council as well as measures adopted under such acts.

Amendment 10

Draft decision Recital 8 b (new)

Draft by the European Central Bank

Amendment

(8b) The ECB should ensure full transparency and accountability towards the European Parliament and the Council regarding the exercise of its powers and tasks under Article 22 of its Statute. In particular, it should keep the European Parliament and the Council regularly informed of all decisions taken and regulations adopted on the basis of that Article. To that end, it should dedicate a specific chapter of its annual report to the exercise of its powers under Article 22 of its Statute and it should publish on its website all the decisions, recommendations and opinions related to regulations that it adopts on the basis of that Article.

Amendment 11

Draft decision Article 1

Statute of the European System of Central Banks and of the European Central Bank

Article 22

Draft by the European Central Bank

Amendment

Article 22

Clearing systems and payment systems

The ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems, ***and clearing systems for financial instruments***, within the Union and with other countries.

Article 22

Clearing systems and payment systems

The ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Union and with ***third*** countries.

In order to achieve the objectives of the ESCB and to carry out its tasks, the ECB may make regulations concerning clearing systems for financial instruments within the Union and with third countries, with due regard to the legal acts of the European Parliament and the Council and with measures adopted under such acts, and in a manner which is fully consistent with those acts and measures.
