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'I' ITEM NOTE

From: Presidency/General Secretariat of the Council
To: Permanent Representatives Committee

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
- Mandate for negotiations with the European Parliament

Delegations will find attached the latest Presidency compromise proposal for a negotiating mandate with regard to the above-mentioned recommendation.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 129(3) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 40.1 thereof,

Having regard to the recommendation of the European Central Bank,

Having regard to the opinion of the European Commission¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(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.

(2) In order to achieve the objectives of the ESCB and to carry out its tasks, the European Central Bank (ECB) and national central banks may already provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Union and with third countries.

(3) On 4 March 2015, the General Court delivered its judgment in *United Kingdom v ECB*, Case T-496/11², which held that the ECB does not have the competence necessary to regulate the activity

¹ This number will be allocated by the Publications Office of the European Union when the opinion is published in the Official Journal.

² ECLI: EU:T:2015:133.

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 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.”

(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 maintaining price stability.

(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.

(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, including the euro area. This is reflected in Regulation (EU) No 648/2012 of the European Parliament and of the Council³, 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 of issue for the euro.

(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.

³ 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).

(8) Moreover, the ECB should have, upon request and limited to aspects which relate to the euro, the power to take part in procedures assessing whether clearing systems for financial instruments located in third countries or some of its clearing services are of such substantial systemic importance for the financial stability of the Union or of one or more of its Member States that they should not be recognised.

(9) The ECB should have the powers related to clearing systems for financial instruments located in third countries that are systemically important to the financial stability of the Union or of one or more of its Member States to require the submission of information, to require full cooperation with the ECB in the context of the ECB's contribution to the assessment of the clearing systems' resilience to adverse market conditions and to require clearing systems to open overnight deposit accounts with the ECB in accordance with relevant access criteria and requirements.

(10) Only in exceptional situations, such as stresses in the markets (especially the money and repurchase markets) on which a clearing system for financial instruments relies to obtain liquidity, situations where operations of clearing systems for financial instruments contribute to the drying up of liquidity in the market or serious malfunctions of payment or settlement arrangements that impede the ability of the clearing system for financial instruments to meet its payment obligations or increase its liquidity needs, and in close cooperation with other Union authorities, the ECB should also have the powers related to clearing systems for financial instruments located in third countries that are systemically important to the financial stability of the Union or of one or more of its Member States to adopt requirements limited to a duration of up to one year aimed at addressing temporary systemic liquidity risks affecting the transmission of monetary policy or the smooth functioning of payment systems. Such requirements should preserve the financial soundness and safety of the clearing system for financial instruments, be related to the areas of liquidity risk control, margin requirements, collateral, settlement arrangements or interoperability arrangements and may include, in particular, enhancements to the liquidity risk management of the clearing system for financial instruments, such as an increase in the liquidity buffer, an increase in the frequency of the collection of intraday margins, limits to cross-currency exposures or specific modalities for depositing cash with the ECB and settling payments in euro. Where the ECB intends to impose requirements in exceptional situations, it should inform other relevant Union bodies of its intention and provide them with an explanation of how the requirements it intends to impose preserve the soundness and financial safety of the clearing system for financial instruments and with a justification of why the requirements are necessary and proportionate.

(11) 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.

(12) For these reasons, the ECB should be granted powers over clearing systems for financial instruments, in particular CCPs, which are located in third countries and that are systemically important to the financial stability of the Union or of one or more of its Member States, by means of an amendment to Article 22 of the Statute of the ESCB.

(13) Legislative acts of the European Parliament and the Council adopted on the basis of provisions relating to the establishment or functioning of the internal market provided for in Part III TFEU, including measures adopted pursuant to those acts, establish the general legal framework for clearing systems of financial instruments and in particular for the authorisation, recognition and supervision of CCPs in Union law. While the ECB should exercise its powers to impose requirements concerning clearing systems for financial instruments located in third countries that are systemically important to the financial stability of the Union or one or more of its Member States independently pursuant to Article 130 TFEU to the extent necessary to achieve the ESCB's primary objectives and to carry out its basic tasks, it should exercise such powers in a manner which takes due regard to and which is aligned with the aforementioned general framework and should, where applicable, respect the institutional responsibilities and procedures set out in that framework,

HAVE ADOPTED THIS DECISION:

Article 1

Article 22 of the Statute of the ESCB is replaced by the following:

“Article 22

Payment systems and clearing systems for financial instruments

22.1. 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.

22.2. In order to achieve the objectives of the ESCB and to carry out its tasks, without prejudice to the independence of the ECB in accordance with Article 7 and with due regard to and in alignment with legislative acts of the European Parliament and the Council and measures adopted under such acts, the ECB may, in relation to clearing systems for financial instruments located in third countries that are systemically important to the financial stability of the Union or of one or more of its Member States:

(a) require such clearing systems to:

- submit information,
- cooperate in the assessment of their resilience to adverse market conditions,
- open overnight deposit accounts and,
- in exceptional situations, comply with requirements limited to a duration of up to one year regarding liquidity risk control, settlement arrangements, margins, collateral or interoperability arrangements aiming at addressing temporary systemic liquidity risks affecting the transmission of monetary policy or the smooth functioning of payment systems while preserving the financial soundness and safety of such clearing systems.

(b) take part in procedures under Union law related to the recognition of such clearing systems for financial instruments.

Article 2

This decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union.*'
