



2017/0810(COD)

13.04.2018

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DRAFT REPORT

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 – C8-0228/2017 – 2017/0810(COD))

Committee on Economic and Monetary Affairs
Committee on Constitutional Affairs

Rapporteurs: Gabriel Mato, Danuta Maria Hübner

(Joint committee procedure – Rule 55 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the recommendation by the European Central Bank submitted to Parliament and the Council (10850/2017 – ECB/2017/18)¹,
 - having regard to Article 129(3) of the Treaty on the Functioning of the European Union, pursuant to which the draft act was submitted to Parliament (C8-0228/2017),
 - 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 opinion of the European Commission²,
 - having regard to Article 294(3) and (15) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the joint deliberations of the Committee on Economic and Monetary Affairs and the Committee on Constitutional Affairs under Rule 55 of the Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and Committee on Constitutional Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Instructs its President to forward its position to the Council, the Commission, the European Central Bank and the national parliaments.

¹ OJ C 212, 1.7.2017, p. 14.

² OJ C 340, 11.10.2017, p. 1.

Amendment 1

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

(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 ***that have implications for the conduct of monetary policy*** 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.

Or. en

Amendment 2

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. ***Those tasks should be limited to areas that are of relevance to the conduct of monetary policy, including, but not limited to, liquidity, settlement, collateral, interoperability and margin requirements as well as to requirements allowing to obtain an overview of the activities of the clearing system, such as reporting requirements or 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 conditions. They can also include any requirements necessary to address situations in which a clearing system for financial instruments poses an imminent risk of substantial harm to Union financial institutions, critical Union markets, or the broader financial system of the Union, including requirements imposed on the basis of provisional measures related to systemic liquidity risks, with a view in particular to guarantee the transmission of monetary policy and the smooth functioning of payment systems.

Or. en

Amendment 3

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 under Article 22 of the Statute of the ESCB will be exercised alongside the powers of 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. Therefore, 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 and agencies, the powers conferred under Article 22 of the Statute of the ESCB should only be exercised in a

manner which fully respects the general framework for the internal market established by the co-legislators and relevant Union institutions.

Or. en

Amendment 4

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

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.

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 within the Union and with other countries.

In order to achieve the objectives of the ESCB and perform its tasks, the ECB may make regulations concerning clearing systems for financial instruments within the Union and with third countries, provided that it does so in a manner that fully respects the legislative acts adopted by the European Parliament and the Council in this area as well as measures adopted under such acts.

Or. en

EXPLANATORY STATEMENT

In the 2015 Case T 496/11, UK vs ECB, the European Court ruled that the wording of Article 22 of the Statute of the European System of Central Banks and of the European Central Bank, which granted the ECB regulatory powers over “clearing and payment systems”, was not to be construed as granting the ECB regulatory powers over CCPs.

The amendment proposed last 22 June 2017 by the ECB aims to modify the Statute in order to bring “clearing systems for financial instruments”, in other words, CCPs, within the scope of the regulatory powers conferred by Article 22 of the Statute.

This would allow the Eurosystem to take up the powers that will be granted to it as central bank of issue of the euro under the Commission proposal amending EMIR as regards the supervision of CCPs, issued last 13 June 2017.

Your rapporteurs welcome the proposed change to the statute. They consider it an important step towards the creation of an effective system for the supervision of CCPs in the Union, which would include an appropriate role for the central banks of issue of the currencies cleared by the respective CCPs.

Your rapporteurs are however mindful of the need to respect the current allocation of competences under the current Treaty on the Functioning of the Union, in which other institutions, agencies and bodies of the Union have the power to establish the general framework relating to CCPs. The new powers of the ECB under the amended Article 22 of its Statute will interact with those of other institutions. It is therefore necessary to lay down a clear principle of respect of the legal framework established by other EU institutions, not least the co-legislators, by the acts adopted by the ECB under the amended Article 22 of its Statute.

For reasons of legal certainty and clarity of interpretation, your rapporteurs also deem it necessary to include in the recitals of the amending act a list of the regulatory powers that can be exercised over CCPs by the ECB under Article 22 of its Statute. This should include all requirements allowing monetary policy concerns to be addressed. However, in order to leave the possibility to make such adjustments to the role of central banks under the EMIR framework as might potentially become necessary in light of experience, this list shall remain open-ended and non-exhaustive. It shall also include any powers necessary for the ECB to address any potential significant emergency situation.