

# Commission Opinion on the Recommendation of the European Central Bank amending Article 22 of the Statute of the European System of Central Banks and the European Central Bank

## **1. Why is the Commission adopting this Opinion?**

The European Central Bank (ECB) adopted a [recommendation with a view to amending Article 22](#) of the Statute of the European System of Central Banks and the European Central Bank on 23 June 2017. The ECB has used [Article 129\(3\) of the Treaty on the Functioning of the European Union](#), according to which the European Parliament and the Council can change a limited number of the Articles of the Statute following a recommendation from the ECB or a proposal by the Commission. In the case of a recommendation from the ECB, Article 129(3) foresees that the Commission gives an opinion on that recommendation.

## **2. What changes to the Statute is the European Central Bank seeking to achieve in its recommendation?**

Article 22 of the Statute currently only establishes regulatory powers for the ECB in relation to payment systems with a clearing stage, but not for all clearing systems, including those for clearing financial instruments. The current powers serve to allow the ECB to perform its task of ensuring the smooth operation of payment systems, but do not go beyond that area. With the recommended amendment, the ECB seeks to expand its regulatory powers to also include “clearing systems for financial instruments”, such as central counterparties (CCPs), in view of the bearing these infrastructures could have on the ECB’s basic tasks and primary monetary policy objectives.

## **3. Does the Commission agree with this recommendation from the European Central Bank?**

Yes, the Commission strongly welcomes this recommendation and fully supports the ECB in its wish to amend Article 22 of the Statute. However, these new regulatory powers, which will be enshrined in primary law, need to be appropriately framed to ensure that there can be no regulatory conflicts, particularly between:

- regulations adopted by the ECB under (the amended) Article 22;
- legal acts adopted by the co-legislators (the European Parliament and the Council), as for example the European Market Infrastructure Regulation (see

below);

– or legal acts adopted by the Commission in the form of delegated or implementing acts.

In light of this, the Commission's Opinion suggests some additional framing to the ECB's recommended amendment to Article 22.

#### **4. How are clearing and central counterparties currently regulated at the EU level?**

The [European Market Infrastructure Regulation \(EMIR\)](#), adopted in 2012, is one of the most important EU post-financial crisis pieces of legislation. It covers clearing of financial instruments (for example derivatives) and the prudential and supervisory requirements on central counterparties (often referred to as CCPs).

A significant part of clearing is done across borders, both within the EU and internationally with CCPs established in third countries. The scale and importance of CCPs in Europe and globally has nearly doubled since the post-crisis G20 commitment to clear standardised over-the-counter (OTC) derivatives through CCPs.

A central counterparty is a financial institution that helps facilitate the clearing and settlement process in financial markets. The central counterparty interposes itself between parties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer. A CCP's main purpose is to manage the risk that could arise if one of the counterparties is not able to make the required payments when they are due – i.e. defaults on the deal. CCPs are commercial firms. There are currently 17 European CCPs authorised and 28 third-country CCPs recognised under EMIR, most of which clear various exchange traded or over-the-counter derivatives.

This is an important risk mitigation tool since it means that financial transactions can be completed even if individual buyers or sellers were to default on their individual obligations.

The role of central counterparties has expanded in the global financial system during recent years, reflecting not only the introduction of regulatory obligations in the interest of systemic stability, but also the voluntary use amid increased global initiatives and greater awareness of the benefits of central clearing. However, this has inevitably concentrated risk at the level of the central counterparties. Major problems in one central counterparty could pose significant risks to the smooth operation of payment systems and the implementation of the single monetary policy, which would ultimately affect the achievement of the primary objective of the ECB of maintaining price stability.

#### **5. What does this change to Article 22 (once adopted) mean in the context of the latest changes proposed by the Commission, in June 2017, to the European Market Infrastructure Regulation (EMIR)?**

The [Commission's proposal of 13 June 2017](#), amending the European Market Infrastructure Regulation, strengthens the common European supervisory system over central counterparties, led by the European Securities and Markets Authority. It also reinforces the responsibilities of the central banks of issue (the ECB in case of euro-denominated financial instruments) in the context of the authorisation and oversight over central counterparties on matters of relevance for monetary policy. The proposal deals with central counterparties in the EU as well as counterparties in third countries. Once adopted, the new regulatory powers recommended by the ECB will ensure, inter alia, that the ECB is able to fulfil its responsibilities as the central bank of issue of the euro under the proposed changes to the European Market Infrastructure Regulation.

The recommended changes to Article 22 are thus consistent with, and complementary to, the EMIR-framework, including the latest changes proposed in June 2017.

**6. How does this amendment to the Statute make use of simplified procedures, as mentioned by President Juncker in his State of the Union speech of 13 September?**

The Statute is contained in Protocol 4, annexed to the Union Treaties, and is thus a part of these Treaties. According to Article 129(3) of the Treaty on the Functioning of the European Union, a limited number of Articles of the Statute can be changed by a simplified procedure instead of using the regular procedure to amend the Treaty. Under this simplified procedure, the European Parliament and the Council will adopt the change to the Statute, using the ordinary legislative procedure.

The new regulatory powers that will be granted to the ECB via the amendment of Article 22 of the Statute will be enshrined in primary law. It is thus very important that they are appropriately framed.

**7. What is the link to the judgment of the General Court delivered in 2015 in the case United Kingdom vs. the European Central Bank?**

In this case, the General Court held that the current wording of Article 22 of the Statute had to be interpreted narrowly and that the regulatory powers of the ECB were limited to clearing in relation to payment systems and did not cover all clearing systems. Consequently, the Court stated that the ECB did not have the competence, under Article 22 of its Statute, to regulate clearing systems for financial instruments more generally, so for example with regard to clearing systems for derivatives. With its recommendation, the European Central Bank seeks to extend the regulatory remit of Article 22 and increase legal clarity and certainty.

**8. What are the next steps?**

The Commission's opinion, once adopted, will be transmitted to the European Parliament and the Council, which will deal with the recommended amendment to Article 22 of the Statute in the ordinary legislative procedure. This means that the co-legislators (the European Parliament and the Council) will deal

with this matter in parallel to the pending changes to the European Market Infrastructure Regulation from June this year.

**For More Information**

[Commission Opinion on the Recommendation of the European Central Bank amending Article 22 of the Statute of the European System of Central Banks and the European Central Bank](#)

[Commission proposals on more robust supervision of central counterparties \(CCPs\)](#)

[MEMO on the proposal to amend EMIR](#)

[Commission proposal on more robust supervision of central counterparties \(CCPs\)](#)