



EUROPEAN CENTRAL BANK

EUROSYSTEM

██████████
Directorate General International & European Relations

██████████
Chair
Committee on Petitions
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt am Main, 5 August 2020

Re: Petition No 0429/2017 by Harald Bolsinger (German) on the compliance of the European Central Bank with the EU Charter of Fundamental Rights

Honourable Member of the European Parliament, dear Ms Montserrat,

Thank you for your letter seeking further information from the European Central Bank (ECB) regarding its reply to Petition No 0429/2017 by Harald Bolsinger (German) on the compliance of the ECB with the Charter of Fundamental Rights of the European Union (hereafter "Charter").

The ECB's primary objective, as mandated by the Treaty on the Functioning of the European Union (the Treaty), is to ensure price stability over the medium term. In order to achieve this primary objective, the ECB and the national central banks of the Eurosystem have at their disposal a number of tools as indicated in the Statute of the ECB and ESCB (hereafter the "Statute"). Credit operations with credit institutions and other market participants are one of these core tools, as stated in Article 18 of the Statute. **The eligibility of assets as collateral for such credit operations is thus primarily guided by considerations regarding the monetary policy objective and appropriate risk management** – to shield the Eurosystem against potential losses. **The Eurosystem ensures that collateral assets serve the monetary policy objective and that the Eurosystem is adequately protected against risks, and reserves the right to limit or reject the mobilisation of certain assets.** Under Article 19 of the Statute, and within the limits set by the Council as referred to in this Article, the Eurosystem may require credit institutions to hold minimum reserves in pursuance of monetary policy objectives. Minimum reserves are not collateralised since they constitute a deposit made by credit institutions which are subject to the Eurosystem's minimum reserve requirements with their respective Eurosystem national central banks. No counterparty is obliged to hold collateral as a result of it being subject to minimum reserves.

Address
European Central Bank
Sonnemannstrasse 20
60314 Frankfurt am Main
Germany

Postal Address
European Central Bank
60640 Frankfurt am Main
Germany

Tel. +49-69-1344-0
Fax: +49-69-1344-7305
Website: www.ecb.europa.eu

That being said, and as already mentioned in a recent reply to a written question from MEP Daly¹, the ECB is an addressee of the Charter of Fundamental Rights within the limits of Article 51 thereof. The ECB respects the rights, observes the principles and promotes the application of the Charter, in accordance with its powers and respecting the limits of the powers of the Union as conferred on it in the Treaties (Treaty on European Union and Treaty on the Functioning of the European Union). At the same time, the precise and limited mandate and powers conferred on the ECB by the Treaties, as well as the limits to the powers of the Union conferred on it by the Treaties, imply that while the ECB is an addressee of the Charter, it does not automatically have an obligation to enforce the Charter vis-à-vis the issuers of securities it considers eligible for use in its monetary policy operations. While recognising that the matter may be complex, the following considerations help to substantiate this view.

- First, private corporations such as the issuers named by the Petitioner in his initial petition do not fall directly within the scope of the Charter, which specifies that it is addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. These corporations, however, are instead subject to certain rules applicable to their conduct within the relevant jurisdictions, which may include rules set out in directly applicable EU regulations or other legal acts. The ECB cannot subject the eligibility of collateral to conditions which would effectively extend the scope of the Charter beyond the limits set in Article 51 thereof, and its own powers beyond the mandate established in the Treaties.
- Second, the authoritative assessment of alleged breaches of fundamental rights under the Charter, or other rules in EU legal acts that may be linked to the protection of these fundamental rights, falls within the remit of the relevant regulatory authorities and, ultimately, the competent national and EU courts, not within those of the ECB or of private self-authenticated institutions. The ECB cannot substitute itself for competent EU or national courts and authorities by assessing and, as the case may be, indirectly sanctioning EU corporations – to which the Charter does not even apply directly – for alleged breaches. The ECB also cannot simply defer to the findings of private self-authenticated sources such as those proposed by the Petitioner.

Therefore, the ECB cannot defer the eligibility of assets in its monetary policy operations to the opinion of a private entity regarding issuers' compliance with the Charter, as proposed by the Petitioner.

Yours sincerely,



¹ See letter from the ECB President to Ms Clare Daly, MEP, on the Charter of Fundamental Rights, available at https://www.ecb.europa.eu/pub/pdf/other/ecb_mepletter200619_Daly~cee67c7de1.en.pdf?13b06eff8eb93dda5d33096c35e15089