Framework for the recovery and resolution of central counterparties

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OPINION of the European Central Bank on a proposal for a regulation of the European Parliament and of the Council on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, and (EU) 2015/2365.

The ECB **supported the Commission's initiative and endorsed the scope of the proposed regulation** as regards the mandates and powers of the resolution authorities, central counterparty recovery and resolution plans and resolvability assessments, early intervention measures, resolution triggers, resolution tools and powers, including government stabilisation tools and third country provisions. It also agreed with the main thrust of the proposed regulation.

The ECB believed, however, that the proposed regulation could be **improved in four areas**:

(1) Need to minimise adverse contagion to CCP participants and to the wider financial system: the ECB considered that clearing participants must be able to estimate reliably and manage their potential exposures under the proposed regulation. The ECB recommended that the proposed regulation give priority to **clearly measurable loss allocation tools** in recovery by providing greater *ex ante* transparency regarding resolution authorities' general approaches and decision-making processes when using their discretion in key areas of resolution.

(**2) Ensuring the continuity of CCPs' critical functions without incurring taxpayer losses**: the ECB recommended that **robust arrangements** to ensure the availability of adequate private sector funds, to fully allocate financial losses in resolution and to replenish CCPs' financial resources are therefore crucial. Conversely, any potential **public sector** support should only be considered as an absolute last resort and as a temporary measure, to avoid moral hazard and set appropriate ex ante risk management incentives.

The ECB therefore suggested **strengthening the safeguard measures** provided for in the Regulation.

(**3) Horizontal cooperation to ensure the consistency of the individual devices recovery and resolution of CCPs**: the ECB considered that credible recovery and resolution planning appropriate to safeguarding Union financial stability might not be achievable by focusing solely on individual CCPs on a standalone basis, but should be coordinated across Union CCPs.

Against this background, the ECB considered that the European Securities and Markets Authority (ESMA) should be entrusted with developing a holistic perspective on the ability of the Union central clearing landscape to withstand potential system-wide market events going beyond ‘extreme but plausible’ conditions and involving both recovery and resolution scenarios. In performing this task, ESMA should cooperate closely with the ESCB, including the ECB when performing its prudential supervision tasks, and the European Banking Authority (EBA), given the significant implications of CCP recovery and resolution for central banks in their roles as central banks of issue and overseers as well as for banking supervisors.

(4) Compliance with international standards to ensure coherence of individual recovery and resolution plans: the ECB suggested enhancing the proposed regulation by better aligning the content of recovery and resolution plans and resolvability assessments for Union CCPs with what has been agreed and/or is under development at **international level**.

The ECB agreed that targeted modifications may be necessary to take into account the new role of the CCP Executive Session in colleges under the EMIR Regulation and subsequently in resolution colleges. Moreover, it fully supported the approach that during the finalisation of the proposed regulation, the Commission, the Council and the European Parliament carefully assess the potential role of the CCP Executive Session in **promoting the consistency and effective interaction of recovery and resolution plans** across CCPs, and in monitoring and mitigating their aggregate risk implications for financial stability in the Union.

On a more specific level, the ECB made recommendations that include, among others:

- **Central banks in recovery and resolution**: central banks should have a prominent role in both the design and execution of CCP recovery and resolution strategies.
- **EMIR colleges, resolution colleges and the ESMA resolution committee**: the ECB recommended that the regulatory technical standards specifying the functioning of resolution colleges should be developed in close cooperation with the ESCB, including the ECB when performing its prudential supervision tasks, and the EBA.
- **Recovery plans**: the ECB considered that the key objective of recovery planning should be specified expressly in terms of ensuring the availability of a set of recovery tools that is comprehensive and effective. The content of recovery plans under the proposed regulation requires more detailed specification. The ECB recommended clarifying that the resolution authority's review may take place not only in the context of the initial approval of the recovery plan, but also at a later stage, when the resolution authority conducts or updates its assessment of the CCP's resolvability.
- **Resolution planning**: the ECB considered that the resolution plans should further differentiate the failure scenarios not related to a clearing member's default.
- **Resolvability**: the ECB considered that the technical aspects to be considered by the resolution authority when assessing the resolvability of a CCP should be set out in the regulatory technical standards and not in an annex to the proposed regulation. These regulatory technical standards should be developed in close cooperation with the ESCB, including the ECB when performing its prudential supervision tasks, and the EBA.