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"Global aspects of the regime for CCP recovery and resolution"

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The proposal we are looking at today is the one of the most important final finishing touches of our regulatory agenda. As we all know, it should complete the reforms carried out after the financial crisis in order to bring more stability on financial markets and in particular on derivative markets. In order to make sure that at least one party to derivative transactions would be resilient, the Pittsburgh G20 summit in 2009 mandated the central clearing of over the counter derivatives. In the EU, the European Market Infrastructure Regulation (EMIR) introduced a clearing obligation that will be phased in and has started to apply last year for the most common and standardised types of derivatives: interest rate derivatives.

However, while risk has been reduced on markets, it has also concentrated within the entities tasked with managing it. This means that these institutions have become particularly important and that the failure of one of them would have consequences far greater than it would have had some decades ago. The challenge is to make this scenario unlikely. We must therefore pay special attention to Central Clearing Counterparties (CCPs) and not only make them resilient to crisis, which we have already started to do, but also think of what strategies to follow if things go wrong for a CCP, in order to make sure it would not fail in a disorderly and disruptive way.

It is at the global level, at this of the Committee on Payments and Market Infrastructures (CPMI) jointly with the International Organisation of Securities Commissions (ISOCO) as regards resilience and at the level of the Financial Stability Board (FSB) as regards recovery and resolution, that reflection has started. And in this regard having a global approach for CCP recovery and resolution is crucial.

This global dimension is crucial for a series of reasons.

The main element is that CCPs are a global business, with the US playing a pivotal role in derivative markets. They are also few and they are highly interconnected through the participations of large members (in particular major banks).

Therefore, any problem encountered by CCPs, as well as any measures to be taken by resolution authorities in one country immediately have externalities in other countries. These externalities should be taken into account and the best way of doing this is through common and coordinated rules.

Moreover, a crisis that would be large enough to create a situation in which a CCP would be in serious trouble would mean a generalised financial market panic. Such a situation means that it would likely be several regions of the world, not only the EU,

which would be affected. Therefore, in order to manage the crisis, authorities in several jurisdictions would be acting.

Consequently, most likely, if ever CCP recovery and resolution tools have to be used, they will be used by several authorities in several regions of the world. And this is when a coordinated approach along the same lines and principles will be important. Basically, a coordinated approach means that we all need to play by the same rules in order to ensure as much predictability of the outcomes as possible, regardless of whether the CCP to be resolved is established in the UK, in the US or in Asia. It also means that each resolution authority will have to take into account what other authorities do and that authorities will need to exchange information smoothly.

I would therefore say that, in light of the high interconnectedness of CCPs and the exceptional circumstances that might trigger the resort to resolution tools, global coordination appears even more necessary for CCPs than for the banking sector.

I understand that the need for international coordination is the reason why the Commission has delayed its proposal for over one year, almost for one year and a half, in order to wait for guidance from the FSB. They also had the intelligence of working to influence the standards ex ante in order to make sure that they will not depart too much from our needs and preferences. I am sure they will give us further details.

As a result, the proposal tabled is very much in line with the FSB recommendations and includes all the tools that are allowed and mentioned by the FSB.

Probably some clearer specification will be needed on some points such as the trigger or entry into resolution in the case of non-default losses (FSB definition*: "A loss incurred by a CCP for any reason other than the default of a clearing participant. Examples include losses on investments or due to operational failures or fraud".* Opposed to "default losses" incurred as a result of the failure of a participant), where the FSB is more specific than the Commission and gives conditions that are not in the Commission' s proposal. Differences are in any case rather minor.

The final guidance of the FSB will be issued in July, and this will be in time for it to be taken over during the legislative process. That means it can be reflected in Parliament and Council amendments, in trilogue discussions and, if needs be, in the level 2 framework.

I assume we all agree that international guidance is there to prevent fragmentation.

In this respect, the fact that the FSB has left a very wide array of tools to be used, that was broad enough to suit all needs, in its guidance, is a good thing. We have many options available to us and that we can use without departing from the FSB guidance.

But, on the other hand, this broadness means that we should be more concerned about coordinated transposition than if we had had a granular and prescriptive guidance. There is some theoretical margin for fragmentation if the choices made within the toolbox were more restrictive in some jurisdictions and if the tools finally

retained were not the same. To put it clearly, it is when and where departures from international standards can be expected that we have tough choices to make.

An important aspect of global coordination also relates to the interplay between national insolvency law, future recovery and resolution regime, and FSB guidance. We need to get this right and advance in a coordinated way across jurisdictions, as much as possible.

For instance, the FSB is not forbidding the use of initial margin haircutting as a resolution tool, only putting conditions to its use (that is a last resort and that due consideration is paid to the financial stability implications of its use).

By contrast, using this tool would be illegal under US law and we can therefore be sure that, if there is a framework for the recovery and resolution of CCPs in the US, it will not include this tool. The Commission's proposal still allows "any other tool" compatible with the general principles governing resolution to be used, therefore, being FSB-compliant but probably, in the future, not aligned with the US.

A choice will have to be made.

That takes me to my last comment: we now have two new challenges related to the issue of global approach.

One such challenge is this of Brexit, which brings the issue of third country equivalence to the centre of attention.

This issue of third country regimes is related to the issue of global approach since we are still talking about cooperation between jurisdictions, but distinct from it, since we focus on the compatibility of legislation once international standards have been transposed. Brexit might, everything else being equal (that is, CCPs not migrating to the continent) and if no bespoke agreement is found, result in major CCPs no longer being supervised by European regulators.

In the current proposal, there are only, like in BRRD, provisions on cooperation with third country resolution authorities and on the recognition of third country resolution actions by resolution authorities established in the EU. The rationale for this absence of proper equivalence provisions is that, like in BRRD, there is no issue of market access, no issue of entities having to be licensed since we deal only with cooperation and mutual recognition of measures taken in different countries. So, in principle, there is no need for equivalence decisions. Equivalence reasoning does not apply to resolution actions.

The issue is different as regards the authorisation of CCPs, but this is an EMIR-related issue and does not strictly belong to today's discussion. EMIR provides for an equivalence decision by the Commission (implementing act) recognising the equivalence of the legal and supervisory arrangements of a third country regarding CCPs (Art. 25(6) EMIR). 16 of such implementing acts have already been adopted, though after long periods of discussion as in the case of US CCPs under the supervision of the CFTC.

If the UK CCPs cannot serve the EU market in the absence of recognition by ESMA or for any other reason, then those CCPs would have to be established in an EU Member State and undergo the authorisation procedure via the competent authority of that Member State to obtain an EU passport. However, given that UK CCPs would have been compliant with EMIR until the point that the UK leaves the EU, in principle the UK regulatory regime should at least be deemed equivalent to that of the rest of the EU up to the moment of the UK's withdrawal.

The second challenge is this of the change of presidency in the US. It is no secret that president Trump is, to say the least, less keen on international cooperation than his predecessor, and there were even talks of withdrawing from the Basel negotiations.

Also, although it is still rather early to know exactly what this exactly means, but president Trump would favour some deregulatory agenda, which probably implies that the recovery and resolution of CCPs should not be the priority of its administration. Therefore, we will need to move forward, be in line with FSB standards in order to minimise potential divergences f and when the US adopted its own approach, but be mindful that the US will join us only later on.

In conclusion, let me emphasize that good work and useful guidance have been elaborated and the challenge is to have it transposed in a harmonious and coordinated way. It is also important, now that guidance is almost there, that regimes are put in place swiftly and everywhere. This is to prevent loopholes, fragmentation and regulatory arbitrage between jurisdictions with and without recovery and resolution regimes.

The EU has made the first move. Now, we need to finalise the framework and to watch carefully what, if anything, the US will put into place, although, with the new administration and the current upheavals, CCP recovery and resolution might not be on the top of their priorities.