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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**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**

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Executive Summary Sheet

Impact assessment on a proposal for a framework to ensure the orderly recovery and resolution of central counterparties (CCPs)

A. Need for action

Why? What is the problem being addressed?

The failure of a financial institution has the potential to create contagion to other institutions in particular where normal insolvency proceedings pose such a threat to the stability of the financial system as a whole. In these cases, the State may be compelled to rescue the institution using taxpayers' money, as State inaction could result in a systemic crisis and imply huge losses for the economy. State intervention has recently been required, at a cost to the taxpayer, to rescue many banks so as to dampen such a systemic crisis. In response, EU prudential regulation for banks was strengthened considerably and, importantly, a new framework – the Bank Recovery and Resolution Directive (BRRD) – empowering relevant authorities to ensure the orderly failure of a bank was established. It requires banks to prepare more effectively for managing financial distress, provides the competent authorities with powers for early intervention in a bank that is failing or likely to fail, establishes a common set of resolution tools for managing failure and allocates any financial losses among stakeholders in the bank. The BRRD, thus, facilitates the restructuring of a bank by public authorities that is failing or likely to fail, while minimising any cost for taxpayers.

A central counterparty (CCP) intervenes between counterparties to financial transactions to assume and carry out their rights and obligations, acting as the buyer to every seller and the seller to every buyer for a specified set of contracts. While CCPs are less vulnerable to failure compared to banks, they are not immune. There is an international consensus that systemic financial risks in all financial institutions, and not just banks, should be carefully monitored and addressed.¹ The recent crisis has shown that any public intervention to address risks in financial institutions should be swift and with minimum recourse to taxpayer funds. It is widely acknowledged that an EU-wide recovery and resolution framework is most urgently required for CCPs. The Financial Stability Board (FSB), a top-level international grouping of regulators working under the aegis of the G20 to reform the financial regulatory landscape in the wake of the crisis and to address emerging risks, has also prioritised this work. The business model of CCPs implies a significant concentration of financial risk, primarily from banks as their largest users, but also by other financial actors. It is inherently cross-border within an integrated EU and global market. Moreover, the systemic significance of CCPs is certain to increase further due to the G20-commitment to clear over-the-counter (OTC) derivatives via CCPs, transferring risks inherent in these instruments away from banks and concentrating them on CCPs and ensuring their centralised risk management. While being a low-probability event, the failure of a CCP could, via its central position in the markets and notably its direct links to banks, cause widespread contagion within the financial system if not managed in an orderly manner. Accordingly, a legislative framework is required that empowers relevant authorities to address this financial-stability risk by rapidly restructuring and winding-up the operations of a CCP in an orderly way in case of threatened systemic failure. In addition, legislative measures should provide incentives for sound risk management of CCPs and protect the clients of the large banks which use the CCPs clearing services, and taxpayers from large losses in the event of resolution.

What is this initiative expected to achieve?

The new legislation would ensure that CCPs are better prepared to recover from financial distress and provide appropriate authorities with new powers to rapidly recover or resolve CCPs, which are failing or likely to fail, so as to preserve their critical functions while winding up other operations. While EU Regulation governing the functioning of CCPs² already brings major improvements to the prudential management, this initiative would contribute to further enhancing financial stability by designing and harmonising crisis-prevention and resolution tools across the EU. The specificity of CCPs and the existing regulatory framework will be duly taken into account when designing such tools so as to avoid duplication and ensure proportionality.

What is the value added of action at the EU level?

EU financial markets are highly integrated. Authorised CCPs provide their services across borders and, accordingly, the failure of a CCP would imply spillover effects between Member States. The fragmentation of the EU Single Market during the recent crisis clearly demonstrates the danger of relying exclusively on divergent national regimes to manage the failure of financial institutions with cross-border reach. Therefore, a European framework for recovery and resolution of CCPs would ensure more effective crisis management and less market

¹ See e.g. the letter of the Chairman of the Financial Stability Board to G20 Finance Ministers and Central Bank Governors: "Financial Reforms – Finishing the Post-Crisis Agenda and Moving Forward" (February 2015).
<http://www.financialstabilityboard.org/wp-content/uploads/FSB-Chair-letter-to-G20-February-2015.pdf>

² Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories ("EMIR").

fragmentation. It would foster a coordinated execution of actions across Member States, a level playing-field for the institutions concerned and an equal treatment of their owners, creditors and customers. In this way, the existing EU and national prudential rules would also be enhanced by the EU recovery and resolution framework.
B. Solutions
What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?
A recovery and resolution framework for CCPs is likely to involve a public authority taking extraordinary measures in the public interest, possibly overriding normal property rights and allocating losses to specific stakeholders. Accordingly, legislative policy options are preferred to possible “soft-law” measures.
Who supports which option?
Based on stakeholder feedback obtained through a Commission public consultation and international discussions under the aegis of the FSB, there is widespread consensus within the industry and amongst authorities that all CCPs should be subject to a framework that enables their orderly recovery and potential resolution in the event of serious financial distress. However, stakeholders have diverging preferences among the different loss-allocation options (6.6), depending on how they would be affected.
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)?
In contrast to the banking sector, CCPs did not experience major problems during the recent crisis. Consequently, there is less empirical evidence with which to quantify the benefits of an EU recovery and resolution framework for CCPs. However, the cross-border operations and risk concentration of larger CCPs suggest that the implications of a disorderly failure for financial stability could be even greater than in the case of a systemically-important bank. Moreover, the risk concentration in CCPs is set to increase substantially due to the G20 commitment to mitigate risks for market participants in bilateral derivative transactions by requiring them to clear standardised transactions through CCPs. Better crisis planning within CCPs and powers for authorities to intervene with standardised tools should reduce the risk of a catastrophic failure of a CCP, which would otherwise almost certainly necessitate a rescue by the State at considerable cost to the taxpayer. The prospect of more orderly CCP recovery and resolution is likely to benefit the financial sector more generally, by incentivising better risk management within the CCP and of bank exposures to the CCP.
What are the costs of the preferred option (if any, otherwise main ones)?
The upfront costs for CCPs will primarily be in the shape of requirements for better planning and prevention of failure. These will vary depending on the size, interconnectedness, substitutability and complexity of the CCP and include human resource costs, applicable consulting and legal fees, systems upgrades and possible reorganisation costs. Based on the corresponding costs for banks, these requirements are estimated to be in the millions for the largest institutions and in the thousands for smaller entities. On aggregate, the smaller number of CCPs subject to these requirements and their lower level of organisational complexity compared to banks should entail overall lower upfront costs. As part of assessing and facilitating CCPs’ resolvability, authorities could require some of them to strengthen their balance sheet or streamline their organisational structures, but these would be ad hoc cases and not apply to the whole sector.
How will businesses, SMEs and micro-enterprises be affected?
All EU CCPs are in the scope of this impact assessment. In terms of indirect net impacts, SMEs and other businesses are expected to benefit from an overall reinforcement of financial stability.
Will there be significant impacts on national budgets and administrations?
One of the main objectives of the proposed measures is to spare national budgets from the costs of providing solvency support in the event of failure of a CCP.
Will there be other significant impacts?
It might be necessary for the competent authorities to take extraordinary measures in the public interest so as to avert a threat of financial panic in the event that a CCP is failing or likely to fail. Such extraordinary measures could override established property rights. However, any such measures must comply with the European Convention of Human Rights and so be proportionate, seek to preserve value in the overall interest and leave affected stakeholders in a position no worse than if the CCP had gone into insolvency proceedings.
D. Follow up
When will the policy be reviewed?
CCPs should monitor their recovery plans and authorities their preferred resolution options so as to ensure that they are appropriate on an on-going basis and in light of any changes to the CCPs' situation and wider market developments. The framework as a whole could be subject to review after a 3-5 year period.