

IRSG

INTERNATIONAL
REGULATORY
STRATEGY GROUP

EUROPEAN COMMISSION

DG INTERNAL MARKET AND SERVICES

**CONSULTATION ON A POSSIBLE RECOVERY AND
RESOLUTION FRAMEWORK FOR FINANCIAL
INSTITUTIONS OTHER THAN BANKS**

**RESPONSE FROM INTERNATIONAL REGULATORY
STRATEGY GROUP POST TRADE WORKSTREAM**

December 2012



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IRSG Post Trade Workstream

The International Regulatory Strategy Group (IRSG) is a practitioner-led body comprising leading UK-based representatives from the financial and professional services industry. It is an advisory body both to the City of London Corporation and to TheCityUK.

The Post Trade Workstream includes representatives from financial services firms, investors and financial market infrastructures. A list of the members of the Workstream is attached.

The objective of the Post Trade Workstream is to provide a cross-sectoral review of post-trade services. It has therefore limited its comments to those questions relating to market infrastructures that have broader, market-wide implications. These comments reflect a consensus of views within the Workstream. The views of individual members may differ from the consensus in some areas.

3. FINANCIAL MARKET INFRASTRUCTURES: CENTRAL COUNTERPARTIES AND CENTRAL SECURITIES DEPOSITORIES

Questions:

1. Do you think that a framework of measures and powers for authorities to resolve CCPs and CSDs is needed at EU level or do you consider that ordinary insolvency law is sufficient?

We do not believe that ordinary insolvency law is sufficient to resolve CCPs and CSDs, as it is unlikely to take account of the systemic nature of financial market infrastructures (FMI). Recovery and resolution plans are necessary for FMIs in order to strengthen the safety and soundness of global financial markets. Furthermore, a different framework is needed for CCPs and CSDs as they are very different types of entities with different risk profiles. Ideally a resolution framework should be set at the global level under relevant CPSS-IOSCO standards, but we would support the development of a recovery and resolution framework at EU level, in particular given the cross border nature of financial services in Europe.

3. Do you think that existing rules which may impact CCPs/CSDs resolution (such as provisions on collateral or settlement finality) should be amended to facilitate the implementation of a resolution regime for CCPs/CSDs?

Great importance is attached to achieving predictability and certainty. There is a preference for maintaining the operation of the Settlement Finality and Financial Collateral Directives, but if these prove incompatible with the proposed resolution regime, then there is a need for a thorough market consultation on any proposed changes.

4. Do you consider that a common resolution framework applicable to CCPs and CSDs is desirable or do you favour specific regimes by type of FMIs?

We believe that separate specific regimes should be developed for CCPs and CSDs as they have different characteristics and very different risk profiles.

5. Do you consider that it should only apply to those FMIs which attain specific thresholds in terms of size, level of interconnectedness and/or degree of substitutability, or to those FMIs that incur particular risks, such as credit and liquidity risks, or that it should apply to all? If the former, what are suitable thresholds in one or more of these respects beyond which FMIs are relevant from a resolution point of view? What would be an appropriate treatment of CSDs that do not incur credit and liquidity risks and those that incur such risks?

We believe that a recovery and resolution framework should be applicable to all CCPs and CSDs. However it should only be applicable to other FMIs to the extent that they are systemically important – e.g. the business is material and its services could not be easily replaced by an alternative FMI. Furthermore the treatment of individual entities should be proportionate to their scope of activity, levels of exposure to credit risk and on the systemic risk posed by the FMI.

7. Do you agree that the general objective for the resolution of CCPs/CSDs should be continuity of critical services?

Yes.

8. Do you agree with the above objectives for the resolution of CCPs/CSDs?

Yes

9. Which ones are, according to you, the ones that should be prioritized?

Beyond continuity of critical services, legal certainty, predictability and preservation of financial stability should be prioritised.

10. What other objectives are important for CCP/CSD resolution?

See question 9

25. In your view, what are the key elements and main challenges to take into account for the smooth resolution of an FMI operating cross-border? What aspects and effects of any divergent insolvency and resolution laws applicable to FMIs and their members are relevant here? Are particular measures needed in the case of interoperable CCPs or CSDs?

It is vital for the issue of resolution to be considered from a cross border perspective as few, if any, FMIs serve only their domestic market.

Cross border recognition or even harmonisation of FMI insolvency regimes is particularly important in relation to linked CCPs and CSDs. Cross border recognition of resolution arrangements and its impact on domestic insolvency law is a key aspect of the legal certainty objective. Any uncertainty will inhibit the ability of resolution authorities and market participants to act decisively. The divergence of existing insolvency laws should be addressed where relevant in the new regime.

It is also important to understand and consider the potential effects of the resolution of an FMI to which another FMI is linked or in which it is participating. The R&R regimes should ensure that there is no unintended transfer of risk from one system to another in such circumstances.

26. Do you agree that, within the EU, resolution colleges should be involved in resolution issues of cross border FMIs?

We support the use of colleges to oversee the regulation of cross border FMI and agree on the need for their involvement in resolution issues. However in order to achieve the necessary rapid decision making and action, we would suggest that the Resolution Authority of the Member State where the FMI is established has the power to take decisions. The Resolution Authority should however have the duty to consult the other college members in appropriate predefined circumstances.

27. How should the decision-making process be organized to make sure that swift decisions can be taken? Alternatively, do you think that responsibility for resolving FMIs should be centralised at EU-level?

Resolution and recovery regimes should leverage on the existing regulatory structures for FMI. Leadership of resolution action by the home state resolution authority should be combined with pre-agreed conflict management with other member state resolution authorities. We believe centralisation at EU level is too remote to be able to deal effectively and decisively. Furthermore the national taxpayer may ultimately be called upon to help finance the stricken FMI, requiring the resolution to remain at national level.

28. Do you agree that a recognition regime should be defined to enable mutual enforceability of resolution measures?

Yes

29. Do you agree that bilateral cooperation agreements should be signed with third countries?

Yes – these could help to ensure legal certainty and enforceability of the resolution of an EU FMI.

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Membership of the IRSG Post Trade workstream

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