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Euroclear Group Response to the Financial Stability Board Consultation on **the Guidance on Continuity of Access to FMIs for a Firm in Resolution**

The Euroclear group is the world's leading provider of domestic and cross-border settlement and related services for bond, equity, fund and derivative transactions. The Euroclear group is user-owned and user-governed. It includes the International Central Securities Depositary (ICSD) Euroclear Bank, based in Brussels, with operations in Krakow and Hong Kong, and representative offices across the World. It also comprises the Central Securities Depositaries (CSDs) – Euroclear Belgium, Euroclear Finland, Euroclear France, Euroclear Nederland, Euroclear Sweden and Euroclear UK & Ireland.

We are pleased to be given the opportunity to provide our feedback on the Financial Stability Board (FSB) consultation on the Guidance on Continuity of Access to Financial Market Infrastructures ("FMIs") for a Firm in Resolution.

Euroclear is also a Board Member of ECSDA and chairs both its Public Policy Working Group and its Settlement Practice Working Group. As a consequence, Euroclear has been extremely closely involved in the production of ECSDA's consultation response, with which we are in agreement. Our response should be read as a complement to that of ECSDA.

Main comments

I. We find the guidance generally sensible and helpful.

II. Access to an FMI could be maintained as long as the Firm satisfies the access criteria. We subscribe to the view of some authorities, that the entry into resolution should constitute a risk-reducing event, and hence should not result in an immediate freeze of a Firm's FMI access. However, the Firm must be ready to be subject to an increased scrutiny from, and communication with, the relevant FMI. In the interests of the market, FMIs must balance the

risks for one single participant against the risks that the participant might pose to all other market players, as well as to the FMIs' own balance sheet and risk profile. The FMI shall retain some flexibility and discretion. And it should be possible for the FMI to end its relationship with a Participant, with all appropriate safeguards and warnings, if the Firm no longer meets the FMI's access criteria.

III. The authorities should have a choice between different legal and operational arrangements to support access to a Firm's positions in the FMI's books from a different (and new) legal entity. In case of a 'fast-burning' scenario, we suggest that the authorities consider granting a power of attorney over the accounts of the Firm to an existing FMI participant or to the successor of the firm in resolution, rather than requesting a new membership for that successor.

IV. The contractual relation between the CSD and its participant could help inform which services could be continued for a participant in resolution. In line with this view, we believe that uncommitted credit lines should not be considered "critical FMI services" and the participants should plan to find emergency sources of liquidity and securities pools to facilitate their settlement in advance, other than through an FMI.

V. Regardless of whether a service is deemed critical and committed, the CSD might rely in its provision of such services on the cooperation of external parties, such as correspondent banks, for example. While the guidance mentions custodians, it does not refer to other parties. We believe that such parties should not be described as, or treated, as "FMIs" or "providers of critical FMI services", given the fundamental difference in their risk profile, governance, regulatory environment and business purpose. However, we agree that consideration should be given as to whether custodians and other relevant institutions should be treating their clients in resolution similarly to the way in which FMIs treat their participants in resolution.

VI. Finally, we call upon the authorities to establish a clear legal basis for the Guidance, and international equivalence that will lead to a global and consistent approach by the authorities.

Q1. Does the consultative document appropriately address the tensions that may arise between the various financial stability objectives, with regard to the safety and soundness of providers of critical FMI services on the one hand and to the orderly resolution of the recipients of such services on the other?

The FSB guidance rightly stresses the challenges faced by the FMIs, their participants and the competent authorities. It is indeed a fine balance between fully defined rules, and the flexibility to deal with specific situations. The task of deciding whether to accept the risks of continuing to permit access to the FMI's systems for a client in resolution is complex. It requires to balance the risks carefully between supporting a participant and avoiding risk to the FMI itself and/or subsequent contagion risk affecting other FMI participants. The resolution authorities of Firms should not expect that access will be maintained by an FMI whatever happens. The entrance of a participant into resolution should not, of course, result in a freeze of its access to the FMI's System, provided that it continues to meet its obligations towards the CSD and its other participants. However, if this is not the case, and in order to prevent market contagion, the CSD might not have a choice other than to stop access to some services that might indeed be 'critical' for the participant.

We agree that CSDs do have some discretion, in certain cases. In line with the FSB view – from the FMI-Annex – we believe that CSD rules should provide for sufficient flexibility, amongst other things, in order to cooperate with the resolution authority of the FMI participant. The discretion is necessary in order to be able to adapt to the variety of different situations and resolution measures.

Nevertheless, without hampering that necessary discretion, the FSB could develop a series of case studies and 'lessons learned' in order to advise FMIs on how to balance the risks for a participant in resolution against risks to its own balance sheet and eventual risks for its other participants.

Q2. Do you agree with the overall scope of the guidance and the proposed definitions, in particular the services and functions captured in the definition of 'critical FMI services'? Should any of the definitions be amended? If so, please explain.

We agree with the overall scope of the guidance. We would however, seek additional clarification of a few definitions.

- We welcome the recognition of some ancillary services provided by CSDs under the definition of "**critical FMI services**". Indeed, services like triparty collateral management may in certain cases be critical for the functioning of the market.

  We understood, from the industry workshop, that services will be considered critical from the Firms' (G-SIBs') perspective. In which case, there will be an inconsistency with the recovery plans of the FMIs, which are drafted from the FMI's perspective. Such plans define services as critical for the entire market, and not for each specific participant.

  The contractual relationship between the CSD and its participant and the CSD's Terms and Conditions could help understand which services could be continued for a participant in resolution. We believe that uncommitted credit lines should not be considered "critical FMI

services" and the participants should plan to find emergency sources of liquidity, in the corresponding currencies and securities pools to facilitate their settlement in advance, other than through an FMI.

In order to avoid exposing the CSD to increased risk, credit lines are usually reduced before a participant enters Resolution. **We believe that uncommitted secured credit lines provided by CSDs with a banking license should not be considered "critical FMI services".** Euroclear Bank's Securities Lending and Borrowing programme is also dependent on a credit line at the time of each borrowing. Therefore, similarly to uncommitted credit, such a programme should not be deemed critical and should not be automatically available to a participant in resolution. CSD participants should plan in advance to pre-fund themselves and to find alternative sources of liquidity and securities for their settlement, other than through an FMI. **However, money transfer and access to cash accounts at an FMI might be deemed critical and could fall under the FSB guidance.**

When a service is deemed critical and committed, the CSD might rely for its provision on the cooperation of external parties, correspondent banks, paying agents etc. These parties are neither FMIs, nor, FMI intermediaries. **And we do not believe it is appropriate to include these institutions under the definition of an "FMI" or a "provider of critical FMI services". Despite that, the market counts on their collaboration with the FMIs in order to provide the continuity of critical services to CSD Participants. Hence, we would expect them to treat their clients similarly to the way in which FMIs treat their participant in resolution.**

- The definition of the **"provider of critical FMI services**" mentions FMIs, their intermediaries and custodians. The reasons for mentioning custodians, in addition to FMI intermediaries, are not explained in the consultation. We believe that custodians should not be taken by FMIs, given the fundamental difference in their risk profile, governance and business purpose. However, we suggest that consideration should be given as to whether custodians and other relevant institutions should be treating their clients in resolution similarly to the way in which FMIs treat their participants in resolution.

- We also support ECSDA's view that there might be benefits in aligning the definitions of infrastructures and intermediaries with the CPMI-IOSCO Principles for Financial Market Infrastructures (PFMI) in order to more clearly distinguish their roles.

Q3. What are your views on the proposal in sub-section 1.1 of the consultative document that providers of critical FMI services clearly set out in their rulebooks or contractual arrangements the rights, obligations and applicable procedures in the event of an FMI participant entering into resolution?

We agree that the rights and obligations of CSD participants in resolution, as well as the applicable procedures, should be clearly set out in the CSDs' rulebooks, participation agreements or in general terms and conditions. They should already include the description of risk-based participation requirements and procedures for monitoring compliance with these requirements by participants on an ongoing basis.

Q4. Sub-section 1.1 of the consultative document proposes that the exercise by the provider of critical FMI services of any right of termination or suspension of continued access to critical FMI services arising during resolution of an FMI participant be subject to appropriate procedures and adequate safeguards. What are your views on those procedures and safeguards? In your answer, distinguish where relevant depending on whether the firm that enters resolution continues or fails to meet its payment, delivery and collateral provision obligations to the FMI or FMI intermediary.

Prior to the entry into resolution, the participant should engage with the CSD providing all the necessary information with regard to its evolving situation. The entry into resolution should not undermine its legal or other capacities to the extent that would require the freezing of the access. **The access to the FMI's system should be maintained as long as, the Firm satisfies the membership criteria (which should be satisfied at all times**). The participant should provide the CSD with the required information on an ongoing basis and notify the CSD in writing of any material event or changes which might affect the participant's ability to comply with the following criteria:

- adequate financial resources
- operational and technological capacity
- legal capacity
- internal control and risk management
- ethical standards.

Even before the entry into resolution, the participant would be subject to increased scrutiny. And if it did not meet the FMI's admission criteria, that participant might not be able to keep its participation, unless the situation improved rapidly.

Finally, as said in the consultation, the information sharing between the authorities (proposed in Section 3 of the guidance) will help to facilitate cooperation between the CSDs and the relevant authorities. We suggest that the FSB guidance stresses more explicitly the importance for relevant information to be shared with the relevant CSDs in a timely way, including where the CSD participant is established in a different jurisdiction from that of the CSD.

We also call upon the authorities to ensure consistency across different domestic legal frameworks. **Without timely information sharing and an equivalent legal basis, there is a risk that the situation of a CSD participant could be mistaken for a default, and lead to an outcome not expected by the resolution authorities.**

Q5. Sub-section 1.2 of the consultative document proposes that the general rights, arrangements and applicable procedures of a provider of critical FMI services that would be triggered by entry into resolution of an FMI participant, its parent or affiliate, should be the same irrespective of whether the firm entering into resolution is a domestic or foreign FMI participant. What safeguards should be considered and what measures are needed to ensure a consistent approach is taken across providers of critical FMI services to these safeguards?

We share the view of the Financial Stability Board that there should be no difference in the treatment of foreign and domestic FMI Participants. In the EU, this Principle is highlighted in the CSD Regulation (Regulation 909/2014). Indeed, the specific legislation relating to resolution (EU Bank Recovery and Resolution Directive (Directive 2014/59/EU)), as transposed in some Member-

States, does not mention how the FMIs should treat non-domestic European and, even less, non-European participants.

We would appreciate the establishment of a clear legal basis to ensure the recognition of the resolution measures taken by foreign authorities.

Finally, during the industry workshop, it was specified that the guidance primarily targets the G-SIB FMI's participants. Yet, EU CSDs (under the CSD Regulation) must not discriminate between participants based on their size or systemic importance.

Q6. What are your views on the proposal in sub-section 1.4 of the consultative document that providers of critical FMI services should engage with their participants regarding the range of risk management actions and requirements they would anticipate taking in response to the resolution of an FMI participant? Does this strike the right balance between the objectives of orderly resolution and the FMI or FMI intermediary's prudent risk management?

Sub-sections 1.1. and 1.4. refer to the need for a fast-track application by an FMI for a Firm's successor or transferee (including a bridge institution) in order to deliver continuity of access. However, as required by the CSD's legal framework, unless the Firm's successor or transferee is already a participant of the relevant CSD, it is not possible for it to benefit automatically from that CSD's services as a full right participant without going through the mandatory acceptance process during the resolution week-end.

The EU CSD Regulation, and relevant local legal frameworks aim to ensure the secure and efficient functioning of the CSDs themselves, their participants and the markets they serve. CSDs have to assess if a new participant presents legal, compliance or other risks and whether it is able to connect to the IT systems of the FMI. Therefore, **while CSDs can prioritise the acceptance of the successor of the Firm, they cannot commit on the outcome. If the risks are too high, the CSD might not be able to accept the Firm's successor or transferee as a participant in the system.** For example, if the institution or its management are unknown, or are based in a country presenting higher legal risks, or cannot provide all necessary documentation. Equally, if the resolution measure would require an IT change during the resolution week-end, it would involve significant risks (which might make such a change impractical in the time required).

However, there are two possible solutions when the successor or transferee needs access to the Firm's accounts promptly, if they are not frozen:

- First, it could instruct the CSD to transfer the positions to a different legal entity which already has a participation in the FMI. However, this is not an optimal option, if the Firm holds a large number of positions (segregated accounts) at the level of the CSD: the transfer may involve important operational risks and require technical preparation.
- Secondly, the Firm could give a Power of Attorney to operate the account to a different legal entity, including its successor or transferee. This would not require the CSD to accept a new participant and, hence, to go through a time-consuming acceptance scrutiny.

Q7. Do you agree with the proposal in section 2 of the consultative document that firms should be required to develop contingency plans to facilitate continuity of access in both the lead-up to, and upon entry into, resolution? Does the consultative document address all aspects of the information and analysis that may be required for such contingency plans?

The section is for the attention of an FMI's participants. We, therefore, do not have any comments to provide.

Q8. Are there any aspects of the proposed guidance that should apply differently according to whether access to a critical FMI service is provided directly by an FMI or custodian, or indirectly by an FMI intermediary? If so, please describe with reference to the particular section(s) of the proposed guidance, and include your views on how that section(s) should differ.

No comments.

Q9. Does the consultative document identify all relevant requirements and pre-conditions that a firm may need to meet to support continuity of access in both the lead-up to, and upon, resolution? What other conditions or requirements, if any, should be addressed?

We believe that in a cross-border environment the ability of the authorities to cooperate is one of the conditions to preserve the access to the CSD. The collaboration between national authorities and the alignment of global regulation are fundamental to the successful establishment of infrastructure connections between the markets.

Q10. Does the consultative document identify appropriate methods for providing the information and communication necessary for key decision making during the resolution of an FMI participant? Are there additional safeguards that could be put in place that would ensure adequate level of transparency in the lead-up to, and upon resolution?

No comments.

We remain at the entire disposal of the Financial Stability Board.

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