ECSDA
European Central Securities Depositories Association

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ECSDA Comments on the Assessment Methodology for the FSB Key Attributes

Two weeks ago, ECSDA responded to the Financial Stability Board consultation on the Application of the *Key Attributes of Effective Resolution Regimes* ("Key Attributes") to financial market infrastructures (FMIs), stressing the fact that not all elements of the Key Attributes are relevant for Central Securities Depositories (CSDs). Once more, the present response focuses on the aspects of the FSB report that are relevant from a CSD perspective. Given the ongoing work on the FMI-specific annex to the Key Attributes and the various references to this document in the present consultative paper, our comments can only be preliminary and should be read in conjunction with the ECSDA response to the parallel consultation on the FMI annex[1].

Response to the consultation questions

1. ***Do the Essential Criteria (EC) proposed in the draft methodology focus on relevant and assessable features of resolution regimes that need to be in place to comply with the Key Attributes? What, if any, additional features of resolution regimes, in particular in relation to their sector-specific aspects, should be covered in EC?***

In general, we welcome the fact that ECs and ENs include guidance on sector specific aspects, in particular regarding FMIs and, where appropriate, references to the relevant complementary documents (CPSS-IOSCO Principles for FMIs as well as the Annex to the Key Attributes on FMI Resolution). We would like to note however that a clearer distinction between different types of FMIs would be helpful and necessary in a number of instances. Given their very different characteristics and risk profiles it is necessary to clearly distinguish, in particular between CCPs and CSDs and to adapt the respective guidance provided in the ECs and ENs accordingly.

We would also like to stress that a distinction between FMIs that take credit and liquidity risk and those that do not (as suggested for instance in Chapter V on sector specific considerations, p.17), will often not be sufficient and appropriate in this regard. While most CSDs do not assume any credit and

[1] See http://www.ecsda.eu/fileadmin/PUBLIC_SITE/Publications/Position_papers/2013_10_15_ECSDA_FSB_Resolution.pdf

liquidity risk, a few CSDs operate with a banking licence and are thus exposed to some credit and liquidity risk. Even these CSDs however are fundamentally different from CCPs, in particular regarding the nature of the risk they face. Where a CSD provides credit, any related exposures are by definition short-term, collateralised and transactional, while CCPs mutualise the risk for a whole market. These fundamental differences are relevant for a number of KAs and should be more explicitly reflected in the assessment methodology. An example would be EN 3.1 (c) which notes that the criteria for non-viability could differ between FMIs that assume credit and liquidity risk and those that do not, without specifying further to what extent such criteria will be different (p.40).

2. ***Do any Key Attributes or relating EC require further explanation or interpretation to promote a consistent assessment and implementation of the Key Attributes across jurisdictions?***

ECSDA welcomes the fact that the assessment methodology leaves the necessary flexibility for national regulators to adapt the relevant KAs to the specific circumstances of their respective jurisdiction. Such flexibility is for instance particularly needed in the choice of applicable resolution tools and trigger points of resolution. We would nevertheless like to note that it is important to ensure that flexibility does not come at the expense of legal certainty. This means that the applicable framework for resolution (e.g. at national level) should define a clear line between the recovery and resolution phases respectively, and that it should result in a level playing field for similar institutions.

In Europe in particular, consistency of implementation is likely to come from the adoption of EU legislation on the resolution of banks and “non-bank” financial institutions. In this context, ECSDA strongly favours the adoption of separate, sector-specific resolution regimes, given the major differences between, for example, insurance firms, asset managers, CCPs and CSDs. We thus welcome the recognition by the FSB that the use of a single set of Key Attributes and a single Assessment Methodology at the international level should not prevent individual jurisdictions from adopting sector-specific resolution regimes, rather than a single resolution regime. We also fully support the ECs under KA1 stating that (1) all SIFIs (i.e., including all CSDs) should be subject to a dedicated resolution regime and not to standard insolvency law, and (2) that the FMI-specific regime should apply to all FMIs, irrespective of their licensing status (e.g. whether or not they have a banking license).

3. ***Does KA 4 regarding set-off, netting, collateralisation and the segregation of assets require additional explanation or interpretation? What should be the appropriate length of the temporary stay of early termination rights provided for in KA 4.3? Should authorities have the power to extend the temporary stay? If so, what additional conditions or safeguards should apply?***

ECSDA welcomes the extensive guidance in KA 4 on FMI specific issues, and believes that the explanations are generally sufficient from a CSD point of view.

4. Is additional guidance needed to help assessors evaluate the relative strengths and weaknesses of resolution regimes in light of the structure of the financial system?

a) Should assessors be required to make a determination as to which firms in a jurisdiction may be systemic in failure prior to carrying out an assessment of the resolution regimes that apply to those firms?

As we expect all CSDs to be considered as systemic for their respective national market, we do not have any comments on this point.

b) Should the presence of a G-SIFI require assessors to give greater weight to compliance with the Key Attributes of the resolution regimes that applies to that G-SIFI?

No comments (although CSDs are systemic on a national level, ECSDA understands that no CSD is currently considered as a G-SIFI).

5. Do the 'preconditions' set out in Section VI of the Introduction cover the relevant elements of a jurisdiction's legal and institutional framework that are necessary for resolution regimes to operate effectively?

Yes.

6. Is the methodology suitable for use in assessments of countries with financial markets at different stages of development? Does the methodology provide sufficient guidance on how it should be applied in a proportionate manner in different country circumstances? Should the methodology apply a higher standard to home or key host jurisdictions of G-SIFIs?

ECSDA generally supports the principle that assessments should be proportionate to the complexity and systemic importance of the firms assessed. Within Europe, ECSDA believes that assessments should be comparable as much as possible, especially in view of European Union legislation on the resolution of non-bank financial institutions, which is expected to turn some of the FSB Key Attributes and Essential Criteria into binding standards.

Regarding the notion of "key host jurisdictions" for FMIs, we note that the definition provided in the report (p.5-6) includes jurisdictions *"where major participants of the FMI are located"*. Whereas we recognise that this criterion can be relevant in assessing the importance of a host jurisdiction, we caution against an excessive interpretation. Indeed, many CSDs have a substantial proportion of non-domestic participants[2], and the resolution of the CSD would not necessarily have a systemic impact in the markets where these participants are located. We would advise to determine such jurisdictions

[2] For details on the number of domestic and non-domestic participants, please refer to the ECSDA online database at http://www.ecsda.eu/database.html

based on the FMI's activity and in line with the criteria for determining the authorities responsible for supervising the FMI.

7. Are there any additional elements that should be covered or elaborated in more detail in the methodology?

ECSDA does not have further suggestions at this stage.

ECSDA thanks the Financial Stability Board for the opportunity to comment on the Key Attributes Assessment Methodology. For any questions on this paper, please contact the ECSDA Secretariat at +32 2 230 99 01 or email alexander.westphal@ecsda.eu.