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From:	Presidency
To:	Working Party on Financial Services and the Banking Union (EMIR/CCP) Financial Services Attachés
Subject:	Drafting Article 24 - Emergency situations

(31) The 2020 market turmoil as a result of the Covid-19 pandemic and the 2022 high prices on energy wholesale markets following Russia's unprovoked and unjustified aggression against Ukraine showed that, while it is essential for competent authorities to cooperate and exchange information to address ensuing risks when events with cross-border impacts emerge, ESMA still lacks the necessary tools to ensure such coordination ~~and a convergent approach at Union level.~~ ESMA should therefore be empowered to act in an emergency situation likely to affect more than one CCP. A CCP can be affected by an emergency situation in many ways, including by volatility in market for the instruments it clears or through its clearing members, trading venues or other entities or operational functions shared between CCPs, where, for example, difficulties in a CCP could have contagion risks for other CCPs. ESMA should ~~therefore~~ be able to convene meetings of the CCP Supervisory Committee, either on its own initiative or upon request, potentially with an enlarged composition to coordinate effectively competent authorities' responses in emergency situations. ESMA should also be able to ~~request ask, by simple request,~~ information from relevant competent authorities regarding market participants which is necessary for ESMA to perform its coordination function in those situations and to be able to issue recommendations to the competent authority. The role of ESMA in emergency situations should be without prejudice to the final responsibility of the CCP's competent authority to take supervisory decisions on the CCP it supervises, including on emergency measures. It is also essential that college members are able to forward the information they receive in an emergency situation to public bodies, including ministries, responsible for the financial stability of their markets.

Article 24

Emergency situations

1. The CCP's competent authority or any other relevant authority shall inform ESMA, the college, the relevant members of the ESCB, ~~the Commission~~ and other relevant authorities without undue delay of any emergency situation relating to a CCP, including all of the following:
- (a) situations or events which impact, or are likely to impact, the prudential or financial soundness or the resilience of CCPs authorised in accordance with Article 14, their clearing members or clients;
 - (b) where a CCP intends to activate its recovery plan pursuant to Article 9 of Regulation (EU) No 2021/23, a competent authority has taken an early intervention measure pursuant to Article 18 of that Regulation or a competent authority has required a total or partial removal of the senior management or board of the CCP pursuant to Article 19 of that Regulation;
 - (c) where there are developments in financial markets, or other markets where the CCP provides clearing services, which may have an adverse effect on market liquidity, the transmission of monetary policy, the smooth operation of payment systems or the stability of the financial system in any of the Member States where the CCP or one of its clearing members are established.

Where information is required to be shared under Articles 9(8), 18(6) or 19(1) of Regulation (EU) 2021/23 and where that information

(a) covers the same information as required to be shared under the first subparagraph of this Article, and

(b) has the same recipients as under the first subparagraph of this Article;

the entity, subject to the obligation to share such information under this Article, shall only be obliged to provide such information under the Regulation (EU) 2021/23.

In an emergency situation, information should be provided and updated without undue delay, and enable the members of the college to analyse the impact of the emergency situation in particular on their clearing members and clients. College members may forward the information to the public bodies responsible for the financial stability of their markets.

2. In case of emergency situations where more than one CCP is likely to be affected, ESMA shall coordinate competent authorities, ~~the~~ resolution authorities ~~ies~~ designated pursuant to Article 3(1) of Regulation (EU) 2021/23 and colleges ~~to build a common in~~ providing responses ~~to~~ such emergency situations ~~and ensure the well functioning sharing of information.~~

3. In ~~an ease of~~ emergency situations ~~s-covered by paragraph 2 of this Article~~, except where a resolution authority is taking or has taken a resolution action in relation to a CCP pursuant to Article 21 of Regulation (EU) No 2021/23, ~~and to coordinate the responses of competent authorities, a ad hoc~~ meetings of the CCP Supervisory Committee to coordinate the responses:

- (a) may be convened by the Chair of the CCP Supervisory Committee;
- (b) shall be convened by the Chair of the CCP Supervisory Committee, upon the request of two members of the CCP Supervisory Committee.

4. Any of the following authorities ~~may~~ shall also be invited to the meeting referred to in the paragraph 3, where relevant, considering the issues to be discussed at the meeting:

- (a) the relevant central banks of issue;
- (b) the relevant competent authorities for the supervision of clearing members, including, where relevant, the ECB in the framework of

the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013;

- (c) the relevant competent authorities for the supervision of trading venues;
- (d) the relevant competent authorities for the supervision of clients where they are known;
- (e) the relevant resolution authorities designated pursuant to Article 3(1) of Regulation (EU) 2021/23~~;~~

(f) any member of the supervisory college of the CCP, that is not already covered by the points (a) to (d).

Where a meeting of the CCP Supervisory Committee is held pursuant to the first subparagraph, the Chair shall inform EBA, EIOPA, the ESRB and the Commission thereof who shall also be invited to participate to that meeting upon their request.

~~**5. ESMA may, by simple request, require authorised CCPs, their clearing members and clients, connected financial market infrastructures and related third parties to whom those CCPs have outsourced operational functions or activities to provide all necessary information to enable ESMA to carry out its coordination function under this Article.**~~

5. ESMA may require relevant competent authorities to provide it with the necessary information to enable it to carry out its coordination function in accordance with this Article.

Where a relevant competent authority has the requested information, it shall forward it to ESMA without undue delay.

Where a relevant competent authority does not have the requested information, it shall require the authorised CCPs, their clearing members or clients, connected financial market infrastructures or related third parties to whom those CCPs have outsourced

operational functions or activities, as relevant and applicable, to provide it with that information and shall forward it to ESMA without undue delay.

Instead of requiring the information referred to in the third subparagraph, the relevant competent authority may allow ESMA to require the information directly from the relevant entity. ESMA shall forward all information received by such entity to the relevant competent authority without undue delay.

6. Without prejudice to the right of the competent authority to adopt any decision it deems necessary, ESMA may, upon the proposal of the CCP Supervisory Committee, issue emergency recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010 addressed to one or more competent authorities recommending them to adopt temporary or permanent supervisory decisions in line with the requirements set out in Article 16 and in Titles IV and V to avoid or mitigate significant adverse effects on the Union financial stability. ESMA may issue emergency recommendations only where more than one authorised CCP is **affected impacted** or where Union-wide events are destabilising cross-border cleared markets