

Framework for the recovery and resolution of central counterparties

2016/0365(COD) - 27/03/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 486 to 42 with 69 abstentions, a legislative resolution on the 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.

As a reminder, the draft Regulation lays down rules and procedures for the recovery and resolution of central counterparties (CCPs) authorised in accordance with Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, and rules relating to the arrangements with third countries in the field of recovery and resolution of CCPs.

Parliament's position adopted in first reading following the ordinary legislative procedure amended the Commission's proposal as follows:

Resolution authorities and colleges

Member States where a CCP is established shall and Member States where no CCP is established may designate one resolution authority that is empowered to apply the resolution tools and exercise the resolution powers as set out in the Regulation.

Where a resolution authority designated is entrusted with other functions, the effective operational independence of that resolution shall be ensured.

Competent authorities and resolution authorities and the European Securities and Markets Authority (ESMA) shall cooperate closely in the preparation, planning and, to the extent possible, in the application of resolution decisions.

ESMA shall assess CCP recovery and resolution arrangements across the Union in terms of their aggregate effect on Union financial stability through regular stress-testing and crisis simulation exercises.

Recovery and resolution planning

CCPs shall draw up and maintain a comprehensive and effective recovery plan providing for measures to be taken in the case of both default and non-default events and combinations of both in order to restore their financial position without any public financial support in order to enable them to continue to provide clearing services.

The plans shall consider the interests of all stakeholders that are likely to be affected by that plan and ensure that clearing members do not have unlimited exposures toward the CCP. They should ensure that clients of non-defaulting clearing members are appropriately compensated if their assets are used during the recovery process.

Recovery tools shall allow to address losses from default and non-default events; re-establish a matched book following a default event; address uncovered liquidity shortfalls; and replenish the financial resources of the CCP, including its own funds, to a level sufficient in order for the CCP to meet its obligations and to support the continued and timely operation of the critical functions of the CCP.

Parliament specified the items that shall be included in the recovery plan. These include, among others:

- a summary of the key elements of the plan and a summary of overall recovery capacity;
- a communication and disclosure plan outlining how the CCP intends to manage any potentially negative market reactions while acting in as transparent a manner as possible;
- a comprehensive range of capital, loss allocation and liquidity actions required to maintain or restore the viability and financial position of the CCP;
- appropriate conditions and procedures to ensure the timely implementation of recovery actions, as well as a wide range of recovery options, including an estimation of the timeframe for executing each material aspect of the plan;
- identification of critical functions;
- a detailed description of how recovery planning is integrated into the corporate governance structure of the CCP;
- arrangements and measures to ensure that the CCP has adequate access to contingency funding sources, including potential liquidity sources;
- arrangements and measures: (i) to reduce risk; (ii) to restructure contracts, rights, assets and liabilities; (iii) to restructure business lines; (iv) maintain continuous access to financial markets infrastructures; (v) maintain the continuous functioning of the CCP's operational processes, including infrastructure and IT services.

Recovery plans shall contemplate a range of extreme scenarios, including both system-wide stress events and stress events specific to the CCP, taking into account the potential impact of domestic and cross-border contagion in crises, as well as simultaneous crises in several significant markets.

Resolution plans

The resolution authority of the CCP shall, after consultation with the competent authority and ESMA and in coordination with the resolution college, draw up a resolution plan for each CCP.

These plans shall take into consideration the CCP's failure due to default events; non-default events and broader financial instability or system wide events and shall not assume public financial support. The plans shall clearly distinguish between scenarios based on the circumstances.

The resolution authority shall have the power to modify or amend the operating rules of the CCP, including as regards its terms of participation, where such changes are necessary to remove impediments to resolvability.

Early intervention

Where a CCP infringes or is likely to infringe the prudential requirements of Regulation (EU) No 648/2012, or poses a risk to the financial stability of the global financial system, the Union financial system, or parts of either thereof, the competent authority would have specific powers to intervene in the activities of CCPs before they reach the default waterfall.

Early intervention rights:

- shall include the power to restrict or prohibit any remuneration of equity and instruments treated as equity to the fullest extent possible without triggering outright default, including dividend payments and buybacks by the CCP and
- may restrict, prohibit or freeze any payments of variable remuneration as per Directive 2013/36/EU and discretionary pension benefits or severance packages to management.

Administrative penalties and other administrative measures

Without prejudice to the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures applicable where the provisions of this Regulation have not been complied with.

The powers to impose administrative penalties provided for in this Regulation shall be attributed to resolution authorities or, where different, to competent authorities, depending on the type of infringement.

Member States shall ensure that resolution authorities and competent authorities publish on their official website at least any administrative penalties imposed by them for infringing the provisions laid down in this Regulation where such penalties have not been the subject of an appeal or where the right of appeal has been exhausted.