

Framework for the recovery and resolution of central counterparties

2016/0365(COD) - 20/11/2020 - Council position

The Council adopted its position at first reading in view of the adoption of Regulation of the European Union and of the Council on a framework for the recovery and resolution of central counterparties (CCPs).

The Council's position lays down rules and procedures relating to the recovery and resolution of central counterparties authorised in accordance with Regulation (EU) No 648/2012, and rules relating to the arrangements with third countries in the field of recovery and resolution of CCPs.

The objective of this recovery and resolution framework is to:

- ensure that CCPs set out measures to recover from financial distress, to maintain the critical functions of a CCP which is failing or likely to fail while winding up the remaining activities through normal insolvency proceedings;
- preserve financial stability while avoiding a significant adverse effect on the financial system and its ability to serve the real economy and minimising the cost of a CCP failure to taxpayers.

Authorities, resolution colleges and procedures

Each Member State would designate one or more resolution authorities that would be empowered to use the resolution tools and exercise the resolution powers as laid down in the Regulation. Resolution authorities should have the expertise, resources and operational capacity to apply resolution measures and to exercise their powers, effective operational independence should be ensured between the supervisory and resolution functions.

Each Member State would also designate a single ministry which is responsible for exercising the functions entrusted to the competent ministry pursuant to this Regulation.

The resolution authority of the CCP would establish, manage and chair a resolution college to carry out the tasks provided for in the Regulation, and ensure cooperation and coordination with the authorities that are members of the resolution college and, where appropriate, cooperation with third-country competent authorities and resolution authorities.

The authorities of Member States whose financial stability could be impacted by the failure of the CCP should be able to participate in the resolution college based on an assessment, but without taking part in the vote.

Resolution authorities, competent authorities and the European Securities and Markets Authority (ESMA) should cooperate and exchange all information relevant to the exercise of their tasks. Decision-making should take account of several general principles including: (i) the need to avoid as far as possible the use of extraordinary public financial support; (ii) balance the interests of different stakeholders of the CCP; (iii) ensure transparency towards and involvement of the authorities of the Member States where the proposed decision or action could have a impact on for financial stability.

Recovery and resolution planning

CCPs would be obliged to draw up and maintain recovery plans providing for measures to be taken in the case of both default and non-default events and combinations of both, to restore their financial soundness. The proposed regulation sets out both the minimum content of CCP recovery plans and the requirements that such recovery plans have to comply with.

To ensure proper incentives for prudent risk management, a CCP must use an additional amount of its pre-funded dedicated own resources following a default or a non-default event. That amount shall not be lower than 10% or higher than 25% of the risk-based capital requirements calculated in accordance with the European Market Infrastructure Regulation.

CCPs would be obliged to submit their recovery plans to the competent authority, which will in turn transmit each plan to the supervisory college and to the resolution authority without undue delay.

The resolution authority would examine the recovery plan in order to identify any measures which may adversely impact the resolvability of the CCP.

The competent authority would review the recovery plan and assess the extent to which it satisfies the requirements laid down by the Regulation in a coordination procedure with the supervisory college and with a view to reaching a joint decision. If a simple majority of the voting members disagree with the competent authority's proposal for a joint decision, the matter may be referred to ESMA for specific issues. ESMA may also, at the request of a competent authority within the supervisory college, assist the supervisory college in reaching a joint decision.

Resolution plan

The resolution authority of the CCP would, after consultation with the competent authority and in coordination with the resolution college, draw up a resolution plan for the CCP. The resolution plan would provide for the resolution actions that the resolution authority may take in cases where the CCP meets the conditions for resolution. It should not assume either extraordinary public financial support, or central bank emergency liquidity assistance.

The Council position sets out the minimum content of the resolution plan and provides a mandate for ESMA to develop draft regulatory technical standards further specifying the contents of the resolution plan. ESMA could also, at the request of a resolution authority, assist the resolution college in reaching a joint decision.

Early intervention

Competent authorities should be granted early intervention powers to avoid or minimise adverse effects on financial stability or on the interests of various stakeholders that could result from implementation of certain measures by the CCP.

Early intervention powers should include: (i) the power to restrict or prohibit any remuneration of equity and instruments treated as equity, including dividend payments and buybacks by the CCP, to the fullest extent possible without triggering an event of default; (ii) the power to restrict, prohibit or freeze any payments of variable remuneration as defined by the CCP's remuneration policy, discretionary pension benefits or severance packages to senior management.

Resolution

Where a CCP meets the conditions for resolution, the Regulation would put at the disposal of the resolution authority of the CCP a harmonised set of resolution tools and powers.

The prime objectives of resolution should be to ensure the continuity of the CCP's critical functions, to ensure the continuity of links with other FMIs, to avoid significant adverse effects on the financial system in the European Union or in one or more of its Member States, and to protect public funds.

Affected shareholders, clearing members and other creditors of the CCP should not incur losses greater than those which they would have incurred if the resolution authority had not taken resolution action in relation to the CCP and they had instead been subject to all applicable outstanding obligations pursuant to the CCP's default rules and the CCP had been wound up in normal insolvency proceedings.

Relations with third countries

ESMA should issue guidance on the relevant content of cooperation agreements to be concluded with third country authorities. These cooperation agreements should ensure effective planning, decision-making and coordination for internationally active CCPs.