

Framework for the recovery and resolution of central counterparties

2016/0365(COD) - 28/11/2016 - Legislative proposal

PURPOSE: to safeguard financial stability by establishing a framework for the recovery and resolution of central counterparties.

LEGISLATIVE ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: a central counterparty (CCP) acts as the intermediary to both sides of a transaction in a financial instrument, including bonds, equities, derivatives and commodities (such as agricultural products, oil and natural gas). The importance of CCPs has nearly doubled since the post-crisis G20 commitment to clear standardised over-the-counter (OTC) derivatives through CCPs. This obligation is implemented in the EU by the [Regulation on OTC derivatives, central counterparties and trade repositories](#) ('EMIR'). That Regulation also sets out comprehensive prudential requirements for CCPs, as well as requirements regarding the operations and oversight of CCPs. However, **no harmonised EU rules exist** for the unlikely situations in which CCPs would face severe distress – beyond that envisaged by EMIR – or outright failure. **Recovery and resolution measures are required** in order to safeguard financial stability, ensure the continuity of critical functions and protect taxpayers. The tools currently available to Member State authorities are inadequate to deal with CCPs that face significant stress.

In December 2013 the European Parliament adopted [a resolution](#) calling on the Commission to propose appropriate EU measures to ensure that the impacts of a potential failure of key financial institutions, most notably CCPs, could be mitigated.

IMPACT ASSESSMENT: this concluded that EU action is necessary given the cross-border nature of CCPs' business, which links multiple financial actors, counterparties and clients throughout the single market.

CONTENT: the draft regulation lays down rules and procedures relating to the recovery and resolution of CCPs authorised in accordance with EMIR Regulation. It also lays down rules relating to the arrangements with third countries in the field of recovery and resolution of CCPs.

It sets out provisions **comparable to those in the EMIR framework** applicable to banks and investment firms to facilitate orderly recovery and resolution **but adapts them** to the specific features of CCPs.

Objectives: these are:

- first, to **seek the orderly recovery of CCPs** in various scenarios of financial distress through the implementation of recovery plans that are agreed between the CCP and its clearing members;
- if this were to be insufficient, authorities should take **swift action in order to safeguard financial stability**.

Set-up of resolution authorities and resolution colleges: resolution authorities for CCPs shall be set up and equipped with a harmonised set of powers to undertake all the relevant preparatory and resolution actions. Furthermore, CCPs' resolution authorities are required to set up **resolution colleges** for each CCP

containing all the relevant authorities including the European Securities and Markets Authority (ESMA) and the European banking Authority (EBA).

Preparation – recovery plans: CCPs are required to prepare recovery plans to overcome any form of financial distress which would exceed their default management resources and other requirements under EMIR.

Preparation – resolution plans and resolvability assessments: resolution authorities are required to prepare **resolution plans for how CCPs would be restructured** and their critical functions kept alive in the event of their failure. The plans should **outline the resolution powers and tools** which authorities would employ in case a CCP meets the conditions for resolution.

Early intervention: this will ensure that financial difficulties are addressed as soon as they arise and problems can be averted. Competent authorities are granted **specific powers to intervene in the operations of CCPs where their viability is at risk** but before they reach the point of failure.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.