










Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) Regulation 2016/0365(COD)</p>	<p>Awaiting Council 1st reading position / budgetary conciliation convocation</p> <p>08/02/2018 Decision to enter into interinstitutional negotiations confirmed by plenary (Rule 69c)</p>
<p>Framework for the recovery and resolution of central counterparties</p> <p>Amending Regulation (EU) No 1095/2010 2009/0144(COD)</p> <p>Amending Regulation (EU) No 648/2012 2010/0250(COD)</p> <p>Amending Regulation (EU) 2015/2365 2014/0017(COD)</p> <p>Subject</p> <p>2.50.03 Securities and financial markets, stock exchange, CIUTS, investments</p> <p>2.50.08 Financial services, financial reporting and auditing</p> <p>2.50.10 Financial supervision</p> <p>Legislative priorities</p> <p>Joint Declaration 2018</p> <p>Joint Declaration 2017</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Economic and Monetary Affairs		15/12/2016
		 WINTER Babette	15/12/2016
		 SWINBURNE Kay	
		Shadow rapporteur	
		 HÜBNER Danuta Maria	
	 NAGTEGAAL Caroline		
	 VIEGAS Miguel		
	 SCOTT CATO Molly		
	Committee for opinion	Rapporteur for opinion	Appointed
	 Industry, Research and Energy	The committee decided not to give an opinion.	
	 Legal Affairs	The committee decided not to give an opinion.	
Council of the European Union			
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	DOMBROVSKIS Valdis	
European Economic and Social Committee			

Key events

28/11/2016	Legislative proposal published	COM(2016)0856	Summary
13/02/2017	Committee referral announced in Parliament, 1st reading/single reading		
24/01/2018	Vote in committee, 1st reading/single reading		
24/01/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
31/01/2018	Committee report tabled for plenary, 1st reading/single reading	A8-0015/2018	Summary
27/03/2019	Decision by Parliament, 1st reading/single reading	T8-0300/2019	Summary

Technical information

Procedure reference	2016/0365(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation (EU) No 1095/2010 2009/0144(COD) Amending Regulation (EU) No 648/2012 2010/0250(COD) Amending Regulation (EU) 2015/2365 2014/0017(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114
Modified legal basis	Rules of Procedure EP 150
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Awaiting Council 1st reading position / budgetary conciliation convocation
Committee dossier	ECON/8/08609

Documentation gateway

Legislative proposal	COM(2016)0856	28/11/2016	EC	Summary
Document attached to the procedure	SWD(2016)0368	28/11/2016	EC	
Document attached to the procedure	SWD(2016)0369	28/11/2016	EC	
European Central Bank: opinion, guideline, report	CON/2017/0038 OJ C 372 01.11.2017, p. 0006	20/09/2017	ECB	Summary
Committee draft report	PE610.797	25/09/2017	EP	
Amendments tabled in committee	PE613.281	07/11/2017	EP	
Amendments tabled in committee	PE613.302	07/11/2017	EP	
Committee report tabled for plenary, 1st reading/single reading	A8-0015/2018	31/01/2018	EP	Summary
Text adopted by Parliament, 1st reading/single reading	T8-0300/2019	27/03/2019	EP	Summary

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.

2016/0365(COD) - 20/09/2017 European Central Bank: opinion, guideline, report

OPINION of the European Central Bank on a 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.

The ECB supported the Commission's initiative and endorsed the scope of the proposed regulation as regards the mandates and powers of the resolution authorities, central counterparty recovery and resolution plans and resolvability assessments, early intervention measures, resolution triggers, resolution tools and powers, including government stabilisation tools and third country provisions. It also agreed with the main thrust of the proposed regulation.

The ECB believed, however, that the proposed regulation could be improved in four areas:

(1) **Need to minimise adverse contagion to CCP participants and to the wider financial system:** the ECB considered that clearing participants must be able to estimate reliably and manage their potential exposures under the proposed regulation. The ECB recommended that the proposed regulation give priority to clearly measurable loss allocation tools in recovery by providing greater ex ante transparency regarding resolution authorities' general approaches and decision-making processes when using their discretion in key areas of resolution.

(2) **Ensuring the continuity of CCPs' critical functions without incurring taxpayer losses:** the ECB recommended that robust arrangements to ensure the availability of adequate private sector funds, to fully allocate financial losses in resolution and to replenish CCPs' financial resources are therefore crucial. Conversely, any potential public sector support should only be considered as an absolute last resort and as a temporary measure, to avoid moral hazard and set appropriate ex ante risk management incentives.

The ECB therefore suggested strengthening the safeguard measures provided for in the Regulation.

(3) **Horizontal cooperation to ensure the consistency of the individual devices recovery and resolution of CCPs:** the ECB considered that credible recovery and resolution planning appropriate to safeguarding Union financial stability might not be achievable by focusing solely on individual CCPs on a standalone basis, but should be coordinated across Union CCPs.

Against this background, the ECB considered that the European Securities and Markets Authority (ESMA) should be entrusted with developing a holistic perspective on the ability of the Union central clearing landscape to withstand potential system-wide market events going beyond extreme but plausible conditions and involving both recovery and resolution scenarios. In performing this task, ESMA should cooperate closely with the ESCB, including the ECB when performing its prudential supervision tasks, and the European Banking Authority (EBA), given the significant implications of CCP recovery and resolution for central banks in their roles as central banks of issue and overseers as well as for banking supervisors.

(4) Compliance with international standards to ensure coherence of individual recovery and resolution plans: the ECB suggested enhancing the proposed regulation by better aligning the content of recovery and resolution plans and resolvability assessments for Union CCPs with what has been agreed and/or is under development at international level.

The ECB agreed that targeted modifications may be necessary to take into account the new role of the CCP Executive Session in colleges under the [EMIR Regulation](#) and subsequently in resolution colleges. Moreover, it fully supported the approach that during the finalisation of the proposed regulation, the Commission, the Council and the European Parliament carefully assess the potential role of the CCP Executive Session in promoting the consistency and effective interaction of recovery and resolution plans across CCPs, and in monitoring and mitigating their aggregate risk implications for financial stability in the Union.

On a more specific level, the ECB made recommendations that include, among others:

- Central banks in recovery and resolution: central banks should have a prominent role in both the design and execution of CCP recovery and resolution strategies.
- EMIR colleges, resolution colleges and the ESMA resolution committee: the ECB recommended that the regulatory technical standards specifying the functioning of resolution colleges should be developed in close cooperation with the ESCB, including the ECB when performing its prudential supervision tasks, and the EBA.
- Recovery plans: the ECB considered that the key objective of recovery planning should be specified expressly in terms of ensuring the availability of a set of recovery tools that is comprehensive and effective. The content of recovery plans under the proposed regulation requires more detailed specification. The ECB recommended clarifying that the resolution authority's review may take place not only in the context of the initial approval of the recovery plan, but also at a later stage, when the resolution authority conducts or updates its assessment of the CCP's resolvability.
- Resolution planning: the ECB considered that the resolution plans should further differentiate the failure scenarios not related to a clearing member's default.
- Resolvability: the ECB considered that the technical aspects to be considered by the resolution authority when assessing the resolvability of a CCP should be set out in the regulatory technical standards and not in an annex to the proposed regulation. These regulatory technical standards should be developed in close cooperation with the ESCB, including the ECB when performing its prudential supervision tasks, and the EBA.

2016/0365(COD) - 31/01/2018 Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the joint report by the Jakob von WEIZSÄCKER (S&D, DE) and Kay SWINBURNE (ECR, UK) 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 \(EU\) No 648/2012](#) of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Resolution authorities and colleges: Member States where a CCP is established shall and Member States may designate one resolution authority that is empowered to apply the resolution tools and exercise the resolution powers as set out in this 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 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.

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.

Members 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;
- arrangements and measures to reduce risk.

Such plans should contemplate an appropriate range of scenarios envisaging both systemic stress and stress specific to the CCP. The scenarios should contemplate situations of stress that would be more extreme than those used for the purposes of regular stress testing, while remaining plausible, such as the failure of more than two clearing members to which the CCP has the largest exposures and one or several other CCPs.

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 it 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.

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.

Parliaments position adopted in first reading following the ordinary legislative procedure amended the Commissions 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.

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- 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

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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.

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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.