

## **RECOVERY & RESOLUTION (FOR NON BANKS)**

**Reference Text:** FSB, CPSS-IOSCO consultations, future European legislation

Links:

[http://www.financialstabilityboard.org/publications/r\\_111104cc.pdf](http://www.financialstabilityboard.org/publications/r_111104cc.pdf)

[http://www.financialstabilityboard.org/publications/r\\_130812a.htm](http://www.financialstabilityboard.org/publications/r_130812a.htm)

<http://www.bis.org/publ/cpss101a.pdf>

<http://www.bis.org/publ/cpss103.pdf>

<http://www.bis.org/publ/cpss109.pdf>

[http://ec.europa.eu/internal\\_market/consultations/2012/nonbanks/consultation-document\\_en.pdf](http://ec.europa.eu/internal_market/consultations/2012/nonbanks/consultation-document_en.pdf)

<http://www.bis.org/cpmi/publ/d121.pdf>

[http://www.financialstabilityboard.org/wp-content/uploads/r\\_141015.pdf](http://www.financialstabilityboard.org/wp-content/uploads/r_141015.pdf)

**Dates of application: depending on the body**

### **Presentation**

Last financial crisis have shown that the default of a participant if only it is a big player may lead to severe systemic disruptions. During the G20 (2011 Cannes), the Financial Stability Board (FSB) has been asked to work on measures that could be undertaken to handle the resolution process of a financial institution. In November 2011, the G20 endorsed the « *Key Attributes of Effective Resolution Regimes for Financial Institutions* » issued by the FSB.

Some of these entities considered as systemic like Financial Market Infrastructures (Central Counterparties – CCP-, Central Depositories – CSD-, Settlement Systems – SSS, Payment Systems or Trade Repositories) play an essential role in the global economy so that their default could not end up just through a bankruptcy/insolvency process since those regimes do not have the preservation of financial stability as an objective but are rather focused on the creditors.

For such entities, man need to have in place a legislation which allows them to maintain their critical services despite everything; this is the purpose of these Recovery & Resolution plans. This is will be more significantly needed with the entry into force of the first clearing obligations coming from legislation on OTC derivatives, another commitment of the G20. EMIR (the European regulation on OTC derivatives) foresees indeed that a clearing obligation of a specific product may be decided as of there exists at least one CCP agreed under EMIR and ready to clear the product.

If the recovery phase consists for the entity to take measures through the use of dedicated tools, when the entity is under a resolution process (the step further) it has been taken over by the resolution authority (including national competent authorities). Such an authority may be allowed to use extraordinary measures (even outside the common law).

Recovery and of course Resolution are linked to period in the life of an entity where it can not anymore face consequences of major difficulties even through a Business Continuity Plan. At this stage most of the time financial losses are involved that must be covered to let the entity maintain its services. The aim of most of the recovery/resolution tools is to allocate those losses either to participants or to shareholders rather than exposing taxpayers to loss. For example, in the case of a FMI, the allocation would depend on the origin of the difficulty ; should it be due to the default of a member then tools will concern others members ; if not losses will have to be covered by the FMI itself and its shareholders.

It has to be noted that the European Union has already worked on this topic of Recovery and Resolution where entities are banks considered as systemic ones.

### Latest News

FSB (on the resolution of FMIs) and CPMI/IOSCO (on recovery of FMIs) have both published their recommendations on the 15<sup>th</sup> of October.

The European Commission has published for information a roadmap 2015 related to Recovery & Resolution for CCPs in which is announced that an impact assessment is currently being developed built among others on the answers it received on its 2012 consultation and outcomes of experts groups.

The Commission has postponed the publication of its text (previously foreseen in November). [The text is now expected for beginning of February 2016.](#)

### Main passed steps

In June 2012, CPSS and IOSCO published a first consultation on the « *Recovery and Resolution of Financial Market Infrastructures* », and in August 2013 an added document detailing recovery tools than could be used by a FMI. These two consultations are in line with the *Key Attributes* du FSB as well as with the « *Principles for Financial Market Infrastructures* » issued in April 2012 by CPSS IOSCO.

Again in August 2013 (same day) the FSB issue its own consultation aiming at reinforcing/completing its *Key Attributes* for FMIs or Assurance companies and also in the prism of the client assets protection, the « *Application of the Key Attributes of Effective Resolution Regimes to Non-Bank Financial Institutions* » which despite its name concerns also credit institutions.

At the European level, work started since 2010 and, after having worked on Recovery and Resolution plans for credit institutions and investment firms, the Commission has in November 2012 published a « *Consultation on a possible recovery and resolution framework for financial institutions other than banks* », and in October 2013, a « *Discussion Paper on CCP recovery and resolution* » (which is a not a public consultation); the same type of paper is foreseen for CSDs.

To be noted: until now the European approach was to make a distinction between banks and non banks what posed a dilemma for CCPs that as LCH.Clearnet SA or Eurex have a bank status and would have been submitted to the bank regime rather than the FMI's one. Last document shows that such approach is evolving.

At the end of 2013, it was not less than half a dozen of consultations that have been issued between 2012 and 2013.

### Next steps

February 2016?	Adoption by the college of commissioners of a text
Mid/end 2016	Outcomes of the Work plan (BCBS, CPMI, FSB, IOSCO) on CCPs resilience, Recovery & Resolution and interdependencies

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