

RECOVERY & RESOLUTION (FOR NON BANKS)

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

Links:

FSB

<http://www.fsb.org/2017/02/fsb-consults-on-guidance-for-ccp-resolution-and-resolution-planning/>
http://www.financialstabilityboard.org/publications/r_111104cc.pdf
http://www.financialstabilityboard.org/publications/r_130812a.htm
http://www.financialstabilityboard.org/wp-content/uploads/r_141015.pdf
<http://www.fsb.org/2017/07/guidance-on-central-counterparty-resolution-and-resolution-planning-overview-of-responses-to-the-public-consultation/>

IOSCO

<http://www.bis.org/publ/cpss101a.pdf>
<http://www.bis.org/publ/cpss103.pdf>
<http://www.bis.org/publ/cpss109.pdf>
<http://www.bis.org/cpmi/publ/d121.pdf>

EU

http://eur-lex.europa.eu/resource.html?uri=cellar:b17255a7-b550-11e6-9e3c-01aa75ed71a1.0001.02/DOC_1&format=PDF
http://eur-lex.europa.eu/resource.html?uri=cellar:b17255a7-b550-11e6-9e3c-01aa75ed71a1.0001.02/DOC_2&format=PDF
[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0365\(COD\)&I=EN](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0365(COD)&I=EN)
<http://www.europarl.europa.eu/oeil/popups/summary.do?id=1465581&t=d&l=en>
https://www.esma.europa.eu/sites/default/files/library/esma70-151-222_esma_opinion_on_ccp_rr_0.pdf
[http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2017\)599345](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2017)599345)

Others

<http://assets.isda.org/media/85260f13-48/d1ef0ce0-pdf>

Dates of application: depending on the body

Presentation

Last financial crisis has 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 cannot 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 other 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.

For more information please refer the European Parliament (Legislative Observatory); links are indicated in the Link paragraph of this document

Latest News

Dietrich Domanski (Secretary General of the [FSB](#)) has announced at the Eurofi meeting (26/04/2018) that the FSB will deliver to the Buenos Aires G20 summit (scheduled on the 30th of November – 1st of December 2018) an assessment to determine whether there is a need for additional guidance on financial resources to support CCP's resolution and on the treatment of CCP equity in resolution. To be reminded the FSB issued guidance on CCP Resolution and Resolution Planning in July 2017.

On its side [CPMI-IOSCO](#) has issued two guidance documents also in July 2017: a revised version of the "Recovery of financial market infrastructures" (dated October 2014) and its final report "Resilience of central counterparties (CCPs): Further guidance on the PFMI".

These 3 publications completed the key substantive priorities set out in the joint CCP Workplan for 2015.

To be noted, ISDA has issued recommendations on the CCP recovery and resolution, framework (see the Link §)

On the 28th of November 2016 the [European Commission](#) has issued a draft regulation on a framework for the recovery and resolution of CCPs. The main points of this proposal are the requirement for recovery and resolution plans, the ability for the CCP supervisors to intervene at a sufficiently early stage in a CCP (before the deterioration becomes irreparable), the designation of resolution authorities as well as the definition of tools they can use and finally the cooperation between resolution authorities.

To be noted, the three EU Institutions (the European Parliament, the Council and the European Commission) have committed to agree each year on a number of priority proposals, to which they want to ensure substantial progress. These priority proposals are included in the so-called Joint Declaration on the EU's legislative priorities. [The Recovery and Resolution for CCPs proposal is in the 2017 list as well as in the 2018 list.](#)

- the Council of the EU: after a first compromise proposal (8612/17) on certain elements of the proposed Regulation, the Council has published a second version of a compromise on the 19th of December 2017
- At the European Parliament: awaiting Parliament first reading; the EP took the decision to enter into interinstitutional negotiations (08/02/2018)

ESMA which has issued in April 2017 its comments on the European Commission's proposal (see the Link paragraph) intends according to its workplan for 2018 to consult on different topics in relation with the EC's proposal (for future RTS):

- Content of the resolution plan
- Valuation of the assets, liabilities, rights and obligations of the CCP
- Written arrangements and procedures for the functioning of the resolution college
- Valuation of the No credit worse off

Also in 2018, ESMA will continue its preparatory work on guidelines (one on conditions for entry into resolution of CCPs, one on the content of cross-border cooperation arrangements for CCP resolution)

Some delay may appear since there are divergences of opinion at the European level about the powers ESMA may benefit of.

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.

Also 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.

FSB (on the resolution of FMIs) and CPMI/IOSCO (on recovery of FMIs) have both published their recommendations on the 15th of October 2014.

In August 2016 the FSB issued a discussion note dedicated to CCPs regarding essential aspects of their resolution planning (objectives, strategy, timing, tools,...). The consultation was closed on the 17 of October. Based on the feedbacks received FSB planed to develop proposals for more granular guidance by early 2017 whose aim will be to complete the « *Key attributes of effective resolution regimes for financial institutions* » published in October 2014. It should be noted that this document is not limited to CCPs.

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.

BCBS and CPMI/IOSCO (on recovery of FMIs) have discussed potential acceleration of their work and are aiming to issue policy recommendations for public consultation starting in mid-2016. The Resolution Steering Group of the FSB has also accelerated its part of the work on CCP resolution, and is set to deliver first conclusions around the same time.

On the 9th February 2016, the Commission has announced a delay on the publication of its proposal in order to align with the work on going at the international level.

Next steps

2018 (UE)	EU process following the CE proposal ESMA's consultations
2018 (INT)	IOSCO & FSB to publish their guidance / recommendations

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