

The Weekly Report from Brussels, provided by the European Affairs team at the City of London, provides an update on key developments relating to financial services in the EU.



20 October 2017

Welcome to the Weekly Report from Brussels, prepared by the City of London Corporation European Affairs team.

This week includes:

- **[MEPs discuss the framework for the recovery and resolution of CCPs](#)**
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[MEPs discuss the framework for the recovery and resolution of CCPs](#)

On 19 October, the Economic and Monetary Affairs (ECON) Committee discussed the proposed amendments proposed to the European Commission proposals regarding the framework for the recovery and resolution of central counterparties (CCPs).

Background

In November 2016, the Commission put forward a proposal setting out new rules to ensure that systemic market infrastructures can be managed effectively in the event of a failure. The purpose of the proposal, therefore, was to strengthen the framework for CCPs and clients in both recovery and resolution to address potential crises both ex ante and post event.

The proposal advocated that CCPs draw up recovery plans, including measures to manage financial distress and instances of default, to be reviewed by the supervisor. The Commission also set out a requirement for CCPs to put together resolution plans outlining how CCPs would be restructured and their critical functions maintained in the unlikely event of their failure. The proposal would see these plans reviewed by the relevant resolution authority.

Latest developments

The ECON Committee praised the success of the co-rapporteurs, Kay Swinburne MEP (ECR, UK) and Jakob von Weizsacker MEP (S&D, Germany), despite the “unlikely marriage” of Parliamentary conservatives and socialists. The co-rapporteurs had worked on the basis of a shared objective: to enhance credible protection for taxpayers while making certain that systemic market infrastructure can be either safeguarded or re-established in times of financial stress. Speaking on behalf of the Commission, Patrick Pearson (DG FISMA), echoed the view of the Committee that they had made improvements to the proposals.

Co-rapporteurs’ Summary

Amendments were intended to make recovery plans more binding by requiring that CCPs seek permission from competent authorities to deviate from their initial recovery plans. Further, regarding compensation, it was proposed that this should be offered with due consideration to the shared interests that CCPs, clearing members and clients have in the success of the recovery stage. Compensation should therefore be offered to the benefit of clients and clearing members, but should not be limitless as otherwise there was a risk of removing the CCP’s survival incentive.

Loss absorption had also been addressed. Shareholders were to be prohibited from removing loss absorption capacity and therefore the amendments proposed a prohibition on distributions and bonuses during recovery/resolution.

The legislation is intended to bolster legal certainty and transparency in the global operation of CCPs. Investor protection is paramount and can only be achieved by aligning incentives. If successful, there should be no need to rely on the safety net of recovery/resolution legislation. The file aims to ensure a clear hierarchy for decisions and actions, and is underlined by the principle that no creditor should be worse off.

Mr von Weizsacker highlighted that problems dealing with recovery could arise due to a lack

of fiscal capacity to cover the cost. He therefore advocates the creation of a single resolution fund for CCPs. He opined that whilst it is not “the best imaginable solution”, it is a prerequisite for the move towards a single supervision, recovery and resolution architecture.

Committee comments

The shadow rapporteurs praised the existing work as a basis for discussion and concurred that the next steps were to fine tune the initial Commission proposal. Some concerns surrounded the ‘no creditor worse off’ counterfactual. Brian Hayes MEP (EPP, Ireland) contended that the present phrasing could be clarified further, and the legislation could benefit from being brought closely in line with that of the Financial Stability Board (FSB) in order to ensure global coordination. Cora Van Nieuwenhuizen MEP (ALDE, Netherlands) echoed these concerns and noted that a definition which was too narrow may limit the competent authority to the rulebook. However, a broader definition could make their calculations complex in the scenario of a crisis. Summarising these sentiments, Miguel Viegas MEP (Greens/EFA, Portugal) argued that balance was needed between “rigid rules and procedures and a flexible or discretionary approach”.

Returning to the concept of the proposed resolution fund, Brian Hayes highlighted that this would require huge opportunity costs and the mobilisation of a lot of liquid resources. Patrick Pearson noted that the Commission had considered the possibility of a resolution fund in their impact assessment and decided not to advance with this as it would require clearing members to commit to contributing to a third pool for default funds of the a CCP. He did, however, welcome further discussions about fiscal responsibility.

Cora Van Nieuwenhuizen added that mentioning the protection of public funds as both a key objective and resolution tool risked creating a moral hazard and proposed to address this as a shadow rapporteur.

Supervisory architecture

Although changes to existing supervisory architecture associated with the European Market Infrastructure Regulation (EMIR) and the European Supervisory Authorities (ESAs) were not the central focus of the file under discussion, many Committee members took the opportunity to comment on its potential impact.

Jakob von Weizsacker described the existing College of Regulators approach for global CCPs as “untenable” and a “fair weather arrangement” made more complex by the role of the

European Central Bank (ECB). He therefore advocated that there be single supervision in addition to a single recovery/resolution system. By contrast, Kay Swinburne pointed out that the existing system has worked to make EMIR a “global gold standard” and created a risk-mutualisation model that was not designed pre-financial crisis.

Calls were made by the co-rapporteurs, and their shadows, to ensure that the more political elements of the EMIR review did not hamper the progression of the recovery/resolution framework. However, Patrick Pearson commented that the sequencing of discussions is important, and that he was in favour of “starting at the beginning” by agreeing on single supervision. Discussions on single resolution, he said, should follow thereafter with consideration also to be given to the notion of single financing.

Next Steps

The deadline for amendments to the file is 25 October, and consideration of said amendments will take place by 20 November. It is expected that the ECON Committee will vote on their approval in January 2018.

European Council Summit

The European Council convened this week in Brussels on 19-20 October to formally discuss migration, digital Europe, defence, and external relations, adopting conclusions on each of these four topics. The EU Heads of State also discussed the Leaders' Agenda (a concrete work programme to guide EU's action in the future) and, in an EU27 format, the state of play in the ongoing Brexit negotiations.

Brexit

At the General Affairs Council on 17 October, which was also held in an EU27 format, government ministers were updated by the EU Brexit Chief Negotiator, Michel Barnier, on the progress achieved so far in the negotiations with the UK. The meeting was used as an opportunity to develop draft conclusions for the subsequent European Council summit and EU27 Ministers expressed their hope that the UK/EU negotiators would be able to make ‘sufficient progress’ to advance negotiations ahead of the next European Council summit in December.

The General Affairs Council also noted the eight offers received from Member States to host the European Medicines Agency and European Banking Authority post-Brexit. The EU27 will vote on the relocation of each agency at the General Affairs Council on 20 November 2017.

On 20 October, leaders of the EU27 adopted the recommendation of Michel Barnier that Taskforce 50 is not in a position to open discussions on the future relationship. While Mr Barnier noted that “the [negotiating] round took place in a constructive atmosphere”, insufficient steps forward were taken on the central issues of citizens’ rights, the Irish border and the financial settlement.

On citizens’ rights, while the EU and the UK share common objectives, EU leaders advocated that Mr Barnier ensure “legal certainty and guarantees to all concerned citizens and their family members”. The EU wishes to ensure that citizens can continue to exercise their rights, as stated under EU law and overseen by the Court of Justice of the European Union (CJEU), under the protection of the withdrawal agreement. The EU still needs to examine the UK proposal for a new and simplified administrative procedure through which EU citizens in the UK will assert their rights. The EU insisted that such procedure shall be as smooth and simple as possible.

As regards Ireland, EU leaders remain adamant that both the Good Friday Agreement and the Common Travel Area are protected under the withdrawal agreement. The EU called upon the UK to “present and commit to flexible and imaginative solutions” so as to avoid a hard border.

Finally, on the financial settlement, EU leaders called for the UK to translate its stated commitment to honour its financial obligations into a “firm and concrete” offer. The UK had already confirmed, however, that it was not in a position this week to clarify as to which specific obligations, beyond the multiannual financial framework (MFF), it had committed. Technical discussions were held during the last round of negotiations but no progress was achieved. Michel Barnier indicated earlier in the week his growing concern as regards the deadlock on this issue.

EU Leaders’ Agenda

The main issues that Donald Tusk, as President of the European Council, intends for the agenda of the Leaders between now and June 2019 were considered by the Council. In addition to the necessary discussions on Brexit and regularly recurring items such as external relations, the Leaders’ **Agenda** should act as a framework for discussions on the future of the EU on issues such as Single Market strategies for jobs and growth, climate and energy agendas, and migration.

Broader Council conclusions

Regarding migration, the European Council praised the overall reduction in migratory flows and the significant reduction in deaths at sea. The EU Heads of State advocated that

consolidation and deepening of the approaches already being taken should be sought going forward.

EU leaders concurred that the Tallinn Digital Summit on 29 September sent a strong message on the need for a stronger and more coherent Digital Europe. A series of conclusions were adopted that are intended to assist in achieving the objective of creating “a more integrated Single Market and to deliver practical benefits for European citizens and businesses”.

On defence, the Council acknowledged the progress relating to a Permanent Structured Cooperation notification, the European Defence Fund and the Coordinated Annual Review on Defence. Progress relating to all aspects of security and defence will be reassessed in December.

EU leaders also debated relations with Turkey, affirmed the EU sanctions regime towards North Korea and reaffirmed the EU’s commitment to the Iran nuclear deal

In other news

- The Economic and Monetary Affairs Committee held a structured **dialogue** with Pierre Moscovici, Commissioner for Economic and Financial Affairs, Taxation and Customs on 19 October 2017
- **The General Affairs Council (Art. 50)** met on 17 October 2017 and adopted resolutions on Brexit and the relocation of EU agencies currently based in the UK

Upcoming EU Institutions events and consultations

27 October: Deadline for responses to EIOPA **consultation** on regular information requests towards NCAs regarding provision of occupational pensions information

3 November: Deadline for responses to EBA **consultation** on draft Guidelines on reporting requirements on statistical data on fraud under the revised Payment Services Directive (PSD2)

6 November: Deadline for responses to **EBA Discussion Paper** on its approach to financial technology (FinTech)

30 November: Deadline for ESMA **consultation** on Guidelines detailing the obligations which apply to non-significant benchmarks under the Benchmarks Regulation (BMR)

City of London Research

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