

Press release

Brussels,
4th December 2019

EACH welcomes the Council General Approach on CCP Recovery and Resolution

The European Association of CCP Clearing Houses (EACH) welcomes the General Approach on CCP Recovery and Resolution reached by the Council of the EU on Wednesday 4th December 2019¹. The resumption of the work on this important file by the former Romanian Presidency of the Council of the EU and its continuation by the current Finnish Presidency has overall resulted in additional safeguards for financial stability and limited recourse to taxpayer money.

EACH is of the opinion that an EU framework for CCP Recovery and Resolution plays an important role in ensuring an ex-ante definition of an efficient cooperation and coordination between Authorities to address situations that would highly likely be cross-border. EACH is particularly pleased that the Council of the EU has:

- **Increased the safeguards around the use of public money.** EACH firmly believes that an adequate CCP Recovery and Resolution regime should focus on the continuity of the CCPs' critical services without having recourse to public funds. Should the intervention of public funds be the only option available to safeguard financial stability, EACH supports the proposal of the Council of EU to include a recoupment mechanism to recover the taxpayer money and hence diminish moral hazard.
- **Strengthened the No Creditor Worse Off clause.** EACH welcomes the Council outcome which ensures a balanced approach between the protection of the resolution authority and that of clearing members and direct clients through a broad No-creditor-worse-off (NCWO) counterfactual by taking into consideration the CCP's operating rules, insolvency proceedings and direct replacement costs. This maximises the possibilities for resolution authorities to effectively perform their resolution tasks and provides incentives for clearing members to participate in the recovery and resolution process of a CCP.

¹ <https://www.consilium.europa.eu/en/press/press-releases/2019/12/04/clearing-houses-council-adopts-position-on-recovery-and-resolution/>

EACH would however like to draw the Authorities' attention to certain aspects that, in our opinion, should be considered paramount in triologies negotiations with the objective of preserving stable and efficient markets in the EU:

- **Compensation should be linked to the NCWO safeguard.** Whilst we welcome the wording included in Article 27(5), which limits the potential compensation of non-defaulting clearing members to the resolution authority's discretion, the **Council's proposal allowing a parallel track for compensation could potentially expose the resolution authority (and therefore taxpayers) to claims from clearing members outside the NCWO safeguard**, as it is very unlikely that the CCP's equity or profit would be sufficient to extinguish those claims (and as the CCP will have been taken over by the Resolution Authority). To address this weakness, we strongly suggest that co-legislators limit the possibility for compensation in resolution to claims within the NCWO safeguard.
- **Additional CCPs own resources are unjustified and threaten the risk management framework.** In line with the European Commission's proposal, we do not believe that additional CCP resources are needed. CCPs are already well incentivised to perform robust risk management through their existing skin in the game and through the write down of their equity in insolvency, like in resolution. These resources have not been questioned in the ESMA CCP Stress Tests² or the European Commission's impact assessment³. The unjustified proposal to increase the exposure of CCP's resources would **make EU diverge from international standards and put EU CCPs at a competitive disadvantage**. It could potentially weaken risk management by shifting the burden from the risk takers to the risk managers and threatening the continuation of clearing services in some smaller markets without any risk justification.

EACH looks forward to the finalisation of the work on this file and to contributing to the eventual Level 2 work of EU authorities.

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² <https://www.consilium.europa.eu/en/press/press-releases/2019/12/04/clearing-houses-council-adopts-position-on-recovery-and-resolution/>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0368&from=EN>

Notes to the editors

Background

On Wednesday 4th December 2019, the Council of the EU agreed its position on the European Commission proposal on CCP Recovery and Resolution. The European Parliament Plenary adopted the ECON Committee report on 27th March 2018.

The next step is the starting of the trilogue negotiations that will put together the views of the Council, the Parliament and the European Commission with the objective of agreeing the final text of the final legislation.

A final for CCP Recovery and Resolution is required in order to ensure that in a situation beyond extreme but plausible (e.g. the default of more than two of the largest clearing members in a CCP) in which the resources available at CCPs in line with the existing EMIR legislation are not enough, there is an orderly course of action that ensures the continuation of critical services without an impact on public funds.

About EACH

The European Association of CCP Clearing Houses (EACH) represents the interests of CCPs in Europe since 1992. EACH currently has 19 members from 15 different European countries. Its Membership is open to European and non-European CCPs. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH members

ATHEXClear	IRGiT S.A. (Warsaw Commodity Clearing House)
BME Clearing	KDPW_CCP S.A.
CC&G (Cassa di Compensazione e Garanzia S.p.A.)	KELER CCP Ltd
CCP Austria	LCH.Clearnet Ltd
CCP NCC	LCH.Clearnet SA
ECC (European Commodity Clearing AG)	LME Clear
Eurex Clearing AG	Nasdaq Clearing
EuroCCP	OMIClear
ICE Clear Europe	Takasbank
	SIX x-clear AG