



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Sir William Cash MP
Chair
European Scrutiny Committee
House of Commons London
SW1A 0AA

16th September 2019

Dear Sir Bill,

14835/16: 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

I am writing to update you on the current status of the proposal for an EU Regulation to provide a framework for the recovery and resolution of central counterparties (CCPs).

In the Treasury's last letter to the Committee on this proposal, dated 20 March 2017, my predecessor stated that the Government would keep this Committee informed of negotiating developments in the European Council working group that could lead to a divergence of the EU legislative proposal from international standards, as well as the likely timing for this proposal. Given the significant gap in working group meetings on this topic, and that discussions on this file have recently resumed, I am writing at this point to update the Committee on the discussions to date, and outstanding issues.

There were a number of European Council Working Group meetings in 2017 on this file. However, following the meeting in November 2017 the Working Group was paused until the changes to the supervision framework of CCPs proposed in other dossiers (EMIR REFIT (8890/17) and EMIR 2.2 (10363/17)) were finalised. As referred to in my letters to this Committee of March 2019 and July 2019, EMIR REFIT was agreed at COREPER on 6 March 2019 and EMIR 2.2 was agreed at COREPER on 20 March 2019. Consequently, the European Council Working Groups on a framework for the recovery and resolution of CCPs only resumed in May 2019, with further meetings occurring in June and July. The Finnish Presidency have indicated that they intend to reach a 'general approach' in December 2019. Trilogues would then be expected to

commence in January 2020. Discussions at the Council Working Group are ongoing in significant areas of the file, with agreement having not yet been reached.

The form of the proposed legislation remains broadly consistent with international standards, as set by the Committee on Payments and Markets Infrastructure (CPMI) and the International Organisation of Securities Commission (IOSCO), and the Financial Stability Board (FSB). As previously stated, consistent implementation of these international standards is important to prevent regulatory arbitrage and competitive distortions.

In recent Council Working Groups, discussions on the No Creditor Worse Off (NCWO) counterfactual have progressed since the last update to this Committee. Member States have recognised the importance of an effective NCWO principle in line with FSB Guidance which requires that creditors should have a 'right to compensation' in circumstances where they are left worse off in resolution than they would have been under the counterfactual of an insolvency. Adherence to this principle will ensure that both industry and resolution authorities have certainty when resolution actions are undertaken. At recent Working Groups there was a discussion of including replacement costs in the NCWO counterfactual. The UK position has been that the counterfactual should be clear and transparent, to ensure certainty and minimise the likelihood of the use of public funds, and that this is best affected by narrowing the concept to account for only 'direct' replacement costs. This position has been supported by a number of other Member States, though a final position on the text has not yet been agreed.

There has also been further progress in Council Working Groups on the requirements for recovery plans for CCPs that are part of a group, and how this relates to resolution. The UK has argued that CCPs have always been intended to be self-standing entities, and so should not rely on group structures in a resolution scenario – and the underlying EU European Markets Infrastructure Regulation (EMIR) supports this approach. However, where there are established critical interdependences between a CCP and a wider group entity we believe it may be appropriate to consider the impacts of these, though a recovery plan at group level should not be necessary. This position is supported by a number of Member States, and we expect it to be reflected in the final text.

There are a number of areas in the file where agreement has not yet been reached. This includes the treatment of CCP equity in resolution. Financial Stability Board (FSB) guidance on the treatment of equity in the resolution of any form of firm states that its equity should bear loss in resolution, and discussions continue on how best to approach this. A Financial Markets Infrastructure cross-border crisis management group (fmiCBCM) is in the process of producing a consultation paper on the treatment of CCP equity in resolution, and further FSB guidance in this area is anticipated in 2020. There are ongoing discussions in the Council Working Groups as to how to best address this issue in advance of further international guidance.

I hope this letter provides the Committee with sufficient information and I am happy to provide further details to address any additional questions the Committee may have. I am copying this letter to Lord Kinnoul, the Chair of the Lords European Union

Committee; to the Chairs of the Exiting the EU and Treasury Committees; and copying this letter to Foeke Noppert, Clerk to the Commons Committee; Christopher Johnson, Clerk to the Lords Committee; Les Saunders, Department for Exiting the EU; Barbara Armstrong and Aidan Irwin-Singer, HM Treasury.

With very best regards

John

JOHN GLEN MP