



**THE SENATE
OF THE PARLIAMENT OF THE CZECH REPUBLIC
8TH TERM**

77TH

RESOLUTION OF THE SENATE

Delivered on the 4th session held on 26 January 2011

**on the Proposal for a Regulation of the European Parliament and of the Council
on OTC derivatives, central counterparties and trade repositories
(Senate Press no. N 132/07)**

The Senate

I.

S h a r e s

the Commission's opinion that it is necessary to enhance clearing of OTC derivatives by means of clearly regulated and supervised central counterparties (CCP) with the view of reducing risks of failures when settling a concluded deal and further related repercussions for the stability of the financial system, and supports introducing trade repositories that enhance transparency of the OTC derivatives market;

II.

1. I s , h o w e v e r , o f t h e o p i n i o n

that the current version of the proposal confers excessive powers on the ESMA when taking decisions on the eligibility for CCP clearing of individual groups of OTC derivatives, which may, in the end, lead to pressure for excessive standardization of derivative contracts that would limit the scope of available tailor-made derivative solutions for hedging with use of derivatives;

2. B e l i e v e s

that certain groups of plain-vanilla derivatives, such as foreign exchange or interest rate derivatives, should, a priori, not be considered eligible for CCP clearing because their influence on a potential systemic failure of the financial system is minimal while their contribution to risk management in the banking and corporate world is indisputable;

3. D i s a g r e e s

with the general clearing obligation for all financial counterparties regardless of their size or systemic importance as the obligation to clear through CCP is neither logical nor effective for smaller financial institutions without systemic

importance and will only lead to higher costs without enhancing financial stability;

4. Supports

the idea of centralized clearing for OTC derivatives when dealing with trades whose magnitude might, in case of a counterparty's default, severely affect the functioning of the whole financial market, and, at the same time, supports CCP clearing for credit default swaps, for which it finds CCP clearing and appropriate collateralization procedures beneficial;

5. Is convinced

that just as non-financial counterparties, according to Article 7 Paragraph 4, do not have to include the contracts that are directly linked to the commercial activity of that non-financial counterparty into their calculation of position in OTC derivatives, neither should retail banks have the CCP clearing obligation for OTC derivatives as long as these derivatives serve only for management of risks arising from their banking activity;

6. Regrets

that a number of important aspects such as key threshold indicators, criteria, setting of procedures and norms are left out without any further specification in many parts of the proposal and shall be adopted later on by means of delegated acts or by the ESMA, which does not allow the Senate to fully assess the quality and impact of the proposal;

III.

1. Requests

the Government to inform the Senate about the way this position was taken into account and to provide the Senate with further information on the proceeding of negotiations;

2. Authorises

the President of the Senate to forward this resolution to the European Commission.

Milan Štěch
sign manual
President of the Senate

Petr Šilar
sign manual
Senate Verifier