



2016/0365(COD)

25.9.2017

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DRAFT REPORT

on the proposal for a 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 (COM(2016)0856 – C8-0484/2016 – 2016/0365(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Kay Swinburne, Jakob von Weizsäcker

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	103

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a 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 (COM(2016)0856 – C8-0484/2016 – 2016/0365(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0856),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0484/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social committee of ...¹
 - having regard to the opinion of the European Central Bank of 20 September 2017²
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2017),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal

² Not yet published in the Official Journal

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Financial markets are pivotal for the functioning of modern economies. The more integrated they are, the **more efficient** the allocation of economic resources will be, benefitting economic performance. However, in order to improve the functioning of the single market in financial services, it is important to have procedures in place to ensure that if a financial institution or a financial market infrastructure that is active in this market faces financial distress or is at the point of failure, such an event does not de-stabilise the entire financial market and damage growth across the wider economy.

Amendment

(1) Financial markets are pivotal for the functioning of modern economies. The more integrated they are, the **greater the potential for** efficient allocation of economic resources will be, **potentially** benefitting economic performance. However, in order to improve the functioning of the single market in financial services, it is important to have procedures in place **to deal with market failures and** to ensure that if a financial institution or a financial market infrastructure that is active in this market faces financial distress or is at the point of failure, such an event does not de-stabilise the entire financial market and damage growth across the wider economy.

Or. en

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) Central counterparties (CCPs) are key components of financial markets, stepping in between participants to act as the buyer to every seller and the seller to every buyer, and playing a central role in processing financial transactions and managing exposures to diverse risks inherent in those transactions. CCPs centralise the handling of counterparties' transactions and positions, and honour the obligations created by the transactions and

Amendment

(2) Central counterparties (CCPs) are key components of **global** financial markets, stepping in between participants to act as the buyer to every seller and the seller to every buyer, and playing a central role in processing financial transactions and managing exposures to diverse risks inherent in those transactions. CCPs centralise the handling of counterparties' transactions and positions, and honour the obligations created by the transactions and

receive adequate collateral from their members as margin and as contributions to default funds.

require adequate collateral from their members as margin and as contributions to default funds.

Or. en

Amendment 3

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) The crisis also highlighted the lack of adequate tools to preserve the critical functions provided by failing financial institutions. It further demonstrated the lack of frameworks to enable cooperation and coordination amongst authorities, in particular those located in different Member States or jurisdictions, to ensure the implementation of swift and decisive action. Without such tools and lack of cooperation and coordination frameworks, Member States were compelled to save financial institutions using taxpayers' money in order to stem contagion and reduce panic. While CCPs were not direct recipients of *extraordinary* public financial support in the crisis, they were indirect beneficiaries of the rescue measures undertaken in relation to banks and were protected from the effects which banks failing on their obligations would otherwise have had on them. A recovery and resolution framework for CCPs is therefore necessary to prevent reliance on taxpayers' money in the event of their disorderly failure.

Amendment

(6) The crisis also highlighted the lack of adequate tools to preserve the critical functions provided by failing financial institutions. It further demonstrated the lack of frameworks to enable cooperation and coordination amongst authorities, in particular those located in different Member States or jurisdictions, to ensure the implementation of swift and decisive action. Without such tools and lack of cooperation and coordination frameworks, Member States were compelled to save financial institutions using taxpayers' money in order to stem contagion and reduce panic. While CCPs were not direct recipients of public financial support in the crisis, they were indirect beneficiaries of the rescue measures undertaken in relation to banks and were protected from the effects which banks failing on their obligations would otherwise have had on them. A recovery and resolution framework for CCPs is therefore necessary to prevent reliance on taxpayers' money in the event of their disorderly failure. ***Such a framework should also address the possibility of CCPs entering into resolution for reasons other than the default of one or several of their clearing members.***

Or. en

Amendment 4

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) Building on the approach for bank recovery and resolution, **Member States'** authorities should be prepared and have adequate recovery and resolution tools at their disposal to handle situations involving CCP failures. However, due to their different functions and business models, the risks inherent in banks and CCPs are different. Specific tools and powers are therefore needed for CCP failure scenarios caused both by the failure of the CCP's clearing members or as a result of non-default events.

Amendment

(10) Building on the approach for bank recovery and resolution, **competent authorities and resolution** authorities should be prepared and have adequate recovery and resolution tools at their disposal to handle situations involving CCP failures. However, due to their different functions and business models, the risks inherent in banks and CCPs are different. Specific tools and powers are therefore needed for CCP failure scenarios caused both by the failure of the CCP's clearing members or as a result of non-default events.

Or. en

Amendment 5

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) In order to ensure that resolution actions are taken efficiently and effectively, and in line with resolution objectives, Member States should appoint public administrative authorities or authorities entrusted with public administrative powers to perform functions and tasks in relation to resolution. Member States should also ensure that appropriate resources are allocated to those resolution authorities. Where a Member State designates the authority responsible for the prudential supervision of CCPs as a resolution authority, **adequate structural** arrangements should be put in place to separate the supervisory and resolution

Amendment

(13) In order to ensure that resolution actions are taken efficiently and effectively, and in line with resolution objectives, Member States should appoint public administrative authorities or authorities entrusted with public administrative powers to perform functions and tasks in relation to resolution. Member States should also ensure that appropriate resources are allocated to those resolution authorities. Where a Member State designates the authority responsible for the prudential supervision of CCPs as a resolution authority, **the independence of the decision-making process should be ensured and all necessary** arrangements

functions to avoid any conflicts of interest and risk of regulatory forbearance.

should be put in place to separate the supervisory and resolution functions to avoid any conflicts of interest and risk of regulatory forbearance.

Or. en

Amendment 6

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) As CCPs often provide services across the Union, effective recovery and resolution requires cooperation among competent authorities and resolution authorities within supervisory and resolution colleges, notably at the preparatory stages of recovery and resolution. That includes the assessment of recovery plans developed by the CCP, the ***preparation and maintenance*** of resolution plans and addressing any impediments to resolvability.

Amendment

(15) As CCPs often provide services across the Union, effective recovery and resolution requires cooperation among competent authorities and resolution authorities within supervisory and resolution colleges, notably at the preparatory stages of recovery and resolution. That includes the assessment of recovery plans developed by the CCP, the ***assessment*** of resolution plans ***prepared by the resolution authority of the CCP***, and addressing any impediments to resolvability.

Or. en

Amendment 7

Proposal for a regulation Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) In light of the cross-border global nature of certain CCP operations, decisions of resolution authorities can have economic and fiscal effects in other jurisdictions. To the extent reasonably possible, such cross-border implications should be borne in mind in recovery and resolution situations, whilst also taking

into account the sovereignty of fiscal authorities in other jurisdictions.

Or. en

Amendment 8

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) In order to address the potential failure of a CCP in an effective and proportionate manner, authorities should take into account a number of factors when exercising their recovery and resolution powers such as the nature of the CCP's business, *shareholding* structure, *legal form*, risk profile, size, legal status and interconnectedness to the financial system. The authorities should also take account of whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other financial institutions, or on the wider economy.

Amendment

(18) In order to address the potential failure of a CCP in an effective and proportionate manner, authorities should take into account a number of factors when exercising their recovery and resolution powers such as the nature of the CCP's business, *legal and organisational* structure, risk profile, size, legal status and interconnectedness to the financial system. The authorities should also take account of whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other financial institutions, or on the wider economy.

Or. en

Amendment 9

Proposal for a regulation Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Recovery plans should ensure proper incentives for CCPs, clearing members and clients not to let the situation deteriorate further and to incentivise cooperative behaviour. In order for that incentive structure to be credible, deviations from the recovery

plan should be subject to approval by the competent authority.

Or. en

Amendment 10

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) CCPs should prepare and regularly update their recovery plans. ***The requirement to prepare a recovery plan should be applied proportionately, reflecting the systemic importance of the CCP and its interconnectedness with the financial system.*** The recovery phase in this context should start when there is a significant deterioration of the CCP's financial situation or risk of breach of its prudential requirements under Regulation (EU) 648/2012. This should be indicated with relation to a framework of qualitative or quantitative indicators included in the recovery plan.

Amendment

(20) CCPs should prepare and regularly update their recovery plans. The recovery phase in this context should start when there is a significant deterioration of the CCP's financial situation or risk of breach of its prudential requirements under Regulation (EU) 648/2012. This should be indicated with relation to a framework of qualitative or quantitative indicators included in the recovery plan.

Or. en

Amendment 11

Proposal for a regulation Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) The recovery plan should ensure that the sequencing of the use of recovery tools properly balances the allocation of losses between CCPs, clearing members and their clients. As a general principle, losses should be distributed between CCPs, clearing members and clients as a function of their ability to control risks, in

order to create sound incentives ex ante and to ensure a fair allocation of losses. The recovery plan should ensure that the CCP's capital is relied upon to bear first losses in default cases and even more in non-default cases. Substantial loss absorption by clearing members should be foreseen before any tools are used that allocate losses to clients.

Or. en

Amendment 12

Proposal for a regulation

Recital 22

Text proposed by the Commission

(22) Recovery plans should comprehensively set out the actions that the CCP would take to address any unmatched outstanding obligations, uncovered loss, liquidity shortfall, or capital inadequacy, as well as the actions to replenish any depleted pre-funded financial resources and liquidity arrangements in order to restore the CCP's viability and its continuing ability to meet its requirements for *authorisation*.

Amendment

(22) Recovery plans should comprehensively set out the actions that the CCP would take to address any unmatched outstanding obligations, uncovered loss, liquidity shortfall, or capital inadequacy, as well as the actions to replenish any depleted pre-funded financial resources and liquidity arrangements in order to restore the CCP's viability and its continuing ability to meet its requirements for *authorisation and should include sufficient loss absorption capacity to that end*.

Or. en

Amendment 13

Proposal for a regulation

Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) Where a CCP in recovery has applied position and loss allocation tools, which go beyond the waterfall in

Regulation (EU) No 648/2012, on non-defaulting clearing members and their clients and has not entered into resolution as a result, the competent authority should be able, once a matched book has been restored, either to require the CCP to recompense the participants for their loss through cash payments or, where appropriate, to require the CCP to issue instruments of ownership in future profits of the CCP.

Or. en

Amendment 14

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) Resolution planning is an essential component of effective resolution. The plans should be drawn up by the resolution authority of the CCP and jointly agreed by the relevant authorities of the resolution college. Authorities should have all the information necessary to identify and ensure the continuance of critical functions. The *content of a resolution plan should, however, be proportionate to the systemic importance of the CCP and based, inter alia, on the information provided by it.*

Amendment

(26) Resolution planning is an essential component of effective resolution. The plans should be drawn up by the resolution authority of the CCP and jointly agreed by the relevant authorities of the resolution college. Authorities should have all the information necessary to identify and ensure the continuance of critical functions. The *operating rules of the CCP that are agreed contractually with clearing members should contain provisions to ensure the enforceability of resolution measures by resolution authorities, including a resolution cash call.*

Or. en

Amendment 15

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) Resolution plans and resolvability assessments constitute areas where day-to-day supervisory considerations are **taken over** by the need to expedite and ensure swift restructuring actions in order to secure a CCP's critical functions and safeguard financial stability. In the event of disagreement between the different members of the resolution college on decisions to be taken with regard to the CCP's resolution plan, the assessment of the CCP's resolvability and the decision to remove any impediments thereto, ESMA should play a mediation role in accordance with Article 19 of Regulation (EU) No 1095/2010. Such binding mediation by ESMA should nonetheless be prepared for its consideration by an ESMA internal committee, in view of the competences of ESMA members to ensure financial stability and to oversee clearing members in several Member States. Certain competent authorities under the EBA Regulation should be invited to participate as observers to that ESMA internal committee in view of the fact that such authorities carry out similar tasks under Directive 2014/59/EU. Such binding mediation should not prevent non-binding mediation in accordance with Article 31 of Regulation (EU) No 1095/2010 in other cases.

Amendment

(28) Resolution plans and resolvability assessments constitute areas where day-to-day supervisory considerations are **outweighed** by the need to expedite and ensure swift restructuring actions in order to secure a CCP's critical functions and safeguard financial stability. In the event of disagreement between the different members of the resolution college on decisions to be taken with regard to the CCP's resolution plan, the assessment of the CCP's resolvability and the decision to remove any impediments thereto, ESMA should play a mediation role in accordance with Article 19 of Regulation (EU) No 1095/2010. Such binding mediation by ESMA should nonetheless be prepared for its consideration by an ESMA internal committee, in view of the competences of ESMA members to ensure financial stability and to oversee clearing members in several Member States. Certain competent authorities under the EBA Regulation should be invited to participate as observers to that ESMA internal committee in view of the fact that such authorities carry out similar tasks under Directive 2014/59/EU. Such binding mediation should not prevent non-binding mediation in accordance with Article 31 of Regulation (EU) No 1095/2010 in other cases.

Or. en

Amendment 16

Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) In order to preserve financial stability, it is necessary that competent

Amendment

(32) In order to preserve financial stability, it is necessary that competent

authorities are able to remedy the deterioration of a CCP's financial and economic situation before that CCP reaches a point at which authorities have no other alternative but to resolve it or to direct the CCP to change course where its actions could be detrimental for overall financial stability. Therefore, competent authorities should be granted early intervention powers to avoid or minimise adverse effects on financial stability that could result from the CCP's implementation of certain measures. The early intervention powers should be conferred on competent authorities in addition to their powers provided for in the national law of Member States or under Regulation (EU) No 648/2012 for circumstances other than those considered to be early intervention.

authorities are able to remedy the deterioration of a CCP's financial and economic situation before that CCP reaches a point at which authorities have no other alternative but to resolve it or to direct the CCP to change course where its actions could be detrimental for overall financial stability. Therefore, competent authorities should be granted early intervention powers to avoid or minimise adverse effects on financial stability *or in the interests of clients* that could result from the CCP's implementation of certain measures. The early intervention powers should be conferred on competent authorities in addition to their powers provided for in the national law of Member States or under Regulation (EU) No 648/2012 for circumstances other than those considered to be early intervention. ***Early intervention rights should include the power to restrict or prohibit any remuneration of equity and instruments treated as equity to the fullest extent possible without triggering outright default, including dividend payments and buybacks by the CCP, and it should be able to restrict, prohibit or freeze any payments of variable remuneration under Directive 2013/36/EU and EBA Guidelines EBA/GL/2015/22, of discretionary pension benefits and of severance packages to management.***

Or. en

Amendment 17

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) During the recovery and early intervention phases, shareholders should retain their rights in full. They ***should no longer fully retain*** such rights once the

Amendment

(33) During the recovery and early intervention phases, shareholders should retain their rights in full. They ***lose*** such rights once the CCP has been put under

CCP has been put under resolution.

resolution. ***Any remuneration of equity and instruments treated as equity, including dividend payments and buybacks by the CCP, should be restricted or prohibited, to the extent possible, in recovery.***

Or. en

Amendment 18

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) The resolution framework should provide for timely entry into resolution before a CCP is insolvent. A CCP should be considered to be failing or likely to fail when it infringes or is likely in the near future to infringe the requirements for continuing authorisation, when its recovery has failed to restore its viability, when the assets of the CCP are or are likely in the near future to be less than its liabilities, when the CCP is or is likely in the near future to be unable to pay its debts as they fall due, or when the CCP requires ***extraordinary*** public financial support. However, the fact that a CCP does not comply with all the requirements for authorisation should not justify by itself the entry into resolution.

Amendment

(34) The resolution framework should provide for timely entry into resolution before a CCP is insolvent. A CCP should be considered to be failing or likely to fail when it infringes or is likely in the near future to infringe the requirements for continuing authorisation, when its recovery has failed to restore its viability, when the assets of the CCP are or are likely in the near future to be less than its liabilities, when the CCP is or is likely in the near future to be unable to pay its debts as they fall due, or when the CCP requires public financial support. However, the fact that a CCP does not comply with all the requirements for authorisation should not justify by itself the entry into resolution. ***In order to allow for timely entry into resolution, it should only be possible to challenge a decision taken by a resolution authority to accelerate transition from recovery to resolution on substantive grounds on the basis that the decision was arbitrary and unreasonable at the time it was taken, based on the information then readily available.***

Or. en

Amendment 19

Proposal for a regulation Recital 36

Text proposed by the Commission

(36) Where a CCP meets the conditions for resolution, the resolution authority of the CCP should have at its disposal a harmonised set of resolution tools and powers. Their exercise should be subject to common conditions, objectives, and general principles. The use of additional tools and powers by resolution authorities should be consistent with the resolution principles and objectives. In particular, the use of such tools or powers should not impinge on the effective resolution of cross-border groups.

Amendment

(36) Where a CCP meets the conditions for resolution, the resolution authority of the CCP should have at its disposal a harmonised set of resolution tools and powers. Their exercise should be subject to common conditions, objectives, and general principles. The use of additional tools and powers by resolution authorities should be consistent with the resolution principles and objectives. In particular, the use of such tools or powers should not impinge on the effective resolution of cross-border groups. ***In view of the objective to prevent, insofar as possible, the use of public funds and considering the difficulty in predicting the exact nature of a severe crisis in which a resolution authority would have to take action, no resolution tools should be excluded ex ante.***

Or. en

Amendment 20

Proposal for a regulation Recital 37

Text proposed by the Commission

(37) The prime objectives of resolution should be to ensure the continuity of critical functions, to avoid adverse effects on financial stability, and to protect public funds by minimising reliance on ***extraordinary*** public financial support to failing CCPs.

Amendment

(37) The prime objectives of resolution should be to ensure the continuity of critical functions, to avoid adverse effects on financial stability, and to protect public funds by minimising reliance on public financial support to failing CCPs.

Or. en

Amendment 21

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) The critical functions of a failing CCP should be maintained, albeit re-structured with changes to the management where appropriate, through the use of resolution tools *as a going concern with the use*, to the extent possible, *of private funds*. That could be achieved either through sale to or merger with a solvent third party, or after having restructured or written down the contracts and liabilities of the CCP via the allocation of losses and positions, or after having written down shares or written down and converted its debt to equity, in order to effect a recapitalisation. In line with this objective, prior to these actions, the resolution authority should consider enforcing any existing and outstanding contractual obligations *of* the CCP in line with how they would be *called in* under normal insolvency proceedings.

Amendment

(38) The critical functions of a failing CCP should be maintained, albeit re-structured with changes to the management where appropriate, through the use of resolution tools *relying on private loss absorption and avoiding public support* to the extent possible. That could be achieved either through sale to or merger with a solvent third party, or after having restructured or written down the contracts and liabilities of the CCP via the allocation of losses and positions, or after having written down shares or written down and converted its debt to equity, in order to effect a recapitalisation. In line with this objective, prior to these actions, the resolution authority should consider enforcing any existing and outstanding contractual obligations *towards* the CCP in line with how they would be *treated* under *the CCP's operating rules and* normal insolvency proceedings.

Or. en

Amendment 22

Proposal for a regulation

Recital 41

Text proposed by the Commission

(41) Interference with property rights should be proportionate to the financial stability risk. Resolution tools should therefore be applied only to those CCPs that meet the conditions for resolution, specifically where it is necessary to pursue

Amendment

(41) Interference with property rights should be proportionate to the financial stability risk. Resolution tools should therefore be applied only to those CCPs that meet the conditions for resolution, specifically where it is necessary to pursue

the objective of financial stability in the public interest. Given that resolution tools and powers may disrupt the rights of shareholders, clearing *participants and* creditors, resolution action should be taken only where necessary in the public interest and any interference with those rights should be compatible with the Charter. In particular, where creditors within the same class are treated differently in the context of resolution action, such distinctions should be justified in the public interest and proportionate to the risks being addressed and should be neither directly nor indirectly discriminatory on the grounds of nationality.

the objective of financial stability in the public interest. Given that resolution tools and powers may disrupt the rights of shareholders, clearing *members, their clients and wider* creditors, resolution action should be taken only where necessary in the public interest and any interference with those rights should be compatible with the Charter. In particular, where creditors within the same class are treated differently in the context of resolution action, such distinctions should be justified in the public interest and proportionate to the risks being addressed and should be neither directly nor indirectly discriminatory on the grounds of nationality.

Or. en

Amendment 23

Proposal for a regulation

Recital 42

Text proposed by the Commission

(42) Affected shareholders, clearing *participants* and creditors should not incur losses greater than those which they would have incurred if the resolution authority *would* not have taken resolution action in relation to the CCP and *they would* instead *have* been subject to possible outstanding obligations pursuant to the CCP's recovery plan *or* other arrangements in its operating rules *or* the CCP *had* been wound up *in* normal insolvency proceedings. In the event of a partial transfer of assets of a CCP under resolution to a private purchaser or to a bridge CCP, the residual part of the CCP under resolution should be wound up under normal insolvency proceedings.

Amendment

(42) Affected shareholders, clearing *members and their clients* and creditors should not incur losses greater than those which they would have incurred if the resolution authority *had* not taken resolution action in relation to the CCP and *if they had* instead been subject to possible outstanding obligations pursuant to the CCP's recovery plan *and all* other *contractual* arrangements in its operating rules, *and* the CCP *has* been wound up *under* normal insolvency proceedings, *properly taking into account any adverse effects of systemic instability and market turmoil*. In the event of a partial transfer of assets of a CCP under resolution to a private purchaser or to a bridge CCP, the residual part of the CCP under resolution should be wound up under normal insolvency proceedings.

Amendment 24**Proposal for a regulation****Recital 43***Text proposed by the Commission*

(43) For the purpose of protecting the right of shareholders, counterparties and creditors, clear obligations should be laid down concerning the valuation of the assets and liabilities of the CCP and the valuation of the treatment that shareholders and creditors would have received if the resolution authority would not have taken resolution action. It should be possible to commence a valuation already during the recovery phase. Before any resolution action is taken, a fair and realistic valuation of the assets and liabilities of the CCP should be carried out. Such a valuation should be subject to a right of appeal only together with the resolution decision. In addition, in certain cases, an ex-post comparison between the treatment that shareholders and creditors have actually been afforded and the treatment they would have received if the resolution authority **would not have** taken resolution action in relation to the CCP and **they would** instead **have** been subject to possible outstanding obligations pursuant to the CCP's recovery plan or other arrangements in its operating rules or under normal insolvency proceedings, should be carried out after resolution tools have been used. Where shareholders and creditors have received, in payment of, or compensation for, their claims, less than the amount that they would have received if the resolution authority **would not have** taken resolution action in relation to the CCP and **they would** instead **have** been subject to possible outstanding obligations pursuant to the CCP's recovery plan or other

Amendment

(43) For the purpose of protecting the right of shareholders, counterparties and creditors, clear obligations should be laid down concerning the valuation of the assets and liabilities of the CCP and the valuation of the treatment that shareholders and creditors would have received if the resolution authority would not have taken resolution action. It should be possible to commence a valuation already during the recovery phase. Before any resolution action is taken, a fair and realistic valuation of the assets and liabilities of the CCP should be carried out. Such a valuation should be subject to a right of appeal only together with the resolution decision. In addition, in certain cases, an ex-post comparison between the treatment that shareholders and creditors have actually been afforded and the treatment they would have received if the resolution authority **had not** taken resolution action in relation to the CCP and **if they had** instead been subject to possible outstanding obligations pursuant to the CCP's recovery plan or other arrangements in its operating rules or under normal insolvency proceedings, **properly taking into account any adverse effects of systemic instability and market turmoil**, should be carried out after resolution tools have been used. Where shareholders and creditors have received, in payment of, or compensation for, their claims, less than the amount that they would have received if the resolution authority **had not** taken resolution action in relation to the CCP and **if they had** instead been subject to possible outstanding

arrangements in its operating rules or under normal insolvency proceedings, they should in certain cases be entitled to the payment of the difference. As opposed to the valuation prior to the resolution action, it should be possible to challenge that comparison separately from the resolution decision. Member States should be free to decide on the procedure as to how to pay any difference of treatment that has been determined to shareholders and creditors.

obligations pursuant to the CCP's recovery plan or other arrangements in its operating rules or under normal insolvency proceedings, ***properly taking into account any adverse effects of systemic instability and market turmoil***, they should in certain cases be entitled to the payment of the difference. ***The calculation of the amount that they would have received should not assume provision of public financial support***. As opposed to the valuation prior to the resolution action, it should be possible to challenge that comparison separately from the resolution decision. Member States should be free to decide on the procedure as to how to pay any difference of treatment that has been determined to shareholders and creditors.

Or. en

Amendment 25

Proposal for a regulation

Recital 45

Text proposed by the Commission

(45) Upon entry into resolution, any outstanding contractual obligations set out in the operating rules of the CCP, including outstanding recovery measures, ***should be*** honoured except where the exercise of another resolution power or tool is more appropriate to ***avoid*** adverse effects for financial stability or to secure the critical functions of the CCP in a timely manner. Losses should ***then*** be absorbed by regulatory capital instruments and should be allocated to shareholders up to their capacity either through the cancellation or transfer of instruments of ownership or through severe dilution. Where those instruments are not sufficient, resolution authorities should have the power to write down ***subordinated*** unsecured debt and ***senior*** unsecured liabilities, to the extent

Amendment

(45) Upon entry into resolution, ***the resolution authority should ensure that*** any outstanding contractual obligations ***of the CCP, of clearing members and of other counterparties*** set out in the operating rules of the CCP, including outstanding recovery measures, ***are*** honoured except where the exercise of another resolution power or tool is more appropriate to ***mitigate*** adverse effects for financial stability or to secure the critical functions of the CCP in a timely manner. Losses should be absorbed by regulatory capital instruments and should be allocated to shareholders up to their capacity either through the cancellation or transfer of instruments of ownership or through severe dilution, ***taking into account any losses that are to be absorbed by the***

necessary, without jeopardising broader financial stability, in accordance with their ranking under applicable national insolvency law.

enforcement of any outstanding obligation towards the CCP. Where those instruments are not sufficient, resolution authorities should have the power to write down unsecured debt and unsecured liabilities, to the extent necessary, without jeopardising broader financial stability, in accordance with their ranking under applicable national insolvency law.

Or. en

Amendment 26

Proposal for a regulation Recital 48

Text proposed by the Commission

(48) The resolution tools should be used to the fullest extent possible before any public sector injection of capital or equivalent ***extraordinary*** public financial support to a CCP. The use of public financial support to assist in the resolution of failing institutions should comply with the relevant State aid provisions.

Amendment

(48) The ***recovery and*** resolution tools should be used to the fullest extent possible before any public sector injection of capital or equivalent public financial support to a CCP. The use of public financial support to assist in the resolution of failing institutions should comply with the relevant State aid provisions ***and should be treated as a tool of absolute last resort.***

Or. en

Amendment 27

Proposal for a regulation Recital 49

Text proposed by the Commission

(49) An effective resolution regime should minimise the costs of the resolution of a failing CCP borne by the taxpayers. It should ensure that CCPs can be resolved without jeopardising financial stability. The loss and position allocation tools achieve that objective by ensuring that

Amendment

(49) An effective resolution regime should minimise the costs of the resolution of a failing CCP borne by the taxpayers. It should ensure that CCPs can be resolved without jeopardising financial stability. The loss and position allocation tools ***should*** achieve that objective by ensuring

shareholders and counterparties who are among the creditors of the failing CCP suffer appropriate losses and bear an appropriate part of the costs arising from the failure of the CCP. The loss and position allocation tools therefore give shareholders and counterparties of CCPs a stronger incentive to monitor the health of a CCP during normal circumstances in accordance with the recommendations of the Financial Stability Board²¹ .

²¹ http://www.fsb.org/wp-content/uploads/r_141015.pdf

that shareholders and counterparties who are among the creditors of the failing CCP suffer appropriate losses and bear an appropriate part of the costs arising from the failure of the CCP. The loss and position allocation tools *should* therefore give shareholders and counterparties of CCPs a stronger incentive to monitor the health of a CCP during normal circumstances in accordance with the recommendations of the Financial Stability Board²¹ .

²¹ http://www.fsb.org/wp-content/uploads/r_141015.pdf

Or. en

Amendment 28

Proposal for a regulation Recital 52

Text proposed by the Commission

(52) The loss and position allocation tools should be exercised with a view to re-matching the CCP's book, stemming any further losses and obtaining additional resources to help recapitalise the CCP and replenish its prefunded resources. In order to ensure that they are effective and achieve their objective, they should be able to apply to as wide a range of contracts giving rise to unsecured liabilities or creating an unmatched book for the failing CCP *as possible*. They should provide for the possibility to auction defaulters' positions among remaining clearing members, *forcibly allocate them to the extent that voluntary arrangements established as part of recovery plan are not exhausted upon entry into resolution, partially or fully tear-up the contracts of defaulted clearing members, product lines and of the CCP, further* haircut outgoing

Amendment

(52) The loss and position allocation tools should be exercised with a view to re-matching the CCP's book, stemming any further losses and obtaining additional resources to help recapitalise the CCP and replenish its prefunded resources. In order to ensure that they are effective and achieve their objective, they should be able to apply to as wide a range *as possible* of contracts giving rise to unsecured liabilities or creating an unmatched book for the failing CCP. They should provide for the possibility to auction defaulters' positions among remaining clearing members, haircut outgoing variation margin payments *to such members and their clients*, exercise any outstanding cash calls set out in recovery plans, exercise additional *resolution* cash calls specifically earmarked for the resolution authority *in the CCP operating rules* and write-down

variation margin payments, exercise any outstanding cash calls set out in recovery plans, exercise additional cash calls specifically earmarked for the resolution authority and write-down of capital and debt instruments issued by the CCP or other unsecured liabilities and a conversion of any debt instruments into shares.

of capital and debt instruments issued by the CCP or other unsecured liabilities and a conversion of any debt instruments into shares. ***If deemed necessary to achieve the resolution objectives in a timely manner, whilst minimising risks to financial stability and avoiding the use of public funds, the resolution authorities should be able to partially or fully tear up the contracts of defaulted clearing members, of product lines and of the CCP.***

Or. en

Amendment 29

Proposal for a regulation

Recital 53

Text proposed by the Commission

(53) Resolution authorities should be able to exclude or partially exclude some contracts from loss and position allocation in a number of circumstances. Where those exclusions are applied, the level of loss or exposure applied to other contracts may be increased to take account of such exclusions subject to the "no creditor worse off principle" being respected.

Amendment

(53) ***With due regard to the impact on financial stability,*** resolution authorities should be able to exclude or partially exclude some contracts from loss and position allocation in a number of circumstances. Where those exclusions are applied, the level of loss or exposure applied to other contracts may be increased to take account of such exclusions subject to the "no creditor worse off principle" being respected.

Or. en

Amendment 30

Proposal for a regulation

Recital 60

Text proposed by the Commission

(60) Should all other options be practically unavailable or be demonstrably insufficient to safeguard financial stability,

Amendment

(60) Should all other options be practically unavailable or be demonstrably insufficient to safeguard financial stability,

government participation in the shape of equity support or temporary public ownership should be possible, in accordance with applicable rules on State aid, including a restructuring of the operations of the CCP, and enable the deployed funds to be recouped from the CCP over time. The use of government stabilisation tools is notwithstanding the role of central banks in providing liquidity to the financial system even in times of stress.

government participation in the shape of equity support or temporary public ownership should be possible, in accordance with applicable rules on State aid, including a restructuring of the operations of the CCP, and enable the deployed funds to be recouped from the CCP over time. The use of government stabilisation tools is notwithstanding the role of *any* central banks in providing liquidity to the financial system even in times of stress, *that is subject to their discretion, and should not be assumed likely to occur.*

Or. en

Amendment 31

Proposal for a regulation

Recital 61

Text proposed by the Commission

(61) To ensure the ability of a *Union* authority to apply the loss and position allocation tools to contracts with entities based in third countries, recognition of that possibility should be included in the operating rules of the CCP.

Amendment

(61) To ensure the ability of a *resolution* authority to apply the loss and position allocation tools to contracts with entities based in third countries, recognition of that possibility should be included in the operating rules of the CCP.

Or. en

Amendment 32

Proposal for a regulation

Recital 62

Text proposed by the Commission

(62) Resolution authorities should have all the necessary legal powers that, in different combinations, could be exercised when using the resolution tools. They should include the power to transfer

Amendment

(62) Resolution authorities should have all the necessary legal powers that, in different combinations, could be exercised when using the resolution tools. They should include the power to transfer

instruments of ownership, assets, rights, obligations or liabilities of a failing CCP to another entity such as another CCP or a bridge CCP, the power to write down or cancel instruments of ownership, or write down or convert liabilities of a failing CCP, the power to write down variation margin, the power to enforce any outstanding obligations of third parties in relation to the CCP including cash calls and position allocations, the power to tear up contracts of the CCP partially and fully, the power to replace the management and the power to impose a temporary moratorium on the payment of claims. The CCP and the members of its board and senior management should remain liable, subject to Member State law, under civil or criminal law for their responsibility for the failure of the CCP.

instruments of ownership, assets, rights, obligations or liabilities of a failing CCP to another entity such as another CCP or a bridge CCP, the power to write down or cancel instruments of ownership, or write down or convert liabilities of a failing CCP, the power to write down variation margin, the power to enforce any outstanding obligations of third parties in relation to the CCP including **recovery and resolution** cash calls **including those set out in the CCP's operating rules** and position allocations, the power to tear up contracts of the CCP partially and fully, the power to replace the management and the power to impose a temporary moratorium on the payment of claims. The CCP and the members of its board and senior management should remain liable, subject to Member State law, under civil or criminal law for their responsibility for the failure of the CCP.

Or. en

Amendment 33

Proposal for a regulation Recital 65

Text proposed by the Commission

(65) In accordance with Article 47 of the Charter, the parties concerned have a right to due process and to an effective remedy against the measures affecting them. Therefore, the decisions taken by the resolution authorities should be subject to a right of appeal.

Amendment

(65) In accordance with Article 47 of the Charter, the parties concerned have a right to due process and to an effective remedy against the measures affecting them. Therefore, the decisions taken by the resolution authorities should be subject to a right of appeal **on substantive grounds if the decision was arbitrary and unreasonable at the time it was taken, given the information then readily available.**

Or. en

Amendment 34

Proposal for a regulation

Article 2 – paragraph 1 – point 3

Text proposed by the Commission

(3) 'resolution authority' means an authority designated **by a Member State** in accordance with Article 3;

Amendment

(3) 'resolution authority' means an authority designated in accordance with Article 3;

Or. en

Amendment 35

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Text proposed by the Commission

(7) 'competent authority' means an authority designated **by a Member State** in accordance with Article 22 of Regulation (EU) No 648/2012;

Amendment

(7) 'competent authority' means an authority designated in accordance with Article 22 of Regulation (EU) No 648/2012;

Or. en

Amendment 36

Proposal for a regulation

Article 2 – paragraph 1 – point 7 a (new)

Text proposed by the Commission

Amendment

(7a) 'default event' means a scenario where a clearing member fails to honour its financial obligations to the CCP;

Or. en

Amendment 37

Proposal for a regulation

Article 2 – paragraph 1 – point 7 b (new)

Text proposed by the Commission

Amendment

(7b) 'non-default event' means a scenario where losses arise for the CCP due to any business, custody, investment, legal or operational failure;

Or. en

Amendment 38

Proposal for a regulation

Article 2 – paragraph 1 – point 9

Text proposed by the Commission

Amendment

(9) 'resolution action' means the **decision to place a CCP under resolution pursuant to Article 22**, the application of a resolution tool, or the exercise of one or more resolution powers;

(9) 'resolution action' means the application of a resolution tool, or the exercise of one or more resolution powers **once the conditions for resolution set out in Article 22 are met;**

Or. en

Amendment 39

Proposal for a regulation

Article 2 – paragraph 1 – point 15 a (new)

Text proposed by the Commission

Amendment

(15a) 'O-SII' means other systemically important institutions as referred to in Article 131(3) of Directive 2013/36/EU;

Or. en

Amendment 40

Proposal for a regulation

Article 2 – paragraph 1 – point 16

Text proposed by the Commission

Amendment

(16) *'linked CCP'* means a CCP *with* which an interoperability arrangement *has been set up under* Title V of Regulation (EU) No 648/2012;

(16) *'interoperable CCP'* means a CCP which *has entered into* an interoperability arrangement *pursuant to* Title V of Regulation (EU) No 648/2012;

Or. en

Amendment 41

Proposal for a regulation

Article 2 – paragraph 1 – point 17

Text proposed by the Commission

Amendment

(17) *'clearing participants' means clearing members and clients;*

deleted

Or. en

Amendment 42

Proposal for a regulation

Article 2 – paragraph 1 – point 20

Text proposed by the Commission

Amendment

(20) 'college' means the college referred to in Article 18(1) of Regulation (EU) No 648/2012;

(20) *'supervisory college'* means the college referred to in Article 18(1) of Regulation (EU) No 648/2012 *with the participation of the Single Resolution Board (SRB);*

Or. en

Amendment 43

Proposal for a regulation

Article 2 – paragraph 1 – point 21

Text proposed by the Commission

(21) 'capital' means ***subscribed*** capital ***within the meaning of Article 22 of Council Directive 86/635/EEC²⁵ including instruments of ownership in so far it has been paid up, plus the related share premium accounts, it fully absorbs losses in going concern situations, and, in the event of bankruptcy or liquidation, it ranks after all other claims;***

²⁵ Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

Amendment

(21) 'capital' means capital ***as defined in point 25 of Article 2 of Regulation (EU) No 648/2012;***

²⁵ Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

Or. en

Amendment 44

Proposal for a regulation Article 2 – paragraph 1 – point 24

Text proposed by the Commission

(24) 'group' means a ***parent undertaking and its subsidiaries;***

Amendment

(24) 'group' means a ***group as defined in point 16 of Article 2 of Regulation (EU) No 648/2012;***

Or. en

Amendment 45

Proposal for a regulation Article 2 – paragraph 1 – point 25

Text proposed by the Commission

(25) 'linked FMI' means ***a linked*** CCP or another FMI with which the CCP has contractual arrangements;

Amendment

(25) 'linked FMI' means ***an interoperable*** CCP or another FMI ***or a CCP*** with which the CCP has contractual

arrangements;

Or. en

Amendment 46

Proposal for a regulation

Article 2 – paragraph 1 – point 26

Text proposed by the Commission

(26) '**extraordinary** public financial support' means State aid within the meaning of Article 107(1) TFEU, or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of a CCP or of a group of which such a CCP forms part;

Amendment

(26) 'public financial support' means State aid within the meaning of Article 107(1) TFEU, or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of a CCP or of a group of which such a CCP forms part;

Or. en

Amendment 47

Proposal for a regulation

Article 2 – paragraph 1 – point 37

Text proposed by the Commission

(37) 'resolution cash call' means a request for cash resources to be provided by clearing members to the CCP, additional to prefunded resources, based on statutory powers available to a resolution authority in accordance with Article 31;

Amendment

(37) 'resolution cash call' means a request for cash resources to be provided by clearing members to the CCP, additional to prefunded resources, based on statutory powers available to a resolution authority in accordance with Article 31 ***and as laid out in the operating rules of the CCP;***

Or. en

Amendment 48

Proposal for a regulation

Article 2 – paragraph 1 – point 38

Text proposed by the Commission

(38) 'cash calls' means requests for cash resources to be provided by clearing members to the CCP, additional to prefunded resources, based on contractual arrangements laid out in the operating rules of the CCP;

Amendment

(38) '**recovery** cash calls' means requests for cash resources to be provided by clearing members to the CCP, additional to prefunded resources, based on contractual arrangements laid out in the operating rules of the CCP;

Or. en

Amendment 49

Proposal for a regulation

Article 3 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Each Member *State shall* designate one or more resolution authorities that are empowered to *use* the resolution tools and exercise the resolution powers as set out in this Regulation.

Amendment

Member States where a CCP is established shall, and Member States where no CCP is established may, designate one or more resolution authorities that are empowered to ***apply*** the resolution tools and exercise the resolution powers as set out in this Regulation.

Or. en

Amendment 50

Proposal for a regulation

Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Resolution authorities shall be national central banks, ***competent ministries***, public administrative authorities or other authorities entrusted with public administrative powers.

Amendment

Resolution authorities shall be national central banks, public administrative authorities or other authorities entrusted with public administrative powers.

Amendment 51**Proposal for a regulation****Article 3 – paragraph 3***Text proposed by the Commission*

3. Where a resolution authority designated pursuant to paragraph 1 is entrusted with other functions, the Member State shall ensure the ***operational independence*** of that resolution authority and shall put in place all necessary arrangements to avoid conflicts of interest between the functions entrusted to the resolution authority pursuant to this Regulation and all other functions entrusted to that authority.

Amendment

3. Where a resolution authority designated pursuant to paragraph 1 is entrusted with other functions, the Member State shall ensure the ***independence of the decision-making process*** of that resolution authority, ***in particular its independence from the competent authority designated under Article 22 of Regulation (EU) No 648/2012, and from the competent and resolution authorities of the clearing members referred to in point (c) of Article 18(2) of Regulation (EU) No 648/2012,*** and shall put in place all necessary arrangements to avoid conflicts of interest between the functions entrusted to the resolution authority pursuant to this Regulation and all other functions entrusted to that authority.

Or. en

Amendment 52**Proposal for a regulation****Article 3 – paragraph 4 – subparagraph 1***Text proposed by the Commission*

The staff involved in carrying out the functions entrusted to the resolution authority pursuant to this Regulation shall be structurally separated from, and subject to separate reporting lines from, the staff involved in carrying out the other functions of that authority.

Amendment

The staff involved in carrying out the functions entrusted to the resolution authority pursuant to this Regulation shall be structurally separated from, and subject to separate reporting lines from, the staff involved in carrying out the ***tasks pursuant to Regulation (EU) No 648/2012 and*** other functions of that authority.

Amendment 53

Proposal for a regulation

Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The resolution authority shall establish, manage and chair a resolution college to carry out the tasks referred to in Articles 13, 16 and 17 and ensure cooperation and coordination with third-country resolution authorities.

Amendment

The resolution authority *of the CCP* shall establish, manage and chair a resolution college to carry out the tasks referred to in Articles 13, 16 and 17 and ensure cooperation and coordination with third-country resolution authorities.

Or. en

Amendment 54

Proposal for a regulation

Article 4 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

(b) *develop* resolution plans pursuant to Article 13;

Amendment

(b) *assess* resolution plans pursuant to Article 13;

Or. en

Amendment 55

Proposal for a regulation

Article 4 – paragraph 1 – subparagraph 2 – point d

Text proposed by the Commission

(d) identify, address and remove impediments to the resolvability of CCPs pursuant to Article 17;

Amendment

(d) identify, address and, *where possible*, remove impediments to the resolvability of CCPs pursuant to Article 17;

Or. en

Amendment 56

Proposal for a regulation

Article 4 – paragraph 2 – point i

Text proposed by the Commission

(i) the competent authority of the parent undertaking, where Article 8(4) applies;

Amendment

(i) the competent authority of the parent undertaking, where Article **11(1)** applies;

Or. en

Amendment 57

Proposal for a regulation

Article 4 – paragraph 2 – point i a (new)

Text proposed by the Commission

Amendment

(ia) the competent authorities charged with supervision of O-SIIs referred to in Article 131(3) of Directive 2013/36/EU;

Or. en

Amendment 58

Proposal for a regulation

Article 4 – paragraph 3

Text proposed by the Commission

3. ESMA **and EBA** shall not have voting rights in resolution colleges.

Amendment

3. ESMA, **EBA and the competent authorities charged with the supervision of O-SIIs** shall not have voting rights in resolution colleges.

Or. en

Amendment 59

Proposal for a regulation

Article 4 – paragraph 4 – subparagraph 1

Text proposed by the Commission

The competent and resolution authorities of clearing members established in third countries and the competent and resolution authorities of third-country CCPs with which the CCP has established interoperability arrangements may be invited to participate in the resolution college as observers. Their attendance shall be conditional on those authorities being subject to confidentiality requirements equivalent, in the opinion of the chair of the college, to those laid down in Article 71.

Amendment

The competent and resolution authorities of clearing members established in third countries and the competent and resolution authorities of third-country CCPs with which the CCP has established interoperability arrangements may be invited to participate in the resolution college as observers. Their attendance shall be conditional on those authorities being subject to confidentiality requirements equivalent, in the opinion of the chair of the **resolution** college, to those laid down in Article 71.

Or. en

Amendment 60

Proposal for a regulation

Article 4 – paragraph 4 – subparagraph 2 – introductory part

Text proposed by the Commission

The participation of third country authorities in the resolution college **shall** be limited to the discussion of cross-border enforcement issues, **including** the following:

Amendment

The participation of third country authorities in the resolution college **may** be limited to the discussion of **select** cross-border enforcement issues, **which may include** the following:

Or. en

Amendment 61

Proposal for a regulation

Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Authorities referred to in points (i) and (iv)

Amendment

Authorities referred to in points (i) and (iv)

of Article 4(2) of Regulation (EU) No 1093/2010 shall be invited to participate in the resolution committee as observers.

of Article 4(2) of Regulation (EU) No 1093/2010 **and the competent authorities charged with supervision of O-SIIs** shall be invited to participate in the resolution committee as observers.

Or. en

Amendment 62

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

1. Competent authorities and resolution authorities shall cooperate closely in the preparation, planning and application of resolution decisions.

Amendment

1. Competent authorities and resolution authorities shall cooperate closely in the preparation, planning and application of resolution decisions. ***In particular, the resolution authority and other relevant authorities, including competent authorities and authorities of linked FMIs, shall cooperate and communicate effectively in recovery to enable the resolution authority to act in a timely manner.***

Or. en

Amendment 63

Proposal for a regulation Article 7 – paragraph 1 – point a – introductory part

Text proposed by the Commission

(a) that the proportionality of any decision or action in relation to an individual CCP is ensured, taking into account at least the following factors:

Amendment

(a) that the ***effectiveness and*** proportionality of any decision or action in relation to an individual CCP is ensured, taking into account at least the following factors:

Or. en

Amendment 64

Proposal for a regulation

Article 7 – paragraph 1 – point a – point i

Text proposed by the Commission

i) the *CCP's legal form*;

Amendment

i) the *ownership, legal and organisational structure, of the CCP*;

Or. en

Amendment 65

Proposal for a regulation

Article 7 – paragraph 1 – point a – point iii

Text proposed by the Commission

iii) the CCP's clearing membership structure;

Amendment

iii) the CCP's clearing membership structure *including clearing members, their clients and other counterparties to which those clearing members and their clients provide clearing services under that CCP*;

Or. en

Amendment 66

Proposal for a regulation

Article 7 – paragraph 1 – point a – point iv

Text proposed by the Commission

iv) *the CCP's shareholding structure*;

Amendment

deleted

Or. en

Amendment 67

Proposal for a regulation

Article 7 – paragraph 1 – point a – point v a (new)

Text proposed by the Commission

Amendment

va) whether the CCP clears any OTC derivative contract pertaining to a class of OTC derivatives that has been declared subject to the clearing obligation pursuant to Article 5(2) of Regulation (EU) No 648/2012;

Or. en

Amendment 68

Proposal for a regulation

Article 7 – paragraph 1 – point a – point v b (new)

Text proposed by the Commission

Amendment

vb) the availability of other CCPs that could credibly and feasibly act as a substitute for the critical functions of the CCP;

Or. en

Amendment 69

Proposal for a regulation

Article 7 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) that the imperatives of efficacy of decision-making and of keeping costs as low as possible when taking early intervention or resolution action are observed;

(b) that the imperatives of efficacy of decision-making and of keeping costs as low as possible *while preventing market disruption* when taking early intervention *measures* or resolution action are observed *in order to avoid the use of public funds*;

Or. en

Amendment 70

Proposal for a regulation

Article 7 – paragraph 1 – point f

Text proposed by the Commission

(f) that due consideration is given to the interests of the Member States where the CCP provides services and where its clearing members, their clients, and any **linked** CCPs are established, and in particular the impact of any decision or action or inaction on the financial stability or fiscal resources of those Member States and the Union as a whole;

Amendment

(f) that due consideration is given to the interests of the Member States where the CCP provides services and where its clearing members, their clients, and any **interoperable** CCPs are established, and in particular the impact of any decision or action or inaction on the financial stability or fiscal resources of those Member States and the Union as a whole;

Or. en

Amendment 71

Proposal for a regulation

Article 7 – paragraph 1 – point g

Text proposed by the Commission

(g) that due consideration is given to the objectives of balancing the interests of the various clearing **participants, affected** creditors and **affected holders** in the Member States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of particular actors in some Member States, including avoiding unfair burden allocation across Member States;

Amendment

(g) that due consideration is given to the objectives of balancing the interests of the various clearing **members, their clients, wider** creditors and **stakeholders of the CCP** in the Member States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of particular actors in some Member States, including avoiding unfair burden allocation across Member States;

Or. en

Amendment 72

Proposal for a regulation

Article 7 – paragraph 1 – point j

Text proposed by the Commission

(j) that transparency is ensured wherever a proposed decision or action is likely to have implications on the financial stability or fiscal resources of any relevant Member State;

Amendment

(j) that transparency is ensured wherever **possible, in particular where** a proposed decision or action is likely to have implications on the financial stability or fiscal resources of **(i) any relevant Member State, (ii) any other jurisdiction, or (iii) other parties, where reasonably possible;**

Or. en

Amendment 73

Proposal for a regulation

Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Resolution authorities shall only divulge confidential information provided by a third-country authority where that authority has given its prior consent.

Amendment

Resolution authorities shall only divulge confidential information provided by a third-country authority where that authority has given its prior **written** consent.

Or. en

Amendment 74

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

1. CCPs shall draw up and maintain a recovery plan providing for measures to be taken in order to restore their financial position following a significant deterioration of their financial situation or a risk of breaching their prudential requirements under Regulation (EU) No 648/2012.

Amendment

1. CCPs shall draw up and maintain a recovery plan providing for measures to be taken in **the case of default and non-default events in** order to restore their financial position **without any public financial support and in order to enable them to continue to provide clearing services** following a significant deterioration of their financial situation or a risk of breaching their prudential

Amendment 75

Proposal for a regulation

Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The recovery plan shall include a framework of indicators that identify the circumstances under which measures in the recovery plan are to be taken. The indicators may be of either a qualitative or a quantitative nature relating to the financial position of the CCP.

Amendment

The recovery plan shall include a framework of indicators that identify the circumstances under which measures in the recovery plan are to be taken, ***taking into account different scenarios***. The indicators may be of either a qualitative or a quantitative nature relating to the financial position of the CCP.

Amendment 76

Proposal for a regulation

Article 9 – paragraph 3 – introductory part

Text proposed by the Commission

3. CCPs shall ***not be prevented from deciding any of the following, where duly justified***:

Amendment

3. CCPs shall ***include provisions in their operating rules outlining the procedures to be followed by them in order to achieve the goals of the recovery process***:

Amendment 77

Proposal for a regulation

Article 9 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. *Any measure to be taken pursuant to paragraph 3 shall require the approval of the competent authority.*

Or. en

Amendment 78

Proposal for a regulation

Article 9 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

Any decision taken pursuant to paragraph 3 and its justification shall be notified to the competent authority without delay.

Where a CCP intends to activate its recovery plan, it shall inform the competent authority of the nature and magnitude of the problems it has identified, setting out all relevant circumstances and indicating the recovery measures or other measures it intends to take to address the situation.

Where a CCP intends to activate its recovery plan, it shall inform the competent authority of the nature and magnitude of the problems it has identified, setting out all relevant circumstances and indicating the recovery measures or other measures it intends to take to address the situation.

Or. en

Amendment 79

Proposal for a regulation

Article 9 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

Where the competent authority considers that a recovery measure that the CCP intends to take may cause significant adverse effects to the financial system, it may require the CCP to refrain from taking that measure.

Where the competent authority considers that a recovery measure that the CCP intends to take may cause significant adverse effects to the financial system, ***is unlikely to be effective, or could disproportionately affect the clients of the clearing members,*** it may require the CCP to refrain from taking that measure.

Amendment 80

Proposal for a regulation

Article 9 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. *Where the competent authority is informed in accordance with the first subparagraph of paragraph 4, it shall restrict or prohibit any remuneration of equity and instruments treated as equity to the fullest extent possible without triggering outright default, including dividend payments and buybacks by the CCP, and it may restrict, prohibit or freeze any payments of variable remuneration under Directive 2013/36/EU and EBA Guidelines EBA/GL/2015/22, of discretionary pension benefits and of severance packages to management.*

Or. en

Amendment 81

Proposal for a regulation

Article 9 – paragraph 6

Text proposed by the Commission

Amendment

6. CCPs shall update their recovery plans at least annually and after **a** change to their legal or organisational structure or business or financial situation which could have a material effect on those plans or otherwise necessitate a change to the plans. Competent authorities may require CCPs to update their recovery plans more frequently.

6. CCPs shall **review and** update, **where necessary**, their recovery plans at least annually and after **any** change to their legal or organisational structure or business or financial situation which could have a material effect on those plans or otherwise necessitate a change to the plans. Competent authorities may require CCPs to update their recovery plans more frequently.

Amendment 82

Proposal for a regulation Article 9 – paragraph 7

Text proposed by the Commission

7. Recovery plans shall ***be drafted in accordance with Section A of the Annex. Competent authorities may require CCPs to include additional information in their recovery plans.***

Amendment

7. Recovery plans shall:

(a) ***not assume any access to or receipt of public financial support;***

(b) ***consider the interests of all stakeholders that are likely to be affected by that plan, specifically in relation to clearing members and their clients, both direct and indirect;***

(c) ***ensure that clearing members do not have unlimited exposures toward the CCP.***

Or. en

Amendment 83

Proposal for a regulation Article 9 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. The CCP shall develop adequate mechanisms to involve relevant stakeholders in the process of the drawing-up of that plan, unless they are already participating via the risk committee established pursuant to Article 28 of Regulation (EU) No 648/2012.

Or. en

Amendment 84

Proposal for a regulation Article 9 – paragraph 7 b (new)

Text proposed by the Commission

Amendment

7b. The recovery plan shall include the following items:

(a) a summary of the key elements of the plan and a summary of overall recovery capacity;

(b) a summary of the material changes to the CCP since the most recently filed recovery plan;

(c) a communication and disclosure plan outlining how the CCP intends to manage any potentially negative market reactions while acting in as transparent a manner as possible;

(d) a comprehensive range of capital, loss allocation and liquidity actions required to maintain or restore the viability and financial position of the CCP including to restore its matched book and capital, and replenish pre-funded resources that are necessary for the CCP to maintain its viability as a going concern and to continue providing its critical services in accordance with Article 1(2) of Commission Delegated Regulation (EU) No 152/2013 and Articles 32(2) and (3) of Commission Delegated Regulation (EU) No 153/2013;

(e) the appropriate conditions and procedures for ensuring the timely implementation of recovery actions, as well as a wide range of recovery options, including an estimation of the timeframe for executing each material aspect of the plan;

(f) a detailed description of any material impediments to the effective and timely execution of the plan, including consideration of the impact on clearing

members and clients including in cases where clearing members are likely to take measures in accordance with their recovery plans as referred to in Articles 5 and 7 of Directive 2014/59/EU and, where appropriate, consideration of the impact on the rest of the group;

(g) an identification of critical functions;

(h) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the CCP;

(i) a detailed description of how recovery planning is integrated into the corporate governance structure of the CCP, how it forms part of the operating rules of the CCP agreed to by clearing members, as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;

(j) the arrangements and measures incentivising non-default clearing members to bid competitively in auctions of a defaulted member's positions;

(k) the arrangements and measures for ensuring that the CCP has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer resources or liquidity across business lines, to ensure that it can continue to carry out its operations and meet its obligation as they fall due;

(l) the arrangements and measures:

i. to reduce risk;

ii. to restructure contracts, rights, assets and liabilities including:

a) to partially or fully terminate contracts;

b) to reduce the value of any gains

payable by the CCP to non-defaulting clearing members and their clients;

iii. to restructure business lines;

iv. necessary to maintain continuous access to financial markets infrastructures;

v. necessary to maintain the continuous functioning of the CCP's operational processes, including infrastructure and IT services;

vi. a description of management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;

vii. preparatory measures that the CCP has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the CCP, restoring its matched book and replenishment of its pre-funded resources, as well as to ensure its enforceability across borders; those measures shall include arrangements for non-defaulting clearing members to make a minimum contribution in cash to the CCP up to an amount equivalent to their contribution to the CCP's default fund.

viii. a framework of indicators for identifying the points at which appropriate actions referred to in the plan can be taken.

ix. where applicable, an analysis of how and when the CCP can apply, in the conditions addressed in the plan, for the use of central bank facilities and identify those assets that would be expected to qualify as collateral under the terms of the central bank facility;

x. taking into account the provisions of Article 49(1) of Regulation (EU) No 648/2012, a range of extreme scenarios of stress relevant to the CCP's specific conditions, including system-wide events and stress specific to the legal entity and

any group to which it belongs an specific stress to the individual clearing members of the CCP or, where appropriate, a linked FMI;

xi. taking into account the provisions of Article 34 and Article 49(1) of Regulation (EU) No 648/2012, scenarios caused both by the stress or default of one or more of its members and by other reasons including losses from the CCP's investment activities or from operational problems (including severe external threats to a CCP's operations due to an external disruption, shock or cyber-related incident);

Or. en

Justification

Taken from the ANNEX, Section A, paragraph 2

Amendment 85

Proposal for a regulation Article 9 – paragraph 7 c (new)

Text proposed by the Commission

Amendment

7c. Following a default scenario, a CCP shall use an additional amount of dedicated own resources equivalent to the amount specified in Article 45(4) of Regulation (EU) No 678/2012, prior to the use of the tools referred to in point (l) of paragraph 7b of this Article.

Or. en

Amendment 86

Proposal for a regulation Article 9 – paragraph 7 d (new)

Text proposed by the Commission

Amendment

7d. *Following a non-default scenario, a CCP shall use dedicated own resources equivalent to three times the amount required to be used in accordance with Article 45(4) of Regulation (EU) No 648/2012, prior to the use of the tools referred to in point (l) of paragraph 7b of this Article.*

Or. en

Amendment 87

Proposal for a regulation
Article 9 – paragraph 7 e (new)

Text proposed by the Commission

Amendment

7e. *A CCP shall, in agreement with the competent authority, use the tools referred to in sub-point (ii) of point (l) of paragraph 7b only after cash calls, of a minimum amount equivalent to the CCP's default fund, have been carried out under the conditions referred to in that sub-point.*

Or. en

Amendment 88

Proposal for a regulation
Article 9 – paragraph 7 f (new)

Text proposed by the Commission

Amendment

7f. *In the case of a non-default event, and to maintain the strictly incentivised process, CCPs shall not use the default fund nor the default waterfall.*

Or. en

Amendment 89

Proposal for a regulation

Article 9 – paragraph 7 g (new)

Text proposed by the Commission

Amendment

7g. Competent authorities may require CCPs to include additional information in their recovery plans.

Or. en

Amendment 90

Proposal for a regulation

Article 9 – paragraph 9

Text proposed by the Commission

Amendment

9. Recovery plans shall be considered as part of the operating rules of CCPs and CCPs shall ensure that the measures set out in the recovery plans are enforceable at all times.

9. Recovery plans shall be considered as part of the operating rules of CCPs and CCPs **and their clearing members in the case of provisions related to their clients**, shall ensure that the measures set out in the recovery plans are enforceable at all times.

Or. en

Amendment 91

Proposal for a regulation

Article 9 – paragraph 9 a (new)

Text proposed by the Commission

Amendment

9a. CCPs shall make their recovery plans publicly available. Clearing members shall ensure that any provisions affecting their clients are adequately explained to them.

Or. en

Amendment 92

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The competent authority shall transmit each plan to the college and to the resolution authority without undue delay.

Amendment

The competent authority shall transmit each plan to the **supervisory** college and to the resolution authority without undue delay.

Or. en

Amendment 93

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Within six months of the submission of each plan, and in coordination with the college in accordance with the procedure in Article 12, the competent authority shall review the recovery plan and assess the extent to which it satisfies the requirements set out in Article 9.

Amendment

Within six months of the submission of each plan, and in coordination with the **supervisory** college in accordance with the procedure in Article 12, the competent authority shall review the recovery plan and assess the extent to which it satisfies the requirements set out in Article 9.

Or. en

Amendment 94

Proposal for a regulation

Article 10 – paragraph 3

Text proposed by the Commission

3. When assessing the recovery plan, the competent authority shall take into consideration the CCP's capital structure, its default waterfall, the level of complexity of the organisational structure and the risk profile of the CCP, and the

Amendment

3. When assessing the recovery plan, the competent authority shall **consult the ESRB and** take into consideration the CCP's capital structure, its default waterfall, the level of complexity of the organisational structure and the risk profile

impact that the implementation of the recovery plan would have on clearing members, their clients, financial markets served by the CCP and on the financial system as a whole.

of the CCP, and the impact that the implementation of the recovery plan would have on clearing members, their clients, financial markets served by the CCP and on the financial system as a whole. ***The competent authority shall take into due consideration whether the recovery plan ensures appropriate incentives for the CCP's owners and clearing members and their clients to control the amount of risk that they bring to or incur in the system. The competent authority shall encourage monitoring of the CCP's risk-taking and risk management activities, and encourage as full participation as possible in the CCP's default management process.***

Or. en

Amendment 95

Proposal for a regulation Article 10 – paragraph 4

Text proposed by the Commission

4. The resolution authority shall examine the recovery plan in order to identify any measures which may adversely impact the resolvability of the CCP. The resolution authority shall make recommendations to the competent authority ***with regard to those matters.***

Amendment

4. The resolution authority shall examine the recovery plan in order to identify any measures which may adversely impact the resolvability of the CCP. ***Where any such measures are identified,*** the resolution authority shall make recommendations to the competent authority ***on ways to address the adverse impact of those measures on the resolvability of the CCP.***

Or. en

Amendment 96

Proposal for a regulation Article 10 – paragraph 9 – subparagraph 2 – introductory part

Text proposed by the Commission

Where the CCP or parent undertaking fails to identify such changes within the timeframe set by the competent authority, or where the competent authority considers that the actions proposed would not adequately address the deficiencies or impediments to the implementation of the recovery plan, the competent authority shall require the CCP or parent undertaking to take any of the following measures, taking into account the seriousness of the deficiencies and impediments **and** the effect of the measures on the CCP's business:

Amendment

Where the CCP or parent undertaking fails to identify such changes within the timeframe set by the competent authority, or where the competent authority considers that the actions proposed would not adequately address the deficiencies or impediments to the implementation of the recovery plan, ***or improve the resolvability of the CCP***, the competent authority shall require the CCP or parent undertaking, ***within a reasonable period of time specified by the competent authority***, to take any of the following measures, taking into account the seriousness of the deficiencies and impediments, the effect of the measures on the CCP's business ***and the ability of the CCP to remain in compliance with Regulation (EU) No 648/2012***:

Or. en

Amendment 97

Proposal for a regulation

Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Where the parent undertaking of the group to which a CCP belongs is not an institution or entity referred to in the first subparagraph and where appropriate in order to meet the criteria of ***Section A of the Annex***, competent authorities may, after consulting the college and in accordance with the procedure laid down in Article 10 of this Regulation, require the parent undertaking to submit a plan for the recovery of the CCP as part of the recovery plan for the group. That request shall be reasoned and shall be notified in writing to the CCP and its parent undertaking.

Amendment

Where the parent undertaking of the group to which a CCP belongs is not an institution or entity referred to in the first subparagraph and where appropriate in order to meet the criteria of ***Article 9(7b)***, competent authorities may, after consulting the ***supervisory*** college and in accordance with the procedure laid down in Article 10 of this Regulation, require the parent undertaking to submit a plan for the recovery of the CCP as part of the recovery plan for the group. That request shall be reasoned and shall be notified in writing to the CCP and its parent undertaking.

Amendment 98

Proposal for a regulation

Article 12 – paragraph 1 – introductory part

Text proposed by the Commission

1. The college shall reach a joint decision on all of the following issues:

Amendment

1. The **supervisory** college shall reach a joint decision on all of the following issues:

Or. en

Amendment 99

Proposal for a regulation

Article 12 – paragraph 2 – subparagraph 3

Text proposed by the Commission

ESMA may, at the request of a competent authority within the college, assist the college in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1095/2010.

Amendment

ESMA may, at the request of a competent authority within the **supervisory** college, assist the **supervisory** college in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1095/2010.

Or. en

Amendment 100

Proposal for a regulation

Article 12 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Where, after four months from the date of transmission of the recovery plan, the college has failed to reach a joint decision on the issues referred to in points (a) and (b) of paragraph 1, the competent authority of the CCP shall make its own decision.

Amendment

Where, after four months from the date of transmission of the recovery plan, the **supervisory** college has failed to reach a joint decision on the issues referred to in points (a) and (b) of paragraph 1, the competent authority of the CCP shall make

its own decision.

Or. en

Amendment 101

Proposal for a regulation

Article 12 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The competent authority of the CCP shall make the decision referred to in the first subparagraph taking into account the views of the other college members expressed during the four-month period. The competent authority of the CCP shall notify in writing that decision to the CCP, to its parent undertaking, where relevant, and to the other members of the college.

Amendment

The competent authority of the CCP shall make the decision referred to in the first subparagraph taking into account the views of the other college members expressed during the four-month period. The competent authority of the CCP shall notify in writing that decision to the CCP, to its parent undertaking, where relevant, and to the other members of the *supervisory* college.

Or. en

Amendment 102

Proposal for a regulation

Article 12 – paragraph 4

Text proposed by the Commission

4. Where, by the end of that four-month period, any member of the college has referred to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010 a matter in relation to the assessment of recovery plans and implementation of the measures pursuant to points (a), (b) and (d) of Article 10(9) of this Regulation, the competent authority of the CCP shall await the decision taken by ESMA in accordance with Article 19(3) of Regulation (EU) No 1095/2010 and decide in accordance with the decision of ESMA.

Amendment

4. Where, by the end of that four-month period, any member of the *supervisory* college has referred to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010 a matter in relation to the assessment of recovery plans and implementation of the measures pursuant to points (a), (b) and (d) of Article 10(9) of this Regulation, the competent authority of the CCP shall await the decision taken by ESMA in accordance with Article 19(3) of Regulation (EU) No 1095/2010 and decide in accordance with the decision of ESMA.

Amendment 103

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

1. The resolution authority shall, after consultation with the competent authority and in coordination with the resolution college, in accordance with the procedure set out in Article 15, draw up a resolution plan for each CCP.

Amendment

1. The resolution authority *of each CCP* shall, after consultation with the competent authority and in coordination with the resolution college, in accordance with the procedure set out in Article 15, draw up a resolution plan for each CCP.

Or. en

Amendment 104

Proposal for a regulation Article 13 – paragraph 3 – point a – point i

Text proposed by the Commission

i. *the default of one or more of its members;*

Amendment

i. *a default event;*

Or. en

Amendment 105

Proposal for a regulation Article 13 – paragraph 3 – point a – point ii

Text proposed by the Commission

ii. *other reasons including losses from its investment activities or operational problems;*

Amendment

ii. *a non-default event;*

Or. en

Amendment 106

Proposal for a regulation

Article 13 – paragraph 4 – point a

Text proposed by the Commission

(a) *extraordinary* public financial support;

Amendment

(a) public financial support;

Or. en

Amendment 107

Proposal for a regulation

Article 13 – paragraph 6 – subparagraph 1 – point a

Text proposed by the Commission

(a) a summary of the key elements of the plan;

Amendment

(a) a summary of the key elements of the plan *differentiating between default events, non-default events, and a combination of the two*;

Or. en

Amendment 108

Proposal for a regulation

Article 13 – paragraph 6 – subparagraph 1 – point c

Text proposed by the Commission

(c) a demonstration of how the CCP's critical functions could be legally and economically separated, to the extent necessary, from its other functions so as to ensure their continuity upon *the* failure of the CCP;

Amendment

(c) a demonstration of how the CCP's critical functions could be legally and economically separated, to the extent necessary, from its other functions so as to ensure their continuity upon *entry into all possible forms of resolution, including* failure of the CCP;

Or. en

Amendment 109

Proposal for a regulation

Article 13 – paragraph 6 – subparagraph 1 – point k

Text proposed by the Commission

(k) a description of critical interdependencies between the CCP and other market participants;

Amendment

(k) a description of critical interdependencies between the CCP and other market participants ***and any linked FMIs***;

Or. en

Amendment 110

Proposal for a regulation

Article 13 – paragraph 6 – subparagraph 1 – point l – point ii

Text proposed by the Commission

ii. timely settlement of obligations due to clearing ***participants*** and any linked FMIs;

Amendment

ii. timely settlement of obligations due to clearing ***members and their clients*** and any linked FMIs;

Or. en

Amendment 111

Proposal for a regulation

Article 13 – paragraph 6 – subparagraph 1 – point l – point iii

Text proposed by the Commission

iii. access of clearing ***participants*** to securities or cash accounts provided by the CCP and securities or cash collateral posted to and held by the CCP that is owed to such participants;

Amendment

iii. access of clearing ***members and their clients*** to securities or cash accounts provided by the CCP and securities or cash collateral posted to and held by the CCP that is owed to such participants ***on a transparent and non-discriminatory basis***;

Or. en

Amendment 112

Proposal for a regulation

Article 13 – paragraph 6 – subparagraph 1 – point 1 – point v

Text proposed by the Commission

v. the portability of the positions of clearing *participants*;

Amendment

v. the portability of the *assets and* positions of *the clients of* clearing *members as referred to in Article 39 of Regulation (EU) No 648/2012*;

Or. en

Amendment 113

Proposal for a regulation

Article 13 – paragraph 6 – subparagraph 1 – point 1 – point vi

Text proposed by the Commission

vi. preservation of the licenses, authorisations, recognitions and legal designations of a CCP necessary for the continued performance of the CCP's critical functions including its recognition for the purposes of the application of the relevant settlement finality rules and the participation in or links with other FMIs;

Amendment

vi. preservation of the licenses, authorisations, recognitions and legal designations of a CCP *where* necessary for the continued performance of the CCP's critical functions including its recognition for the purposes of the application of the relevant settlement finality rules and the participation in or links with other FMIs;

Or. en

Amendment 114

Proposal for a regulation

Article 13 – paragraph 6 – subparagraph 1 – point n

Text proposed by the Commission

(n) a plan for communicating with the media and the public;

Amendment

(n) a plan for communicating with the media and the public *in order to be as transparent as possible*;

Or. en

Amendment 115

Proposal for a regulation

Article 13 – paragraph 8 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

When developing the draft regulatory technical standards, ESMA shall take into due consideration the level of differentiation between national legal frameworks, in particular in the area of insolvency law, across the Union, as well as the differing sizes and nature of CCPs established in the Union.

Or. en

Amendment 116

Proposal for a regulation

Article 15 – paragraph 3 – point ii

Text proposed by the Commission

Amendment

ii. *significant* clearing members *of* the CCP;

ii. clearing members *to which* the CCP *has significant exposure*;

Or. en

Amendment 117

Proposal for a regulation

Article 15 – paragraph 3 – point iv a (new)

Text proposed by the Commission

Amendment

iva. a CCP with interoperable arrangements with the CCP.

Or. en

Amendment 118

Proposal for a regulation

Article 15 – paragraph 5

Text proposed by the Commission

5. Where, after four months from the date of transmission of the resolution plan, the college has failed to reach a joint decision, the resolution authority shall make its own decision on the resolution plan. The resolution authority shall make its decision taking into account the views of the other college members expressed during the four-month period. The resolution authority shall notify in writing the decision to the CCP, to its parent undertaking where relevant, and to the other members of the college.

Amendment

5. Where, after four months from the date of transmission of the resolution plan, the **resolution** college has failed to reach a joint decision, the resolution authority shall make its own decision on the resolution plan. The resolution authority shall make its decision taking into account the views of the other **resolution** college members expressed during the four-month period. The resolution authority shall notify in writing the decision to the CCP, to its parent undertaking where relevant, and to the other members of the **resolution** college.

Or. en

Amendment 119

Proposal for a regulation

Article 16 – paragraph 1 – point a

Text proposed by the Commission

(a) **extraordinary** public financial support;

Amendment

(a) public financial support;

Or. en

Amendment 120

Proposal for a regulation

Article 16 – paragraph 2 – subparagraph 1

Text proposed by the Commission

A CCP shall be deemed resolvable where the resolution authority considers it feasible and credible to either liquidate it

Amendment

A CCP shall be deemed resolvable where the resolution authority considers it feasible and credible to either liquidate it

under normal insolvency proceedings or to resolve it using the resolution tools and exercising the resolution powers while ensuring the continuity of the CCP's critical functions and avoiding to the maximum extent possible any significant adverse effect on the financial system.

under normal insolvency proceedings or to resolve it using the resolution tools and exercising the resolution powers while ensuring the continuity of the CCP's critical functions and avoiding ***any use of public funds and*** to the maximum extent possible any significant adverse effect on the financial system.

Or. en

Amendment 121

Proposal for a regulation Article 16 – paragraph 5

Text proposed by the Commission

5. The resolution authority shall make the resolvability assessment at the same time as drawing up and updating the resolution plan in accordance with Article 13.

Amendment

5. The resolution authority ***in cooperation with the resolution college*** shall make the resolvability assessment at the same time as drawing up and updating the resolution plan in accordance with Article 13.

Or. en

Amendment 122

Proposal for a regulation Article 17 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where, following the assessment in Article 16, the resolution authority ***and resolution college conclude*** that there are substantive impediments to the resolvability of a CCP, the resolution authority, in cooperation with the competent authority, shall prepare and submit a report to the CCP and to the resolution college.

Amendment

Where, following the assessment in Article 16 ***and after consulting the resolution college***, the resolution authority ***concludes*** that there are substantive impediments to the resolvability of a CCP, the resolution authority, in cooperation with the competent authority, shall prepare and submit a report to the CCP and to the resolution college.

Or. en

Amendment 123

Proposal for a regulation

Article 17 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The report referred to in the first subparagraph shall analyse the *substantive* impediments to the effective use of the resolution tools and the exercise of the resolution powers in relation to the CCP, consider their impact on the business model of the CCP and recommend targeted measures to remove those *impediments*.

Amendment

The report referred to in the first subparagraph shall analyse the impediments to the effective use of the resolution tools and the exercise of the resolution powers in relation to the CCP, consider their impact on the business model of the CCP and recommend targeted measures to remove those.

Or. en

Amendment 124

Proposal for a regulation

Article 17 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Where the resolution authority *and* the resolution college *conclude* that the measures proposed by a CCP in accordance with paragraph 3 would not effectively reduce or remove the impediments identified in the report, the resolution authority shall identify alternative measures which it shall communicate to the resolution college for joint decision in accordance with Article 18.

Amendment

Where the resolution authority, *taking into account the opinion of* the resolution college, *concludes* that the measures proposed by a CCP in accordance with paragraph 3 would not effectively reduce or remove the impediments identified in the report, the resolution authority shall identify alternative measures which it shall communicate to the resolution college for joint decision in accordance with Article 18.

Or. en

Amendment 125

Proposal for a regulation

Article 17 – paragraph 4 – subparagraph 3

Text proposed by the Commission

For the purposes of point (b) of the second subparagraph, the resolution authority shall consult the competent authority and the resolution college and, where appropriate, the *designated national macroprudential authority*.

Amendment

For the purposes of point (b) of the second subparagraph, the resolution authority shall consult the competent authority, *the supervisory college* and the resolution college and, where appropriate, the *ESRB*.

Or. en

Amendment 126

**Proposal for a regulation
Article 17 – paragraph 6**

Text proposed by the Commission

6. The CCP shall propose within one month a plan *to comply with* the alternative measures.

Amendment

6. The CCP shall propose within one month a plan *of how it intends to implement* the alternative measures *within the period of time established by the resolution authority*.

Or. en

Amendment 127

**Proposal for a regulation
Article 17 – paragraph 7 – introductory part**

Text proposed by the Commission

7. For the purposes of paragraph 4, the resolution authority may:

Amendment

7. *Only* for the purposes of paragraph 4, the resolution authority *in coordination with the competent authority* may:

Or. en

Amendment 128

Proposal for a regulation

Article 17 – paragraph 7 – point h

Text proposed by the Commission

(h) require the CCP to make changes to its recovery plan;

Amendment

(h) require the CCP to make changes to its recovery plan, ***operating rules and other contractual arrangements***;

Or. en

Amendment 129

Proposal for a regulation

Article 18 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Where, after four months from the date of transmission of the report provided for in Article 17(1), the college has failed to adopt a joint decision, the resolution authority shall take its own decision on the appropriate measures to be taken in accordance with Article 17(5). The resolution authority shall take its decision having taken into account the views of the other college members expressed during the four-month period.

Amendment

Where, after four months from the date of transmission of the report provided for in Article 17(1), the ***resolution*** college has failed to adopt a joint decision, the resolution authority shall take its own decision on the appropriate measures to be taken in accordance with Article 17(5). The resolution authority shall take its decision having taken into account the views of the other ***resolution*** college members expressed during the four-month period.

Or. en

Amendment 130

Proposal for a regulation

Article 18 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The resolution authority shall notify the decision to the CCP, to its parent undertaking where relevant, and to the other members of the college in writing.

Amendment

The resolution authority shall notify the decision to the CCP, to its parent undertaking where relevant, and to the other members of the ***resolution*** college in

writing.

Or. en

Amendment 131

Proposal for a regulation

Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

1. Where a CCP infringes or is likely to infringe *in the near future* the prudential requirements of Regulation (EU) No 648/2012, or where the competent authority has determined that there are other indications of an emerging crisis situation that could affect the operations of the CCP, competent *authorities* may:

Amendment

1. Where a CCP infringes or is likely to infringe the prudential requirements of Regulation (EU) No 648/2012, or where the competent authority has determined that there are other indications of an emerging crisis situation that could affect the operations of the CCP, *in particular, its ability to provide clearing services, the competent authority* may:

Or. en

Amendment 132

Proposal for a regulation

Article 19 – paragraph 1 – point a

Text proposed by the Commission

(a) require the CCP to update the recovery plan in accordance with Article **9(6)**, where the circumstances that required early intervention are different from the assumptions set out in the initial recovery plan;

Amendment

(a) require the CCP to update the recovery plan in accordance with Article **9**, where the circumstances that required early intervention are different from the assumptions set out in the initial recovery plan;

Or. en

Amendment 133

Proposal for a regulation

Article 19 – paragraph 1 – point j

Text proposed by the Commission

Amendment

(j) require the CCP to abstain from the implementation of certain recovery measures where the competent authority has determined that the implementation of those measures may have an adverse effect on financial stability;

(j) require the CCP to abstain from the implementation of certain recovery measures where the competent authority has determined that the implementation of those measures may have an adverse effect on financial stability *or unduly harm the interests of clients*;

Or. en

Amendment 134

Proposal for a regulation

Article 19 – paragraph 1 – point k a (new)

Text proposed by the Commission

Amendment

(ka) restrict or prohibit any remuneration of equity and instruments treated as equity to the fullest extent possible without triggering outright default, including dividend payments and buybacks by the CCP, and it may restrict, prohibit or freeze any payments of variable remuneration under Directive 2013/36/EU and EBA Guidelines EBA/GL/2015/22, of discretionary pension benefits or of severance packages to management.

Or. en

Amendment 135

Proposal for a regulation

Article 19 – paragraph 4 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) maintain the continuity of the critical *services* of the CCP;

(b) maintain the continuity of the critical *functions* of the CCP *on a transparent and non-discriminatory basis*;

Amendment 136

Proposal for a regulation Article 19 – paragraph 5

Text proposed by the Commission

5. Where a CCP has initiated its default waterfall in accordance with Article 45 of Regulation (EU) No 648/2012, it shall inform the competent authority without undue delay and explain whether that event reflects weaknesses or problems of that CCP.

Amendment

5. Where a CCP has initiated its default waterfall in accordance with Article 45 of Regulation (EU) No 648/2012, it shall inform the competent authority **and the resolution authority** without undue delay and explain whether that event reflects weaknesses or problems of that CCP.

Or. en

Amendment 137

Proposal for a regulation Article 19 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Where the conditions referred to in paragraph 1 are met, the competent authority shall notify ESMA and the resolution authority and consult the college.

Amendment

Where the conditions referred to in paragraph 1 are met, the competent authority shall notify ESMA and the resolution authority and consult the **supervisory** college.

Or. en

Amendment 138

Proposal for a regulation Article 19 – paragraph 6 – subparagraph 2

Text proposed by the Commission

Following those notifications and the consultation of the college, the competent

Amendment

Following those notifications and the consultation of the **supervisory** college, the

authority shall decide whether to apply any of the measures provided for in paragraph 1. The competent authority shall notify the decision on the measures to be taken to the college, the resolution authority and ESMA.

competent authority shall decide whether to apply any of the measures provided for in paragraph 1. The competent authority shall notify the decision on the measures to be taken to the *supervisory* college, the resolution authority and ESMA.

Or. en

Amendment 139

Proposal for a regulation Title IV a (new)

Text proposed by the Commission

Amendment

Recoupment of losses

Or. en

Amendment 140

Proposal for a regulation Article 20 a (new)

Text proposed by the Commission

Amendment

Article 20a

Issuance of instruments of ownerships in future profits to clearing members and clients that have suffered losses

Where a CCP in recovery has applied tools, set out in Articles 28, 30 and 31, which go beyond the default waterfall set out in Article 45 of Regulation (EU) No 648/2012, on non-defaulting clearing members and their clients, and has not entered into resolution as a result, the competent authority of the CCP may, once a matched book has been restored, either require the CCP to recompense the participants for their loss through cash payments or, where appropriate, require

the CCP to issue instruments of ownership in future profits of the CCP.

The value of instruments of ownership in future profits of the CCP issued to each affected non-defaulting clearing member, which is to be passed on to clients in a suitable form, shall be proportionate to its loss and based on a valuation conducted in accordance with Article 24(3). Those instruments of ownership shall entitle the possessor to receive payments from the CCP on an annual basis until the loss has been recouped in full up to a maximum of 15 years from the date of issuance. Up to 90% of the CCP's annual profits shall be used towards payments relating to those instruments of ownership.

Or. en

Amendment 141

Proposal for a regulation

Article 21 – paragraph 1 – point a – introductory part

Text proposed by the Commission

(a) to ensure the continuity of the CCP's critical functions, *as identified in the CCP's recovery plan*, in particular:

Amendment

(a) to ensure the continuity of the CCP's critical functions, in particular:

Or. en

Amendment 142

Proposal for a regulation

Article 21 – paragraph 1 – point a – point i

Text proposed by the Commission

(i) the timely settlement of the CCP's obligations to its clearing members;

Amendment

(i) the timely settlement of the CCP's obligations to its clearing members *and their clients*;

Or. en

Amendment 143

Proposal for a regulation

Article 21 – paragraph 1 – point d

Text proposed by the Commission

(d) to protect public funds by minimising reliance on *extraordinary* public financial support;

Amendment

(d) to protect public funds by minimising reliance on public financial support;

Or. en

Amendment 144

Proposal for a regulation

Article 21 – paragraph 1 – point e

Text proposed by the Commission

(e) to minimise the cost of resolution on all affected stakeholders and avoid destruction of the CCP's value.

Amendment

(e) to minimise the cost of resolution on all affected stakeholders and avoid destruction of the CCP's value, *unless such destruction is necessary to achieve the resolution objectives.*

Or. en

Amendment 145

Proposal for a regulation

Article 22 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) there is no reasonable prospect that any alternative private sector measures or supervisory action, including early intervention measures taken, would prevent the failure of the CCP within a reasonable timeframe, having regard to all relevant circumstances;

Amendment

(b) there is no reasonable prospect that any alternative private sector measures or supervisory action, including early intervention measures taken, would prevent the failure of the CCP within a reasonable timeframe, having regard to all relevant circumstances, *and*

Amendment 146

Proposal for a regulation

Article 22 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) a resolution action is necessary in the public interest to achieve the resolution objectives where winding down the CCP under normal insolvency proceedings would not meet those objectives to the same extent.

Amendment

(c) a resolution action is necessary in the public interest to achieve the resolution objectives where ***implementing the CCP's contractual loss allocation arrangements or where such arrangements are not comprehensive, and*** winding down the CCP under normal insolvency proceedings would not meet those objectives to the same extent.

Or. en

Amendment 147

Proposal for a regulation

Article 22 – paragraph 2 – subparagraph 1 – point e

Text proposed by the Commission

(e) the CCP requires ***extraordinary*** public financial support.

Amendment

(e) the CCP requires public financial support.

Or. en

Amendment 148

Proposal for a regulation

Article 22 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

For the purposes of point (e) ***extraordinary*** public financial support shall not include public financial support that meets all of

Amendment

For the purposes of point (e) public financial support shall not include public financial support that meets all of the

the following conditions:

following conditions:

Or. en

Amendment 149

Proposal for a regulation

Article 22 – paragraph 4 – subparagraph 1

Text proposed by the Commission

ESMA shall *issue* guidelines to promote the convergence of supervisory and resolution practices regarding the application of the circumstances under which a CCP is deemed to be failing or likely to fail by [PO, please insert date 12 months from entry into force of this Regulation].

Amendment

ESMA shall *adopt* guidelines to promote the convergence of supervisory and resolution practices regarding the application of the circumstances under which a CCP is deemed to be failing or likely to fail by [PO, please insert date 12 months from entry into force of this Regulation].

Or. en

Amendment 150

Proposal for a regulation

Article 22 – paragraph 4 – subparagraph 2

Text proposed by the Commission

For the issuance of those guidelines, ESMA shall take into account the guidelines issued in accordance with Article 32(6) of Directive 2014/59/EU.

Amendment

When adopting those guidelines, ESMA shall take into account the guidelines issued in accordance with Article 32(6) of Directive 2014/59/EU.

Or. en

Amendment 151

Proposal for a regulation

Article 22 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. *The decision taken by a resolution authority deeming a CCP failing or likely to fail may only be challenged on the basis that the decision was arbitrary and unreasonable at the time it was taken, based on the information then readily available.*

Or. en

Amendment 152

Proposal for a regulation

Article 23 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) all contractual obligations and other arrangements in the CCP's recovery plan are enforced either partially or in full, to the extent that they have not been exhausted before entry into resolution, unless the resolution authority determines that the use of resolution tools or the exercise of resolution powers is more appropriate to achieve the resolution objectives in a timely manner;

(a) all contractual obligations and other arrangements in the CCP's recovery plan are enforced either partially or in full, to the extent that they have not been exhausted before entry into resolution, unless, *in extreme circumstances*, the resolution authority determines that the use of resolution tools or the exercise of resolution powers is more appropriate to achieve the resolution objectives in a timely manner;

Or. en

Amendment 153

Proposal for a regulation

Article 23 – paragraph 1 – point e – introductory part

Text proposed by the Commission

Amendment

(e) none of the CCP's creditors incur higher losses than they would have incurred *under any of the following circumstances*:

(e) none of the CCP's *shareholders*, creditors *and clearing members or their clients* incur higher losses than they would have incurred *in accordance with Article*

Amendment 154

Proposal for a regulation

Article 23 – paragraph 1 – point e – point i

Text proposed by the Commission

Amendment

i) the resolution authority had not taken any resolution action pursuant to Article 21 following the default of one or more clearing members and the creditor was instead subject to possible outstanding obligations pursuant to the CCP's operating rules; *deleted*

Or. en

Amendment 155

Proposal for a regulation

Article 23 – paragraph 1 – point e – point ii

Text proposed by the Commission

Amendment

ii) the CCP had been wound up under normal insolvency proceedings, where no clearing member has defaulted; *deleted*

Or. en

Amendment 156

Proposal for a regulation

Article 24 – paragraph 3 – subparagraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) the price of any termination of contracts by the resolution authority shall

be based, insofar as possible, upon a fair market price determined on the basis of the CCP's rules and arrangements, and only substituted for another price discovery method if deemed essential by the resolution authority.

Or. en

Amendment 157

Proposal for a regulation Article 25 – paragraph 3

Text proposed by the Commission

3. Without prejudice to the Union State aid framework, where applicable, a definitive valuation shall be based on prudent assumptions and shall not assume any potential provision of *extraordinary* public financial support, any central bank emergency liquidity assistance or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to the CCP from the point in time at which resolution action is taken. The valuation shall also take account of the potential recovery of any reasonable expenses incurred by the CCP under resolution in accordance with Article 27(9).

Amendment

3. Without prejudice to the Union State aid framework, where applicable, a definitive valuation shall be based on prudent assumptions and shall not assume any potential provision of public financial support, any central bank emergency liquidity assistance or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to the CCP from the point in time at which resolution action is taken. The valuation shall also take account of the potential recovery of any reasonable expenses incurred by the CCP under resolution in accordance with Article 27(9).

Or. en

Amendment 158

Proposal for a regulation Article 27 – paragraph 2

Text proposed by the Commission

2. In the event of a systemic crisis, the resolution authority may also provide *extraordinary* public financial support by

Amendment

2. In the event of a systemic crisis, the resolution authority may also provide public financial support by using

using government stabilisation tools in accordance with Articles 45, 46 and 47 on the condition of prior and final approval under the Union State aid framework.

government stabilisation tools in accordance with Articles 45, 46 and 47 on the condition of prior and final approval under the Union State aid framework.

Or. en

Amendment 159

Proposal for a regulation

Article 27 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

The resolution authority shall require the CCP to issue instruments of ownership to be subscribed by all non-defaulting clearing members where those non-defaulting clearing members have been subject to loss and position allocation tools in deviation from the CCP's operating rules which have resulted in the non-defaulting clearing member suffering a financial loss. The number of instruments of ownership issued to each affected non-defaulting clearing member shall be proportionate to its loss and shall take account of any outstanding contractual obligations of the clearing members toward the CCP.

deleted

Or. en

Amendment 160

Proposal for a regulation

Article 27 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

The number of instruments of ownership to be subscribed by or transferred to non-defaulting clearing members shall be based on the valuation conducted in accordance with Article 24(3).

deleted

Amendment 161

Proposal for a regulation

Article 27 – paragraph 9 – introductory part

Text proposed by the Commission

9. The resolution authority *may* recover any reasonable expenses incurred in connection with the use of the resolution tools or powers or government financial stabilisation tools in any of the following ways:

Amendment

9. The resolution authority *shall* recover any reasonable expenses incurred in connection with the use of the resolution tools or powers or government financial stabilisation tools in any of the following ways:

Or. en

Amendment 162

Proposal for a regulation

Article 28 – paragraph 2

Text proposed by the Commission

2. The tools referred to in paragraph 1 *shall* be used in respect of all contracts relating to clearing services and the collateral related to those services posted to the CCP.

Amendment

2. The tools referred to in paragraph 1 *may* be used in respect of all contracts relating to clearing services and the collateral related to those services posted to the CCP.

Or. en

Amendment 163

Proposal for a regulation

Article 28 – paragraph 3 – subparagraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) to facilitate the restoration of a matched book;

Amendment 164

Proposal for a regulation

Article 29 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Once the contract has been terminated, the resolution authority shall notify, in a timely manner, the competent authority of any client designated as an O-SII whose contract has been terminated.

Or. en

Amendment 165

Proposal for a regulation

Article 29 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Amendment

Where the resolution authority has terminated one or more contracts of the types referred to in points (a), (b) and (c) of paragraph 1, it shall prevent the CCP from clearing any new contract of the same type as the one terminated.

Where the resolution authority has terminated one or more contracts of the types referred to in points (a), (b) and (c) of paragraph 1, it shall ***temporarily*** prevent the CCP from clearing any new contract of the same type as the one terminated.

Or. en

Amendment 166

Proposal for a regulation

Article 30 – title

Text proposed by the Commission

Amendment

Reduction of the value of any gains payable by the CCP to non-defaulting clearing members

Reduction of the value of any gains payable by the CCP to non-defaulting clearing members ***and their clients***

Amendment 167

Proposal for a regulation Article 30 – paragraph 1

Text proposed by the Commission

1. The resolution authority may reduce the *value* of the CCP's payment obligations to non-defaulting clearing members where those obligations arise from gains due in accordance with the CCP's processes for paying variation margin or an economically *identical* payment.

Amendment

1. The resolution authority may reduce the *amount* of the CCP's payment obligations to non-defaulting clearing members *and their clients* where those obligations arise from gains due in accordance with the CCP's processes for paying variation margin or an economically *equivalent* payment.

Or. en

Amendment 168

Proposal for a regulation Article 30 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Any use of the powers referred to in this Article that affect the positions of a client designated as an O-SII shall be notified to the competent authority of that client in a timely manner.

Or. en

Amendment 169

Proposal for a regulation Article 31 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The resolution authority may require non-defaulting clearing members to make *a*

Amendment

The resolution authority may require non-defaulting clearing members to make

contribution in cash to the CCP *up to an amount equivalent to their contribution to the CCP's default fund.*

contributions in cash to the CCP. *The amount of those cash contributions shall be determined by the resolution authority so as to best achieve the resolution objectives referred to in Article 21(1).*

Or. en

Amendment 170

Proposal for a regulation

Article 31 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The CCP shall include reference to the resolution cash call in addition to the recovery cash calls in its operating rules and ensure that contractual arrangements are concluded to allow the resolution authority to exercise its powers under this Article.

Or. en

Amendment 171

Proposal for a regulation

Article 31 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The resolution authority shall define the amount of the resolution cash call to be included in the operating rules.

Or. en

Amendment 172

Proposal for a regulation

Article 33 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Prior to reducing or converting the principal amount of debt instruments or other unsecured liabilities, the resolution authority shall reduce the notional **amount** of instruments of ownership in proportion to the losses and up to their full value, where necessary.

Amendment

Prior to reducing or converting the principal amount of debt instruments or other unsecured liabilities, the resolution authority shall reduce the notional **value** of instruments of ownership in proportion to the losses and up to their full value, where necessary.

Or. en

Amendment 173

Proposal for a regulation

Article 33 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Where, in accordance with the valuation carried out pursuant to Article 24(3), the CCP maintains a positive net value after the reduction of instruments of ownership, the resolution authority shall cancel or dilute, as the case may be, those instruments of ownership.

Amendment

Where, in accordance with the valuation carried out pursuant to Article 24(3), the CCP maintains a positive net value after the reduction of **the value of** instruments of ownership, the resolution authority shall cancel or dilute, as the case may be, those instruments of ownership.

Or. en

Amendment 174

Proposal for a regulation

Article 36 – paragraph 1 – subparagraph 1

Text proposed by the Commission

CCPs shall, within one month after the use of the tools referred to in Article 32, **draw up** and submit to the resolution authority a business reorganisation plan in accordance with Article 37. Where the Union State aid framework is applicable, that plan shall be compatible with the restructuring plan that the CCP is required to submit to the

Amendment

CCPs shall, within one month after the use of the tools referred to in Article 32, **conduct a review of the causes of its failure** and submit **it** to the resolution authority **alongside** a business reorganisation plan in accordance with Article 37. Where the Union State aid framework is applicable, that plan shall be

Commission in accordance with that framework.

compatible with the restructuring plan that the CCP is required to submit to the Commission in accordance with that framework.

Or. en

Amendment 175

Proposal for a regulation Article 36 – paragraph 3

Text proposed by the Commission

3. The resolution authority shall submit the business reorganisation plan, and any revision thereof in accordance with Article 38, to the competent authority and to the resolution college.

Amendment

3. The resolution authority shall submit the **review and** business reorganisation plan, and any revision thereof in accordance with Article 38, to the competent authority and to the resolution college.

Or. en

Amendment 176

Proposal for a regulation Article 40 – paragraph 10 – subparagraph 2

Text proposed by the Commission

Where the purchaser does not meet the criteria referred to in the first subparagraph, the purchaser may continue to exercise the CCP's rights of membership and accessing those systems and infrastructures **for the period of time specified** by the resolution authority. **That** period of time **shall not exceed** 12 months.

Amendment

Where the purchaser does not meet the criteria referred to in the first subparagraph, the purchaser may continue to exercise the CCP's rights of membership and accessing those systems and infrastructures **subject to approval** by the resolution authority. **Such approval shall be granted only for a period of time not exceeding** 12 months.

Or. en

Amendment 177

Proposal for a regulation Article 40 – paragraph 11

Text proposed by the Commission

11. The purchaser shall not be denied access to payment and settlement systems or any other financial market infrastructure on the ground that the purchaser does not possess a rating from a credit rating agency, or that that rating is below the rating levels required to be granted access to those systems or infrastructures.

Amendment

11. ***For a period of 12 months***, the purchaser shall not be denied access to payment and settlement systems or any other financial market infrastructure on the ground that the purchaser does not possess a rating from a credit rating agency, or that that rating is below the rating levels required to be granted access to those systems or infrastructures.

Or. en

Amendment 178

Proposal for a regulation Article 43 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) the bridge CCP shall ***be authorised*** to provide the services or carry out the activities resulting from the transfer referred to in Article 42(1) in accordance with Regulation (EU) No 648/2012.

Amendment

(b) the bridge CCP shall ***take over the authorisations of the CCP under resolution*** to provide the services or carry out the activities resulting from the transfer referred to in Article 42(1) in accordance with Regulation (EU) No 648/2012.

Or. en

Amendment 179

Proposal for a regulation Article 43 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Where the bridge CCP is not authorised as required pursuant to point (b) of paragraph 1, the resolution authority shall seek the approval of the competent authority for

Amendment

Where the bridge CCP is not authorised as required pursuant to point (b) of paragraph 1, the resolution authority shall seek the approval of the competent authority for

carrying out the transfer referred to in Article 42(1). Where the competent authority approves that transfer, it shall indicate the period for which the bridge CCP's obligation to comply with the requirements of Regulation (EU) No 648/2012 is waived. ***That period shall be no longer than 12 months.***

carrying out the transfer referred to in Article 42(1). Where the competent authority approves that transfer, it shall indicate the period for which the bridge CCP's obligation to comply with the requirements of Regulation (EU) No 648/2012 is waived.

The prudential requirements under Chapter 3 of Title IV of Regulation (EU) No 648/2012 shall only be waived for a period of a maximum of three months, while all other provisions of Regulation (EU) No 648/2012 can be waived for a period of a maximum of 12 months.

Or. en

Amendment 180

Proposal for a regulation

Article 45 – paragraph 1 – introductory part

Text proposed by the Commission

1. The resolution authority may use the government stabilisation tools in accordance with Articles 46 and 47 for the purpose of resolving a CCP where the following conditions are met:

Amendment

1. The resolution authority may use the government stabilisation tools in accordance with Articles 46 and 47 for the purpose of resolving a CCP ***only*** where the following conditions are met:

Or. en

Amendment 181

Proposal for a regulation

Article 45 – paragraph 1 – point d

Text proposed by the Commission

(d) the competent authority requires the resolution authority to provide that financial support.

Amendment

deleted

Or. en

Amendment 182

Proposal for a regulation Article 47 – paragraph 2

Text proposed by the Commission

2. CCPs subject to the temporary public ownership tool shall be managed on a commercial and professional basis and shall be sold to a private purchaser as soon as commercial and financial circumstances allow.

Amendment

2. CCPs subject to the temporary public ownership tool shall be managed on a commercial and professional basis and shall be sold to a private purchaser as soon as commercial and financial circumstances allow, ***also considering the possibility to recover the cost of resolution.***

Or. en

Amendment 183

Proposal for a regulation Article 48 – paragraph 1 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the power to modify or amend the operating rules of the CCP, including as regards its terms of participation, where such changes are necessary to remove impediments to resolvability;

Or. en

Amendment 184

Proposal for a regulation Article 48 – paragraph 1 – subparagraph 1 – point n

Text proposed by the Commission

Amendment

(n) the power to reduce, including to reduce to zero, the amount of variation margin due to a clearing ***participant*** of a CCP under resolution;

(n) the power to reduce, including to reduce to zero, the amount of variation margin due to a clearing ***member*** of a CCP under resolution, ***or to a client of that clearing member, subject to the conditions***

set out in Article 30;

Or. en

Amendment 185

Proposal for a regulation

Article 49 – paragraph 1 – subparagraph 1 – point h

Text proposed by the Commission

(h) modify or amend the operating rules of the CCP under resolution, *including as regards its terms of participation subject to Article 37;*

Amendment

(h) modify or amend the operating rules of the CCP under resolution;

Or. en

Amendment 186

Proposal for a regulation

Article 50 – paragraph 1

Text proposed by the Commission

1. The resolution authority may appoint *a* special *manager* to replace the board of a CCP under resolution. The special manager shall be of sufficiently good repute and shall have adequate expertise in financial services, risk management and clearing services in accordance with the second subparagraph of Article 27(2) of Regulation (EU) No 648/2012.

Amendment

1. The resolution authority may appoint *one or more* special *managers* to replace the board of a CCP under resolution. The special manager shall be of sufficiently good repute and shall have adequate expertise in financial services, risk management and clearing services in accordance with the second subparagraph of Article 27(2) of Regulation (EU) No 648/2012.

Or. en

Amendment 187

Proposal for a regulation

Article 50 – paragraph 7

Text proposed by the Commission

7. Where national insolvency law provides for the appointment of an insolvency management, the special manager appointed pursuant to paragraph 1 may also be appointed as insolvency manager.

Amendment

7. Where national insolvency law provides for the appointment of an insolvency management, the special manager appointed pursuant to paragraph 1 may also be appointed as insolvency manager *or vice versa*.

Or. en

Amendment 188

**Proposal for a regulation
Article 52 – paragraph 1**

Text proposed by the Commission

1. Where instruments of ownership, assets, rights, obligations or liabilities of a CCP under resolution are located in, or governed by the law of a Member State other than the Member State of the resolution authority, any transfer of those instruments, assets, rights, obligations or liabilities shall have effect in accordance with the law of that other Member State.

Amendment

1. Where instruments of ownership, assets, rights, obligations or liabilities of a CCP under resolution are located in, or governed by the law of a Member State other than the Member State of the resolution authority, any transfer *or resolution action in respect* of those instruments, assets, rights, obligations or liabilities shall have effect in accordance with the law of that other Member State.

Or. en

Amendment 189

**Proposal for a regulation
Article 52 – paragraph 2**

Text proposed by the Commission

2. The resolution authority of a Member State shall be provided with all necessary assistance by the authorities of other relevant Member States to ensure that any instruments of ownership, assets, rights, obligations or liabilities are

Amendment

2. The resolution authority of a Member State shall be provided with all necessary assistance by the authorities of other relevant Member States to ensure that any instruments of ownership, assets, rights, obligations or liabilities are

transferred to the purchaser or bridge CCP in accordance with the applicable national law.

transferred to the purchaser or bridge CCP **or any other resolution action becomes effective** in accordance with the applicable national law.

Or. en

Amendment 190

Proposal for a regulation

Article 52 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Where the resolution authority of a Member State uses the resolution tools referred to in Articles 28 or 32, and the contracts, liabilities, instruments of ownership or debt instruments of the CCP under resolution include instruments, contracts or liabilities that are governed by the law of another Member State, or liabilities owed to creditors and contracts in respect of clearing *participants* located in that other Member State, the relevant authorities in that other Member State shall ensure that any action resulting from those resolution tools takes effect.

Amendment

Where the resolution authority of a Member State uses the resolution tools referred to in Articles 28 or 32, and the contracts, liabilities, instruments of ownership or debt instruments of the CCP under resolution include instruments, contracts or liabilities that are governed by the law of another Member State, or liabilities owed to creditors and contracts in respect of clearing ***members or their clients*** located in that other Member State, the relevant authorities in that other Member State shall ensure that any action resulting from those resolution tools takes effect.

Or. en

Amendment 191

Proposal for a regulation

Article 52 – paragraph 4 – subparagraph 2

Text proposed by the Commission

For the purposes of the first subparagraph, shareholders, creditors and clearing *participants* affected by those resolution tools shall not be entitled to challenge the reduction of the principal or payable amount of the instrument or liability or its

Amendment

For the purposes of the first subparagraph, shareholders, creditors and clearing ***members or their clients*** affected by those resolution tools shall not be entitled to challenge the reduction of the principal or payable amount of the instrument or

conversion or restructuring.

liability or its conversion or restructuring.

Or. en

Amendment 192

Proposal for a regulation Article 53 – paragraph 2

Text proposed by the Commission

2. For the purposes of paragraph 1, the resolution authority may require the CCP to ensure the inclusion of a provision in its contracts and other agreements with clearing members and holders of instruments of ownership and debt instruments or other liabilities located in third countries by which they agree to be bound by any action in respect of their assets, contracts, rights, obligations and liabilities taken by the resolution authority, including the application of Articles 55, 56 and 57.

Amendment

2. For the purposes of paragraph 1, the resolution authority may require the CCP to ensure the inclusion of a provision in its contracts and other agreements with clearing members and holders of instruments of ownership and debt instruments or other liabilities located in ***or governed by the law of*** third countries by which they agree to be bound by any action in respect of their assets, contracts, rights, obligations and liabilities taken by the resolution authority, including the application of Articles 55, 56 and 57. ***The resolution authority may require the CCP to provide it with a legal opinion relating to the legal enforceability and effectiveness of such provisions.***

Or. en

Amendment 193

Proposal for a regulation Article 57 – paragraph 4 – point b

Text proposed by the Commission

(b) where the rights and liabilities covered by the contract remain with the CCP ***and the resolution authority has used a resolution tool to allocate losses or positions to that contract, a counterparty may exercise*** termination rights in accordance with the ***terms of that*** contract

Amendment

(b) Where the rights and liabilities covered by the contract remain with the CCP, termination rights ***apply*** in accordance with the ***conditions for termination as set out in the*** contract ***between the CCP and the relevant counterparty only if the enforcement***

on the expiry of a suspension under paragraph 1.

event occurs or continues after the expiry of the suspension period.

Or. en

Amendment 194

Proposal for a regulation

Article 60 – paragraph 1 – introductory part

Text proposed by the Commission

Where the resolution authority uses one or more resolution tools, it **shall** ensure that shareholders, creditors **and clearing participants** do not incur:

Amendment

Where the resolution authority uses one or more resolution tools, it **should aim to** ensure that shareholders, creditors, **clearing members and their clients** do not incur **greater losses than they would have incurred had the resolution authority not taken resolution action in relation to the CCP at the time the resolution authority considered that the conditions for resolution pursuant to Article 22(1) were met and had instead been subject to all possible outstanding obligations pursuant to the CCP's recovery plan and all other contractual arrangements in its operating rules for either a default or anon-default event and the CCP been wound up under normal insolvency proceedings, properly taking into account any plausible adverse effects of systemic instability and market turmoil.**

Or. en

Amendment 195

Proposal for a regulation

Article 60 – paragraph 1 – point a

Text proposed by the Commission

(a) **in the event of the default of a clearing member, greater losses than they would have incurred had the resolution**

Amendment

deleted

authority not taken resolution action in relation to the CCP at the time the resolution authority considered that the conditions for resolution pursuant to Article 22(1) were met and had instead been subject to possible outstanding obligations pursuant to the CCP's recovery plan or other contractual arrangements in its operating rules;

Or. en

Amendment 196

Proposal for a regulation Article 60 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) in an event other than the default of a clearing member, greater losses than they would have incurred had the CCP been wound up under normal insolvency proceedings including by taking account of its contractual arrangements in its operating rules.

deleted

Or. en

Amendment 197

Proposal for a regulation Article 61 – paragraph 1

Text proposed by the Commission

Amendment

1. For the purposes of assessing compliance with the no creditor worse off principle as laid down in Article 60, the resolution authority shall ensure that a valuation is carried out by an independent person as soon as possible after *the* resolution *action has* been effected.

1. For the purposes of assessing compliance with the no creditor worse off principle as laid down in Article 60, the resolution authority shall ensure that a valuation is carried out by an independent person as soon as possible after resolution *actions have* been effected.

Or. en

Amendment 198

Proposal for a regulation

Article 61 – paragraph 2 – point a

Text proposed by the Commission

(a) the treatment that shareholders, creditors and clearing *participants* would have received had the resolution authority not taken resolution action in relation to the CCP the resolution authority considered that the conditions for resolution pursuant to Article 22(1) were met, and they had instead been subject to possible outstanding obligations pursuant to the CCP's recovery plan *or* other arrangements in its operating rules *or* the CCP had been wound up under normal insolvency proceedings;

Amendment

(a) the treatment that shareholders, creditors and clearing *members and their clients* would have received had the resolution authority not taken resolution action in relation to the CCP the resolution authority considered that the conditions for resolution pursuant to Article 22(1) were met, and they had instead been subject to *the enforcement of* possible outstanding obligations pursuant to the CCP's recovery plan *and* other arrangements in its operating rules *and* the CCP had been wound up under normal insolvency proceedings, *properly taking into account any plausible adverse effects of systemic instability and market turmoil*;

Or. en

Amendment 199

Proposal for a regulation

Article 61 – paragraph 2 – point b

Text proposed by the Commission

(b) the actual treatment that shareholders, creditors and clearing *participants* have received, in the resolution of the CCP;

Amendment

(b) the actual treatment that shareholders, creditors and clearing *members or their clients* have received, in the resolution of the CCP;

Or. en

Amendment 200

Proposal for a regulation

Article 61 – paragraph 3

PE610.797v01-00

94/104

PR\1134994EN.docx

Text proposed by the Commission

3. For the purposes of calculating the treatments referred to in paragraph 2, the valuation referred to in paragraph 1 shall disregard any provision of extraordinary public financial support to the CCP under resolution.

Amendment

3. For the purposes of calculating the treatments referred to in **point (a) of** paragraph 2, the valuation referred to in paragraph 1 shall disregard any provision of extraordinary public financial support to the CCP under resolution.

Or. en

Amendment 201

Proposal for a regulation
Article 62 – title

Text proposed by the Commission

Safeguard for shareholders, creditors **and** clearing **participants**

Amendment

Safeguard for shareholders, creditors, clearing **members and clients of clearing members**

Or. en

Amendment 202

Proposal for a regulation
Article 62 – paragraph 1

Text proposed by the Commission

Where, in accordance with the valuation carried out under Article 61, any shareholder, creditor **or** clearing **participant** has incurred greater losses than it would have incurred if the resolution authority would not have taken resolution action in relation to the CCP and they would instead have been subject to possible outstanding obligations pursuant to the CCP's recovery plan or other arrangements in its operating rules or the CCP had been wound up under normal insolvency proceedings, that shareholder,

Amendment

Where, in accordance with the valuation carried out under Article 61, any shareholder, creditor, clearing **member or client of a clearing member** has incurred greater losses than it would have incurred if the resolution authority would not have taken resolution action in relation to the CCP and they would instead have been subject to possible outstanding obligations pursuant to the CCP's recovery plan or other arrangements in its operating rules or the CCP had been wound up under normal insolvency proceedings, that shareholder,

creditor or clearing participant shall be entitled to the payment of the difference.

creditor or clearing participant shall be entitled to the payment of the difference.

Or. en

Amendment 203

Proposal for a regulation

Article 66 – paragraph 1 – point a

Text proposed by the Commission

(a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement to which the *institution* under resolution is a party;

Amendment

(a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement to which the *CCP* under resolution is a party;

Or. en

Amendment 204

Proposal for a regulation

Article 66 – paragraph 1 – point b

Text proposed by the Commission

(b) the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement to which the *institution* under resolution is a party.

Amendment

(b) the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement to which the *CCP* under resolution is a party.

Or. en

Amendment 205

Proposal for a regulation

Article 68 – paragraph 3 – introductory part

Text proposed by the Commission

3. Where a competent authority or resolution authority determines that the conditions referred to in points (a) and (b) of Article 22(1) are met in relation to a CCP, it shall notify *without delay* the following authorities:

Amendment

3. Where a competent authority or resolution authority determines that the conditions referred to in points (a) and (b) of Article 22(1) are met in relation to a CCP, it shall notify the following authorities *in a timely manner*:

Or. en

Amendment 206

**Proposal for a regulation
Article 68 – paragraph 3 – point b a (new)**

Text proposed by the Commission

Amendment

(b a) the supervisory college for that CCP;

Or. en

Amendment 207

**Proposal for a regulation
Article 68 – paragraph 3 – point b b (new)**

Text proposed by the Commission

Amendment

(bb) the resolution college for that CCP;

Or. en

Amendment 208

**Proposal for a regulation
Article 72 – title**

Text proposed by the Commission

Amendment

Ex-ante judicial approval and rights of appeal

Rights of appeal

Or. en

Amendment 209

Proposal for a regulation Article 72 – paragraph 1

Text proposed by the Commission

Amendment

1. A decision to take a crisis prevention measure or resolution action may be subject to ex-ante judicial approval, provided that the procedure relating to that approval and the court's consideration are expeditious.

deleted

Or. en

Amendment 210

Proposal for a regulation Article 72 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. A decision of the resolution authority to take a resolution action, a crisis prevention measure or a decision to exercise any power, other than a resolution action, shall be annulled on substantive grounds only if it was arbitrary and unreasonable at the time it was taken, based on the information then readily available.

Or. en

Amendment 211

Proposal for a regulation

Article 74 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) where a significant number of clearing members of a CCP are established in that third country;

Or. en

Amendment 212

Proposal for a regulation

Article 74 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(bb) where a third country CCP has a significant number of clearing members that are established in the Union.

Or. en

Amendment 213

Proposal for a regulation

Article 76 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) creditors or clearing *participants* located in their Member State would not receive the same treatment as third-country creditors or clearing *participants* with similar legal rights under the third-country home resolution proceedings;

(b) creditors or clearing *members or their clients of those clearing members* located in their Member State would not receive the same treatment as third-country creditors or clearing *members or their clients of those clearing members* with similar legal rights under the third-country home resolution proceedings;

Or. en

Amendment 214

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 8

Text proposed by the Commission

8. The Commission may renew the suspension referred to in paragraph 7 for one or more periods not cumulatively exceeding **three** months from the end of the initial suspension period where the grounds for the suspension continue to apply.

Amendment

8. The Commission may, **after consulting the ESRB**, renew the suspension referred to in paragraph 7 for one or more periods not cumulatively exceeding **six** months from the end of the initial suspension period where the grounds for the suspension continue to apply.

Or. en

Amendment 215

Proposal for a regulation

Article 80 – paragraph 1 – point 2

Regulation (EU) No 648/2012

Article 28 – paragraph 3

Text proposed by the Commission

3. The risk committee shall advise the board on any arrangements that may impact the risk management of the CCP, such as a significant change in its risk model, the default procedures, the criteria for accepting clearing members, the clearing of new classes of instruments, or the outsourcing of functions. The risk committee shall inform the board in a timely manner of any new risk affecting the resilience of the CCP. The advice of the risk committee is not required for the daily operations of the CCP. Reasonable efforts shall be made to consult the risk committee on developments impacting the risk management of the CCP in emergency situations, including on developments relevant to clearing members' exposures to the CCP and interdependencies with other

Amendment

3. The risk committee shall advise the board on any arrangements that may impact the risk management of the CCP, such as a significant change in its risk model, the default procedures, the criteria for accepting clearing members, the clearing of new classes of instruments, or the outsourcing of functions. The risk committee shall inform the board in a timely manner of any new risk affecting the resilience of the CCP. The advice of the risk committee is not required for the daily operations of the CCP. Reasonable efforts shall be made to consult the risk committee on developments impacting the risk management of the CCP in emergency situations, including on developments relevant to clearing members' exposures to the CCP and interdependencies with other

CCPs.

CCPs *without prejudice to the limitations to the exchange of information laid out in the competition law of the Union.*

Or. en

Amendment 216

Proposal for a regulation

Article 80 – paragraph 1 – point 4

Regulation (EU) No 648/2012

Article 38 – paragraph 6

Text proposed by the Commission

The clearing members of the CCP shall inform their existing and potential clients of the potential losses or other costs that they may bear *during a recovery phase* of the *CCP*, including the type of compensation they may receive, taking into account Article 48(7) of Regulation (EU) No 648/2012. Clients shall be provided with sufficient information to ensure that they understand the worst-case losses or other costs they could face should the CCP undertake recovery measures.;

Amendment

The clearing members of the CCP shall *clearly* inform their existing and potential clients of the *specific* potential losses or other costs that they may bear *as a result of the application* of the *default management process and loss allocation arrangements laid out in the CCP's operating rules*, including the type of compensation they may receive, taking into account Article 48(7) of Regulation (EU) No 648/2012. Clients shall be provided with sufficient information to ensure that they understand the worst-case losses or other costs they could face should the CCP undertake recovery measures.;

Or. en

Amendment 217

Proposal for a regulation

Article 82 – paragraph 1

Text proposed by the Commission

By *[...]*, the Commission shall review the implementation of this Regulation and shall submit a report thereon to the European Parliament and to the Council. Where appropriate, that report shall be

Amendment

By ...*[three years after date of entry into force of this Regulation]*, the Commission shall review the implementation of this Regulation *in the light of progress in international efforts on recovery and*

accompanied by a legislative proposal.

resolution of CCPs and shall submit a report thereon to the European Parliament and to the Council. Where appropriate, that report shall be accompanied by a legislative proposal.

Or. en

Amendment 218

Proposal for a regulation Annex I – Section A – Part 2

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Justification

Now reflected in Article 9(7b)

EXPLANATORY STATEMENT

Central Counterparties (CCPs) are centralised institutions that sit in the middle of financial contracts and transactions so that both sides have a legal relationship with the CCP only. CCPs also manage exposures to diverse risks inherent in these transactions. The benefits of this arrangement are the significant reduction in counter-party risk, enhanced transparency compared to bilateral OTC transactions and systematically aggregated collateral in the form of multilateral netting.

However, while the counter party risk is dramatically reduced, there is an increased risk concentration. As a result of the G20 commitment in 2009 to clear centrally derivative products, and further to (ongoing) work at the FSB and CPMI-IOSCO, CCPs have become global risk nodes of systemic importance. If a major CCP were to collapse, the systemic damage would be enormous. It is therefore in the public interest to ensure that CCPs are as safe and stable as possible.

The standards set by EMIR are to ensure that CCPs have sufficient safeguards in place to withstand the default of the two largest clearing members (CMs). EMIR introduced a hierarchy of tools to absorb such losses, called the EMIR waterfall, including a mutualised default fund. The Recovery and Resolution complements EMIR through a framework for dealing with extreme situations where the EMIR safeguards, including the default waterfall, prove to be insufficient.

This regulation will result in the orderly use of the necessary tools and put in place safeguards to deal with even the most extreme scenarios in recovery and also in resolution where appropriate. The central aim of a recovery and resolution mechanism for CCPs is not necessarily an orderly wind-down of the CCP but crucially the continuation of critical services, while addressing systemic risks and protecting taxpayers.

Losses in CCPs should be borne by the private parties involved (CCPs, CMs and clients). As a general principle, losses should be distributed between CCP and CMs and clients as a function of their ability to control the risks in order to create sound incentives ex-ante and to ensure a fair allocation of losses. Safeguards in the Recovery Plan are required to protect clients vis-a-vis CCPs and CMs. In order to achieve this, the Recovery Plan needs to ensure that the CCP's capital is relied upon to bear first losses, once the existing loss absorption capacity of the EMIR default waterfall has been exhausted, in default cases, and even more so in non-default cases. This incentivises CCPs to apply prudent risk policies and margining, as well as to include sufficient loss absorption capacity in their Recovery Plans. Similarly, substantial loss absorption by CMs ought to be foreseen in the recovery plan before any tools are used that allocate losses to clients. For this incentive structure to be credible, deviations from the recovery plan ought to be subject to approval by the competent authority. Overall, the Recovery Plans are to ensure proper alignment of incentives, to provide tools to prevent situations deteriorating further and incentivise cooperative behaviour.

If it is no longer plausible that a CCP can rematch the book through the application of further recovery tools, Resolution should be triggered immediately. This report improves the legal protection for the Resolution Authority should a decision be taken to accelerate the move

from Recovery to Resolution. During Resolution, the Resolution Authority must have full discretion to use resolution tools as it deems most effective in order to achieve the resolution objectives in a timely manner, while addressing systemic problems and protecting taxpayers. For this, it is important that all tools, including those in the CCP rulebook, remain at the disposal of the resolution authority, while remaining as transparent and equitable as possible. During recovery and resolution planning, supervisory and resolution authorities should ensure that incentives are properly aligned while protecting the interests of those who do not have a say over the operational management of CCPs. First and foremost this means protecting the tax payer and the general public from systemic risk. But this also means ensuring adequate protection for clients of clearing members and indirect clients. This needs to be recognised within the Resolution colleges, the Resolution committee within ESMA, and in the general transparency requirements. The views of the supervisors of both CCP and clearing members and client supervisors need to be represented and duly considered in order to preserve the wider financial market stability and most importantly to protect the tax payer.