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AMENDMENT 443 - 619

Draft report

Kay Swinburne, Jakob von Weizsäcker
(PE610.797v01-00)

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

Proposal for a regulation
(COM(2016)0856 – C8-0484/2016 – 2016/0365(COD))

Amendment 443
Ramon Tremosa i Balcells, Lieve Wierinck

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 due to non-default losses at the CCP

Where a CCP in Recovery has suffered non-default losses and allocated them to clearing members and their clients, and has not entered Resolution as a result, the Competent Authority of the CCP may, once a matched book has been restored, require the CCP to recompense the participants for their loss, either through cash payments or, where appropriate, may 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 clearing member, which must be passed on to clients in a suitable form, shall be proportionate to its loss and shall be based on a valuation conducted in accordance with Article 24(3). These 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 these instruments of ownership.

Or. en

Amendment 444
Pervenche Berès

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 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 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, shall be proportionate to its loss and based on a valuation conducted in accordance with Article 24(3) of this Regulation. 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 445
Danuta Maria Hübner

Proposal for a regulation
Article 21 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) to ensure the continuity of the links with other FMIs which, if disrupted, would have a material negative impact on financial stability or the timely completion of payment, clearing, settlement and **recording** functions;

(b) to ensure the continuity of the links with other FMIs which, if disrupted, would have a material negative impact on financial stability or the timely completion of payment, clearing, settlement and **recordkeeping** functions;

Or. en

Amendment 446
Danuta Maria Hübner

Proposal for a regulation
Article 21 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) to avoid a significant adverse effect on the financial system, in particular by preventing contagion of financial distress **between** financial **institutions** and by maintaining market **discipline**;

(c) to avoid a significant adverse effect on the financial system, in particular by preventing contagion of financial distress **to the CCP's clearing members, their clients or to the wider financial system, including other FMIs** and by maintaining market **and public confidence**;

Or. en

Justification

Alignment with FSB resolution guidance, point 1.2.

Amendment 447
Miguel Viegas

Proposal for a regulation
Article 21 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) to avoid **a significant** adverse effect on the financial system, in particular by preventing contagion of financial distress

(c) to avoid **an** adverse effect on the financial system, in particular by preventing contagion of financial distress

between financial institutions and by maintaining market discipline;

between financial institutions and by maintaining market discipline;

Or. en

Amendment 448
Markus Ferber

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 extraordinary public financial support *and ensure that the deployed funds can be recouped from clearing participants over time*;

Or. de

Amendment 449
Jonás Fernández

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 extraordinary public financial support *and the potential risk of losses for taxpayers*;

Or. en

Amendment 450
Neena Gill

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

Or. en

Amendment 451

Danuta Maria Hübner

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 *and potential losses for taxpayers*;

Or. en

Amendment 452

Ramon Tremosa i Balcells, Lieve Wierinck

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 *avoid the use of* public funds by minimising reliance on public financial support;

Or. en

Amendment 453

Miguel Viegas

Proposal for a regulation

Article 21 – paragraph 1 – point e

Text proposed by the Commission

Amendment

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

(e) to minimise the cost of resolution on all affected stakeholders.

Or. en

Amendment 454

Ramon Tremosa i Balcells, Lieve Wierinck

Proposal for a regulation

Article 22 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(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.

(c) a resolution action is necessary **to maintain market liquidity and** to achieve the resolution objectives where winding down the CCP under normal insolvency proceedings would not meet those objectives to the same extent.

Or. en

Amendment 455

Ramon Tremosa i Balcells, Lieve Wierinck

Proposal for a regulation

Article 22 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Without prejudice to subparagraph 1, in case of a non-default event the conditions for resolution shall considered to be met if:

(a) the CCP is mismanaged according to the resolution authority; and

(b) a resolution action is necessary to maintain market liquidity and to achieve the resolution objectives where winding down the CCP under normal insolvency

proceedings would not meet those objectives to the same extent.

Or. en

Amendment 456
Danuta Maria Hübner

Proposal for a regulation
Article 22 – paragraph 1 – subparagraph 2

Text proposed by the Commission

For the purposes of point (a)(ii), the competent authority shall provide ***without delay any relevant information that*** the resolution authority ***requests*** in order to perform its assessment.

Amendment

For the purposes of point (a)(ii), the competent authority shall provide the resolution authority ***without delay with any information that may give an indication that the CCP is failing or likely to fail. The competent authority shall also promptly provide the resolution authority, upon request, with any other information needed*** in order to perform its assessment.

Or. en

Justification

Improvement of communication channels: information giving indication that the CCP is likely to fail is to be transmitted automatically and promptly, other information on requests.

Amendment 457
Pervenche Berès, Jakob von Weizsäcker

Proposal for a regulation
Article 22 – paragraph 1 – subparagraph 2

Text proposed by the Commission

For the purposes of point (a)(ii), the competent authority shall provide without delay any relevant information that the resolution authority requests in order to perform its assessment.

Amendment

For the purposes of point (a)(ii), the competent authority shall provide, without delay ***and on its own initiative, any information that may suggest that the CCP is failing or is likely to fail and, upon request,*** any relevant information that the

resolution authority requests in order to perform its assessment.

Or. en

Amendment 458

Miguel Viegas

Proposal for a regulation

Article 22 – paragraph 1 – subparagraph 2

Text proposed by the Commission

For the purposes of point (a)(ii), the competent authority shall provide without delay any relevant information that the resolution authority requests in order to perform its assessment.

Amendment

For the purposes of point (a)(ii), the competent authority shall provide without delay ***and on its own initiative, any information that may suggest that the CCP is failing or likely to fail and, upon request,*** any relevant information that the resolution authority requests in order to perform its assessment.

Or. en

Amendment 459

Molly Scott Cato

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 22 – paragraph 2 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the CCP failed to implement one or more of the arrangements or measures required of it under point (a) of Article 9(1) within a specific timeframe;

Or. en

Amendment 460

Miguel Viegas

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 extraordinary financial support.

Or. pt

Amendment 461

Neena Gill

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 462

Miguel Viegas

Proposal for a regulation

Article 22 – paragraph 2 – subparagraph 2

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 the following conditions:

(i) it takes the form of a State guarantee to back liquidity facilities provided by a central bank according to the central bank's conditions, or the form of a State guarantee of newly issued liabilities;

(ii) the State guarantees referred to in point (i) are confined to solvent CCPs, conditional on final approval under the

Amendment

deleted

Union State aid framework, are precautionary and temporary, proportionate to remedy the consequences of the serious disturbance and are not used to offset losses that the CCP has incurred or is likely to incur in the future;

(iii) the State guarantees referred to in point (i) are required to remedy a serious disturbance in the economy of a Member State and preserve financial stability.

Or. pt

Amendment 463
Danuta Maria Hübner

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 the following conditions:

Amendment

For the purposes of point (e) *public financial support shall not shall not be considered to be* extraordinary public financial support *where* all of the following conditions *are met*:

Or. en

Amendment 464
Danuta Maria Hübner

Proposal for a regulation
Article 22 – paragraph 2 – subparagraph 2 – point i a (new)

Text proposed by the Commission

(ia) none of the circumstances referred to in point (a), (b), (c) or (d) of this paragraph is present at the time the public financial support is granted;

Or. en

Justification

Clearer and non-redundant way of stating that the CCP shall be solvent.

Amendment 465

Danuta Maria Hübner

Proposal for a regulation

Article 22 – paragraph 2 – subparagraph 2 – point i b (new)

Text proposed by the Commission

Amendment

(ib) the State guarantees referred to in point (i) are required to remedy a serious disturbance in the economy of a Member State and preserve financial stability;

Or. en

Justification

The serious disturbance shall be mentioned before reference to it is made in point (ii).

Amendment 466

Danuta Maria Hübner

Proposal for a regulation

Article 22 – paragraph 2 – subparagraph 2 – point ii

Text proposed by the Commission

Amendment

(ii) the State guarantees referred to in point (i) are ***confined to solvent CCPs***, conditional on final approval under the Union State aid framework, are precautionary and temporary, proportionate to remedy the consequences of the serious disturbance and are not used to offset losses that the CCP has incurred or is likely to incur ***in the future***;

(ii) the State guarantees referred to in point (i) are conditional on final approval under the Union State aid framework, are ***of a precautionary and temporary nature***, proportionate to remedy the consequences of the serious disturbance ***referred to in paragraph 1*** and are not used to offset losses that the CCP has incurred ***since the end of the last financial reporting period*** or is likely to incur ***before the end of the current financial reporting period***;

Or. en

Justification

Drafting improvements and alignment with Article 32 BRRD. Deletion of the sentence “shall be confined to solvent CCPs” to be read in conjunction with the insertion of point ia). Notion of “incurred or likely to incur” is unclear in BRRD and it has been suggested that this wording was meant to exclude losses incurred in the middle of a reporting period.

Amendment 467

Danuta Maria Hübner

Proposal for a regulation

Article 22 – paragraph 2 – subparagraph 2 – point iii

Text proposed by the Commission

Amendment

(iii) the State guarantees referred to in point (i) are required to remedy a serious disturbance in the economy of a Member State and preserve financial stability. *deleted*

Or. en

Justification

Point moved up in the list

Amendment 468

Miguel Viegas

Proposal for a regulation

Article 22 – paragraph 3

Text proposed by the Commission

Amendment

3. The resolution authority may also take a resolution action where it considers that the CCP applies or intends to apply recovery measures which could prevent the CCP's failure but cause **significant** adverse effects to the financial system.

3. The resolution authority may also take a resolution action where it considers that the CCP applies or intends to apply recovery measures which could prevent the CCP's failure but cause adverse effects to the financial system **or the wider economy or when it considers that a CCP has reached a size and level of complexity that its failure would lead to a significant disruption of the economy of the Union as**

a whole or of a Member State.

Or. en

Amendment 469

Kay Swinburne

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

Taking into consideration the differing sizes and nature of CCPs established in the Union, 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].

Or. en

Amendment 470

Ramon Tremosa i Balcells, Lieve Wierinck

Proposal for a regulation

Article 22 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The decision to take a resolution action in relation to a CCP as referred to in paragraphs 1 and 1a may only be challenged on the basis that this decision was arbitrary and unreasonable at the time of the decision, based on the information then readily available to the resolution authority.

Or. en

Amendment 471
Anne Sander, Alain Lamassoure

Proposal for a regulation
Article 23 – paragraph 1 – point a

Text proposed by the Commission

(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;

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 ***and to ensure the stability of the financial sector;***

Or. en

Justification

The wording extreme circumstances introduce by the rapport is seen as too vague. Instead, the wording of the FSB guidance should be used.

Amendment 472
Pervenche Berès

Proposal for a regulation
Article 23 – paragraph 1 – point a

Text proposed by the Commission

(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;

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 ***and to avoid significant adverse effects on the financial***

system;

Or. en

Amendment 473

Kay Swinburne

Proposal for a regulation

Article 23 – paragraph 1 – point a

Text proposed by the Commission

(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;

Amendment

(a) all contractual obligations and other arrangements in the CCP's recovery plan are enforced 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;

Or. en

Amendment 474

Jakob von Weizsäcker

Proposal for a regulation

Article 23 – paragraph 1 – point a

Text proposed by the Commission

(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;

Amendment

(a) all contractual obligations and other arrangements in the CCP's recovery plan are enforced, 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;

Or. en

Amendment 475

Markus Ferber

Proposal for a regulation

Article 23 – paragraph 1 – point e – introductory part

Text proposed by the Commission

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

Amendment

(e) none of the **CCP's** creditors, *shareholders or clearing participants* incur higher losses than would *be* incurred *by them in accordance with Article 60 et seq.*:

Or. de

Justification

Clarification of the 'no creditor worse off' principle in accordance with Article 60 et seq.

Amendment 476

Markus Ferber

Proposal for a regulation

Article 23 – paragraph 1 – point e – point i

Text proposed by the Commission

(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;*

Amendment

deleted

Or. de

Justification

Clarification of the 'no creditor worse off' principle in accordance with Article 60 et seq.

Amendment 477

Markus Ferber

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. de

Justification

Clarification of the ‘no creditor worse off’ principle in accordance with Article 60 et seq.

Amendment 478

Kay Swinburne

Proposal for a regulation

Article 24 – paragraph 3 – subparagraph 1 – point e

Text proposed by the Commission

Amendment

(e) where the loss and position allocation tools are used, inform the decision on the extent of losses to be applied against affected creditors’ claims, outstanding obligations or positions in relation to the CCP;

(e) where the loss and position allocation tools are used, inform the decision on the extent of losses to be applied against affected creditors’ claims, outstanding obligations or positions in relation to the CCP ***and on the extent and necessity of a resolution cash call;***

Or. en

Amendment 479

Anne Sander, Alain Lamassoure

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, or other appropriate price discovery method used by the resolution authority.

Or. en

Justification

It is important that the resolution authority can take into consideration the potential systemic instability of the market when the decision is taken to put a CCP in resolution.

Amendment 480
Pervenche Berès

Proposal for a regulation
Article 24 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

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, or other appropriate price discovery method used by the resolution authority.

Or. en

Amendment 481
Miguel Viegas

Proposal for a regulation
Article 27 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 482

Danuta Maria Hübner

Proposal for a regulation Article 27 – paragraph 2

Text proposed by the Commission

Amendment

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

2. In the event of a systemic crisis, the resolution authority may also provide extraordinary public financial support by 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 **and of the design of comprehensive and credible arrangements for the recovery of the funds provided over an appropriate period of time.**

Or. en

Justification

New rule framing the use of public support.

Amendment 483

Ramon Tremosa i Balcells, Lieve Wierinck

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 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.

Amendment

2. **Only** in the event of a systemic crisis, **and only if it is necessary to maintain market liquidity**, the resolution authority may provide public financial support by 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.

Or. en

Amendment 484

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Article 27 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The resolution authority *may* partially enforce the contractual obligations referred to in *points (a) and (b) where it is not possible to enforce those contractual obligations in full within a reasonable timeframe*.

Amendment

The resolution authority **shall only** partially enforce the contractual obligations referred to in *point (a) should this be sufficient to restore the CCP's ability to comply with the conditions for authorisation and to continue to carry out its critical functions*.

Or. en

Amendment 485

Jonás Fernández

Proposal for a regulation

Article 27 – paragraph 5

Text proposed by the Commission

5. **The resolution authority shall require the CCP to issue instruments of ownership to be subscribed by all non-**

Amendment

deleted

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.

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).

Or. en

Amendment 486
Danuta Maria Hübner

Proposal for a regulation
Article 27 – paragraph 5 – subparagraph 1

Text proposed by the Commission

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.

Amendment

The resolution authority ***may*** require the CCP to ***recompense*** non-defaulting clearing members ***for their loss, either through cash payments or, where appropriate, through the issuance of instruments of ownership in future profits of the CCP,*** where those non-defaulting clearing members have been subject to loss and position allocation tools in deviation from the CCP's operating rules ***and have incurred*** a financial loss ***as a result. The value*** of instruments of ownership ***in future profits of the CCP*** issued to each affected non-defaulting clearing member, ***which must be passed on to clients in a suitable form,*** shall be proportionate to its loss, ***based on the valuation conducted in***

accordance with Article 24(3) and take account any outstanding contractual obligations of the clearing members toward the CCP. Any recompense received pursuant to this paragraph shall be deducted from any payment of the difference in treatment to which members and clients may, as the case may be, be entitled under Article 62.

Or. en

Amendment 487

Markus Ferber

Proposal for a regulation

Article 27 – paragraph 5 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Where a CCP has applied recovery tools and subsequently does not have to enter into resolution, the competent supervisory authority, after the matched book has been restored, may require the CCP to compensate some or all clearing members, provided that both of the following conditions are met, namely that:

- (i) the CCP has deviated both from its rules and from its recovery plan, with the intention of discriminating against individual clearing participants or groups of participants;*
- (ii) the CCP, when applying the tools concerned, has caused operational or technical errors to be made as a result of which unintended or unexpected use has been made thereof.*

Compensation shall be ordered by the competent supervisory authority. It shall be specified whether compensation is to be provided in cash or by transferring instruments of ownership, held by the CCP, in future gains.

The level of compensation for creditors shall be no more than 90% of the CCP's annual gains, over no more than 15 years, provided it has been established that the loss arose on the basis of the conditions under i) and ii) and there has been complete recovery.

Or. de

Justification

A CCP and its participants will agree on measures under this legislation in order to increase the probability of successful resolution. There should nonetheless be safeguards to prevent improper use of recovery tools. Compensation is warranted where a CCP commits an error or carries out recover loss allocation in a discriminatory manner.

Amendment 488

Anne Sander, Alain Lamassoure

Proposal for a regulation

Article 27 – paragraph 5 – subparagraph 1

Text proposed by the Commission

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

Amendment

The resolution authority shall require the CCP, **or its parent company**, 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

clearing members toward the CCP.

members toward the CCP.

Or. en

Justification

It is important to broaden range of "instruments of ownership" in order to ensure the best way of compensation for non-defaulting clearing members suffering a financial loss.

Amendment 489 **Burkhard Balz**

Proposal for a regulation **Article 27 – paragraph 5 – subparagraph 1**

Text proposed by the Commission

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.

Amendment

The resolution authority shall require the CCP to issue instruments of ownership to be subscribed by all non-defaulting clearing *participants* where those non-defaulting clearing *participants* have been subject to loss and position allocation tools in deviation from the CCP's operating rules *and* which have resulted in *losses being passed on to end-user participants*. 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.

Or. en

Amendment 490 **Sirpa Pietikäinen**

Proposal for a regulation **Article 27 – paragraph 5 – subparagraph 1**

Text proposed by the Commission

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.

Amendment

The resolution authority **may** 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.

Or. en

Amendment 491
Danuta Maria Hübner

Proposal for a regulation
Article 27 – paragraph 5 – subparagraph 2

Text proposed by the Commission

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).

Amendment

deleted

Or. en

Justification

Raised to the subparagraph above

Amendment 492
Sirpa Pietikäinen

Proposal for a regulation
Article 27 – paragraph 5 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

No instruments of ownership or any other form of compensation shall be required for the application of the CCP's rulebook tools as defined in Regulation (EU) No 648/2012 and the recovery plan as defined in this Regulation.

Or. en

Justification

The text proposed by the Commission provides an obligation, rather than a possibility to compensate in resolution. This is contrary to the general principle in resolution regimes whereby compensation may be granted if participants are treated unfairly. The legislative text should also preserve the risk management and incentive structure defined EMIR and therefore no compensation may be granted for the normal performance of the CCP's rulebook or recovery plans.

Amendment 493
Molly Scott Cato
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 27 – paragraph 8

Text proposed by the Commission

Amendment

8. National insolvency law rules relating to the voidability or unenforceability of legal acts detrimental to creditors shall not apply to transfers of assets, rights, obligations or liabilities from a CCP in relation to which resolution tools **or government financial stabilisation tools** are used.

8. National insolvency law rules relating to the voidability or unenforceability of legal acts detrimental to creditors shall not apply to transfers of assets, rights, obligations or liabilities from a CCP in relation to which resolution **tools are** used.

Or. en

Amendment 494
Jakob von Weizsäcker, Cătălin Sorin Ivan

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, *including an appropriate risk premium*, 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 495
Danuta Maria Hübner

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 *over an appropriate period of time* any reasonable expenses incurred in connection with the use of the resolution tools or powers or *in connection with the use of the* government financial stabilisation tools in any of the following ways:

Or. en

Amendment 496
Pervenche Berès

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 may recover any reasonable expenses, ***including an appropriate risk premium,*** 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 497

Molly Scott Cato

on behalf of the Verts/ALE Group

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 may recover any reasonable expenses incurred in connection with the use of the resolution tools or powers in any of the following ways:

Or. en

Amendment 498

Ramon Tremosa i Balcells, Lieve Wierinck

Proposal for a regulation

Article 27 – paragraph 9 – point c a (new)

Text proposed by the Commission

Amendment

(ca) from any clearing member, to the extent that a clearing member does not incur 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.

Or. en

Amendment 499
Miguel Viegas

Proposal for a regulation
Article 27 – paragraph 9 – point c a (new)

Text proposed by the Commission

Amendment

(ca) from the CCP's clearing members, where any measure resulting in a loss allocation tool affecting the CCP's clearing members under the CCP's rules and arrangements, including under its recovery plan, has not been exercised, or has not been exercised in full prior to the entry into resolution.

Or. en

Amendment 500
Danuta Maria Hübner

Proposal for a regulation
Article 27 – paragraph 9 – point c a (new)

Text proposed by the Commission

Amendment

(ca) from any revenues from the use of the government stabilisation tools, including the proceeds from the sale of the instruments of ownership referred to in Article 46 and from the sale of a CCP subject to temporary public ownership as referred to in Article 47.

Or. en

Amendment 501
Danuta Maria Hübner

Proposal for a regulation
Article 27 – paragraph 9 a (new)

Text proposed by the Commission

Amendment

9a. In determining the amounts to be recouped pursuant to the previous paragraph, the resolution authority shall take into account the amount that the clients and members of the CCP would otherwise have been required to contribute, both under the CCP rules and arrangements and in resolution, had public support not been granted by the authorities.

Or. en

Justification

Mirroring FSB resolution guidance point 6.7.

Amendment 502
Danuta Maria Hübner

Proposal for a regulation
Article 27 – paragraph 10

Text proposed by the Commission

Amendment

10. When using the resolution tools, resolution authorities shall ensure, on the basis of a valuation that complies with Article 25, the full allocation of losses, the replenishment of the prefunded resources of the CCP or the bridge CCP, and the recapitalisation of the CCP or the bridge CCP.

10. When using the resolution tools, resolution authorities shall ensure, on the basis of a valuation that complies with Article 25, the full allocation of losses, the **restoration of matched book**, the replenishment of the prefunded resources of the CCP or the bridge CCP, and the recapitalisation of the CCP or the bridge CCP.

Or. en

Amendment 503

Neena Gill

Proposal for a regulation

Article 27 a (new)

Text proposed by the Commission

Amendment

Article 27a

The possibility to compensate CCP participants shall not apply to their contractually committed losses in the default management or recovery phases.

Or. en

Amendment 504

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Article 28 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) to *recapitalise* the CCP and *replenish its pre-funded financial resources to an extent sufficient to restore its ability to comply with the conditions for authorisation and to continue to carry out its critical functions*;

(c) to *facilitate restoration of a matched book by providing the CCP with funds to meet an auction bid which enables the CCP to allocate the defaulter's positions or to make payments on the contracts terminated pursuant to Article 29*;

Or. en

Amendment 505

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Article 28 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. *In a default event, the use of position and loss allocation tools shall not include the power for the resolution authority to reduce the value of the collateral posted to the CCP by non-defaulting clearing members as initial margin related to those services or to otherwise reduce the value of or extinguish the CCP's obligation to return or redeliver initial margin to (non-defaulting) clearing members.*

Or. en

Amendment 506

Danuta Maria Hübner

Proposal for a regulation

Article 29 – paragraph 1 – introductory part

Text proposed by the Commission

1. The resolution authority may terminate certain or all of the following contracts :

Amendment

1. *Only for the purpose of returning the CCP to a matched book*, the resolution authority may terminate certain or all of the following contracts :

Or. en

Justification

FSB safeguard (point 2.5 (i) of resolution guidance)

Amendment 507

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Article 29 – paragraph 1 – introductory part

Text proposed by the Commission

1. The resolution authority may terminate certain or all of the ***following*** contracts :

Amendment

1. The resolution authority may terminate certain or all of the contracts ***cleared by the CCP in resolution.***

Or. en

Amendment 508

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Article 29 – paragraph 1 – point a

Text proposed by the Commission

(a) ***the contracts of the clearing member in default;***

Amendment

deleted

Or. en

Amendment 509

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Article 29 – paragraph 1 – point b

Text proposed by the Commission

(b) ***the contracts of the affected clearing service or asset class;***

Amendment

deleted

Or. en

Amendment 510

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Article 29 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) *the contracts of the CCP in resolution.*

deleted

Or. en

Amendment 511
Jonás Fernández

Proposal for a regulation
Article 29 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The resolution authority shall terminate the contracts referred to in points (b) and (c) of the first subparagraph only if this is considered the best available option for ensuring the stability of the financial system.

Or. en

Amendment 512
Kay Swinburne
on behalf of the ECR Group

Proposal for a regulation
Article 29 – paragraph 2

Text proposed by the Commission

Amendment

2. The resolution authority may only terminate the contracts ***referred to in point (a) of paragraph 1*** where the transfer of the assets and positions resulting from those contracts has not taken place within the meaning of Article 48(5) and (6) of Regulation (EU) No 648/2012.

2. The resolution authority may only terminate the contracts ***of the clients of the clearing member in default*** where the transfer of the assets and positions resulting from those contracts has not taken place within the meaning of Article 48(5) and (6) of Regulation (EU) No 648/2012.

Or. en

Amendment 513
Danuta Maria Hübner

Proposal for a regulation
Article 29 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The resolution authority may only fully terminate all of the contracts referred to in point b) or c) of paragraph 1 where it considers that:

(a) the clearing service or the CCP is not critical and the termination of the contracts will not have systemic consequences for the financial market or participants; or

(b) no other option would likely result in a better outcome for financial stability.

Or. en

Justification

Safeguard on full tear-up from FSB resolution guidance, 2.6.

Amendment 514
Danuta Maria Hübner

Proposal for a regulation
Article 29 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The price of any termination of contracts by the resolution authority under this Article shall be based upon a fair market price determined on the basis of the CCP's rules and arrangements, or, should the use of such alternative method be deemed necessary by the resolution authority, determined using any other appropriate price discovery method.

Or. en

Justification

From FSB resolution guidance 2.5 and 2.6- broadly in line with co-rapporteurs' text but leaving more flexibility.

Amendment 515

Anne Sander, Alain Lamassoure

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 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. ***The clearing members should communicate the use of such a tool to their clients as promptly as possible.***

Or. en

Justification

Transparency toward clients is important when the tools that could be used affect them directly.

Amendment 516

Kay Swinburne

on behalf of the ECR Group

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

Amendment

1. ***Following a default event*** 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

CCP's processes for paying variation margin or an economically *identical* payment.

from gains due in accordance with the CCP's processes for paying variation margin or an economically *equivalent* payment.

Or. en

Amendment 517
Danuta Maria Hübner

Proposal for a regulation
Article 30 – paragraph 2

Text proposed by the Commission

2. The resolution authority shall calculate any reduction in payment obligations referred to in paragraph 1 using an equitable allocation mechanism determined in the valuation conducted in accordance with Article 24(3) and communicated to the clearing members as soon as the resolution tool is used. The total net gains to be reduced for each clearing member shall be proportional to the amounts due from the CCP.

Amendment

2. The resolution authority shall calculate any reduction in payment obligations referred to in paragraph 1 using an equitable allocation mechanism determined in the valuation conducted in accordance with Article 24(3) and communicated to the clearing members as soon as the resolution tool is used. The total net gains to be reduced for each clearing member shall be proportional to the amounts due from the CCP. ***Clearing members shall inform their clients without delay about the use of the resolution tool and the way in which such use affects them.***

Or. en

Justification

Safeguard for clients.

Amendment 518
Pervenche Berès, Jakob von Weizsäcker

Proposal for a regulation
Article 30 – paragraph 2

Text proposed by the Commission

2. The resolution authority shall calculate any reduction in payment obligations referred to in paragraph 1 using an equitable allocation mechanism determined in the valuation conducted in accordance with Article 24(3) and communicated to the clearing members as soon as the resolution tool is used. The total net gains to be reduced for each clearing member shall be proportional to the amounts due from the CCP.

Amendment

2. The resolution authority shall calculate any reduction in payment obligations referred to in paragraph 1 using an equitable allocation mechanism determined in the valuation conducted in accordance with Article 24(3) and communicated to the clearing members as soon as the resolution tool is used. The total net gains to be reduced for each clearing member shall be proportional to the amounts due from the CCP. ***The clearing members should inform their clients about the use of such a mechanism as swiftly as possible.***

Or. en

Amendment 519

Danuta Maria Hübner

Proposal for a regulation

Article 30 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The CCP shall include in its operating rules reference to the power to reduce payment obligations referred to in paragraph 1 in addition to any similar arrangements provided for in those operating rules at the recovery stage. The CCP shall ensure that contractual arrangements are concluded to allow the Resolution Authority to exercise its powers under this article.

Or. en

Justification

The FSB advises the inclusion of both cash call and VMGH in the rulebook.

Amendment 520
Ramon Tremosa i Balcells, Lieve Wierinck

Proposal for a regulation
Article 30 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. *Following a non-default event the resolution authority shall only reduce the value of gains payable as referred to in paragraph 1 if this tool is deemed to be the only tool available to avoid the use of public funds.*

Or. en

Amendment 521
Kay Swinburne
on behalf of the ECR Group

Proposal for a regulation
Article 30 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. *Contracts with investment firms conducted under a binding written agreement as referred to in Article 17(3)(b) of Directive 2014/65/EU shall be excluded from the provisions of this Article.*

Or. en

Justification

Provision which excludes contracts that are part of MiFID market making agreements from VMGH.

Amendment 522
Pervenche Berès

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

Amendment

The resolution authority may require non-defaulting clearing members to make *contributions* in cash to the CCP. *The amount of those cash contributions shall not exceed* their contribution to the CCP's default fund.

Or. en

Amendment 523
Jakob von Weizsäcker, Paul Tang, Cătălin Sorin Ivan

Proposal for a regulation
Article 31 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. *The resolution authority shall define the amount of the resolution cash call to be included in the operating rules, which shall at the minimum be equivalent to the clearing member's contribution to the default fund.*

Or. en

Amendment 524
Molly Scott Cato
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 32 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The resolution authority shall use the write-down and conversion tool in accordance with Article 33 in respect of instruments of ownership and debt instruments issued by the CCP in

Amendment

The resolution authority shall use the write-down and conversion tool in accordance with Article 33 in respect of instruments of ownership and debt instruments issued by the CCP in

resolution or other unsecured liabilities in order to absorb losses, recapitalise that CCP or a bridge CCP, or to support the use of the sale of business tool.

resolution or other unsecured liabilities ***other than initial margin*** in order to absorb losses, recapitalise that CCP or a bridge CCP, or to support the use of the sale of business tool.

Or. en

Amendment 525
Burkhard Balz

Proposal for a regulation
Article 32 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The resolution authority shall also use the write-down and conversion tool in accordance with Article 33 in respect of instruments of ownership and debt instruments issued by the parent of the CCP in resolution where the instruments of ownership issued by the parent undertaking are used to fulfil the CCP's capital requirements in accordance with Article 16 of Regulation (EU) No 648/2012 or those instruments of ownership or debt instruments are issued for the purpose of funding the CCP and they fully absorb losses or constitute subordinate claims in normal insolvency proceedings.

deleted

Or. en

Amendment 526
Kay Swinburne

Proposal for a regulation
Article 32 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The resolution authority shall also use the write-down and conversion tool in

deleted

accordance with Article 33 in respect of instruments of ownership and debt instruments issued by the parent of the CCP in resolution where the instruments of ownership issued by the parent undertaking are used to fulfil the CCP's capital requirements in accordance with Article 16 of Regulation (EU) No 648/2012 or those instruments of ownership or debt instruments are issued for the purpose of funding the CCP and they fully absorb losses or constitute subordinate claims in normal insolvency proceedings.

Or. en

Justification

Under EMIR a CCP should be a separately managed entity. It seems therefore to go against this point to allow a parent entity to issue instruments that could be used to fulfil the capital requirements of the CCP.

Amendment 527

Jakob von Weizsäcker

Proposal for a regulation

Article 32 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The resolution authority shall also use the write-down and conversion tool in accordance with Article 33 in respect of instruments of ownership and debt instruments issued by the parent of the CCP in resolution where the instruments of ownership issued by the parent undertaking are used to fulfil the CCP's capital requirements in accordance with Article 16 of Regulation (EU) No 648/2012 or those instruments of ownership or debt instruments are issued for the purpose of funding the CCP and they fully absorb losses or constitute subordinate claims in normal insolvency proceedings.

Amendment

The resolution authority shall also use the write-down and conversion tool in accordance with Article 33 in respect of instruments of ownership and debt instruments issued by the parent of the CCP in resolution where the instruments of ownership issued by the parent undertaking are used to fulfil the CCP's capital requirements in accordance with Article 16 of Regulation (EU) No 648/2012 or those instruments of ownership or debt instruments are issued for the purpose of funding *or enhancing the liquidity of* the CCP and they fully absorb losses or constitute subordinate claims in normal

insolvency proceedings.

Or. en

Amendment 528
Burkhard Balz

Proposal for a regulation
Article 33 – paragraph 7 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the resolution authority has obtained the agreement of the competent authority of the parent undertaking where the parent undertaking is required to issue the instruments of ownership; *deleted*

Or. en

Amendment 529
Burkhard Balz

Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

Amendment

The resolution authority shall use the write down and conversion tool regardless of any provisions in the CCP's instruments of incorporation or statutes, including with respect to pre-emption rights for shareholders or requirements for the consent of shareholders to an increase of capital. *deleted*

Or. en

Amendment 530
Danuta Maria Hübner

Proposal for a regulation
Article 37 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. ESMA shall by ... [18 months after the entry into force of this Regulation] issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to specify further the minimum elements that should be included in a business reorganisation plan pursuant to paragraph 2.

Or. en

Justification

Alignment with Article 32 BRRD, with the RTS replaced by the less burdensome instrument of a guideline.

Amendment 531
Jonás Fernández

Proposal for a regulation
Article 38 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In the case where the Union State Aid framework is applied in accordance with Article 36(1) and (2), the resolution authority, the competent authority and the Commission should coordinate the assessment of the measures provided to restore the CCP's long-term viability, any request for a resubmission of an amended plan by the CCP and the final adoption of the business reorganisation or restructuring plan.

Or. en

Amendment 532
Danuta Maria Hübner

Proposal for a regulation
Article 38 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. ESMA shall by ... [18 months after the entry into force of this Regulation] issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to specify further the minimum criteria that a business reorganisation plan is to fulfil for approval by the resolution authority pursuant to paragraph 1.

Or. en

Justification

Alignment with Article 52 of BRRD.

Amendment 533
Jonás Fernández

Proposal for a regulation
Article 39 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

The CCP shall submit the revision referred to in the first subparagraph to the resolution authority for assessment in accordance with Article 38(3).

The CCP shall submit the revision referred to in the first subparagraph to the resolution authority for assessment in accordance with Article 38(3). ***The resolution authority, in the event that the Union State aid framework applies, shall coordinate this assessment with the Commission.***

Or. en

Amendment 534

Miguel Viegas

Proposal for a regulation

Article 42 – paragraph 3

Text proposed by the Commission

3. When applying the bridge CCP tool, the resolution authority shall ensure that the total value of liabilities and obligations transferred to the bridge CCP does not exceed the total value of the rights and assets transferred from the CCP under resolution.

Amendment

3. When applying the bridge CCP tool, the resolution authority shall ensure that the total value of liabilities and obligations transferred to the bridge CCP does not exceed the total value of the rights and assets transferred from the CCP under resolution. ***It should also ensure the maintenance of jobs and the respective employment and wage rights.***

Or. pt

Amendment 535

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Article 42 – paragraph 4 – point b a (new)

Text proposed by the Commission

Amendment

(ba) any non-defaulting clearing members that have suffered losses prior to resolution.

Or. en

Amendment 536

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Article 43 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the bridge CCP shall ***be authorised***

(b) the bridge CCP shall ***take over the***

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.

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, ***Directive 98/26/EC and Directive (EU) 2015/849.***

Or. en

Justification

Authorisations under the Settlement Finality Directive and the Anti-Money-Laundering Directive are prerequisites for a CCP to carry out its functions. The delay in getting them would prevent the operations of the bridge CCP getting under way.

Amendment 537 **Kay Swinburne**

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 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.

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, ***Directive 98/26/EC and Directive (EU) 2015/849 are*** waived. That period shall be no longer than 12 months.

Or. en

Amendment 538 **Miguel Viegas**

Proposal for a regulation
Article 43 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Before selling the bridge CCP or its assets, rights, obligations or liabilities, the resolution authority shall advertise the availability of the elements intended to be sold, and shall ensure that they are marketed openly and transparently, and that they are not materially misrepresented.

Amendment

Before selling the bridge CCP or its assets, rights, obligations or liabilities, the resolution authority shall advertise the availability of the elements intended to be sold, and shall ensure that they are marketed openly and transparently, and that they are not materially misrepresented, ***as well as guarantee the maintenance of jobs and the respective wage and employment rights.***

Or. pt

Amendment 539
Kay Swinburne
on behalf of the ECR Group

Proposal for a regulation
Article 44

Text proposed by the Commission

Article 44

Alternative funding means

The resolution authority may enter into contracts to borrow or obtain other forms of financial support, including from pre-funded resources available in any non-depleted default funds in the CCP under resolution, where necessary to ensure the effective use of the resolution tools.

Amendment

deleted

Or. en

Amendment 540
Molly Scott Cato
on behalf of the Verts/ALE Group

Proposal for a regulation
Title 5 – chapter 3 – section 7

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 541
Miguel Viegas

Proposal for a regulation
Article 45

Text proposed by the Commission

Amendment

Article 45

deleted

Government financial stabilisation tools

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:

(a) the financial support is necessary to meet the resolution objectives;

(b) the financial support is used as a last resort after having assessed and exploited the other resolution tools to the maximum extent practicable whilst maintaining financial stability, as determined by the competent ministry or the government after consulting the resolution authority;

(c) the financial support complies with the Union State aid framework;

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

2. To give effect to the government financial stabilisation tools, competent ministries or governments shall have the relevant resolution powers specified in Articles 48 to 59, and shall ensure that

Articles 52, 54 and 70 are complied with.

3. Government financial stabilisation tools shall be deemed to be used as a last resort for the purposes of point (b) of paragraph 1, where, at least, any of the following conditions are met:

(a) the competent ministry or government and the resolution authority, after consulting the central bank and the competent authority, determine that the use of the resolution tools would not suffice to avoid a significant adverse effect on the financial system;

(b) the competent ministry or government and the resolution authority determine that the use of the resolution tools would not suffice to protect the public interest, where extraordinary liquidity assistance from the central bank has previously been given to the CCP;

(c) in respect of the temporary public ownership tool, the competent ministry or government, after consulting the competent authority and the resolution authority, determines that the use of the resolution tools would not suffice to protect the public interest, where public equity support through the equity support tool has previously been given to the CCP.

Or. pt

Amendment 542

Molly Scott Cato

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 45

Text proposed by the Commission

Amendment

Article 45

deleted

Government financial stabilisation tools

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:

- (a) the financial support is necessary to meet the resolution objectives;*
- (b) the financial support is used as a last resort after having assessed and exploited the other resolution tools to the maximum extent practicable whilst maintaining financial stability, as determined by the competent ministry or the government after consulting the resolution authority;*
- (c) the financial support complies with the Union State aid framework;*
- (d) the competent authority requires the resolution authority to provide that financial support.*

2. To give effect to the government financial stabilisation tools, competent ministries or governments shall have the relevant resolution powers specified in Articles 48 to 59, and shall ensure that Articles 52, 54 and 70 are complied with.

3. Government financial stabilisation tools shall be deemed to be used as a last resort for the purposes of point (b) of paragraph 1, where, at least, any of the following conditions are met:

- (a) the competent ministry or government and the resolution authority, after consulting the central bank and the competent authority, determine that the use of the resolution tools would not suffice to avoid a significant adverse effect on the financial system;*
- (b) the competent ministry or government and the resolution authority determine that the use of the resolution tools would not suffice to protect the public interest, where extraordinary liquidity assistance from the central bank has previously been given to the CCP;*

(c) in respect of the temporary public ownership tool, the competent ministry or government, after consulting the competent authority and the resolution authority, determines that the use of the resolution tools would not suffice to protect the public interest, where public equity support through the equity support tool has previously been given to the CCP.

Or. en

Amendment 543

Kay Swinburne

on behalf of the ECR Group

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. *A Member State* 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:

Or. en

Amendment 544

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Article 45 – paragraph 1 – point c a (new)

Text proposed by the Commission

(ca) funds can be recouped by the CCP over time if not retrieved in full through the sale to private purchasers in accordance with Article 46(3);

Amendment

Or. en

Amendment 545
Danuta Maria Hübner

Proposal for a regulation
Article 45 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the financial support is used for a limited period of time;

Or. en

Amendment 546
Danuta Maria Hübner

Proposal for a regulation
Article 45 – paragraph 1 – point c b (new)

Text proposed by the Commission

Amendment

(cb) the resolution authority has defined comprehensive and credible arrangements for recovering over a suitable period of time the financial support provided, unless such support has been already recovered through the sale to a private purchaser pursuant to either Article 46(3) or Article 47(2);

Or. en

Amendment 547
Kay Swinburne
on behalf of the ECR Group

Proposal for a regulation
Article 45 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the competent authority requires the resolution authority to provide that

deleted

financial support.

Or. en

Amendment 548

Burkhard Balz

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

(d) the resolution authority *establishes detailed requirements for the timely recovery of financial resources from the clearing members.*

Or. en

Amendment 549

Markus Ferber

Proposal for a regulation

Article 45 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) *the resolution authority has, in advance, defined clear mechanisms allowing the public funds deployed to be recouped from participants profiting from the support.*

Or. de

Justification

One of the main objectives of the reform of financial market supervision after the crisis, as was essential, was to avoid bail-out packages for failed financial institutions that, in the long term, would be paid for by the taxpayer. Where government stabilisation tools have to be used as a final resort, additional safeguards should be laid down in advance in order to prevent moral hazard and ensure market discipline.

Amendment 550
Jonás Fernández

Proposal for a regulation
Article 45 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) the resolution authority has defined comprehensive and credible arrangements for recovering in a timely manner the funds provided.

Or. en

Amendment 551
Miguel Viegas

Proposal for a regulation
Article 46

Text proposed by the Commission

Amendment

Article 46

deleted

Public equity support tool

1. Public financial support may be provided for the recapitalisation of a CCP in exchange for instruments of ownership.

2. CCPs subject to the public equity support tool shall be managed on a commercial and professional basis.

3. The instruments of ownership referred to in paragraph 1 shall be sold to a private purchaser as soon as commercial and financial circumstances allow.

Or. pt

Amendment 552
Molly Scott Cato
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 46

Text proposed by the Commission

Amendment

Article 46

deleted

Public equity support tool

- 1. Public financial support may be provided for the recapitalisation of a CCP in exchange for instruments of ownership.**
- 2. CCPs subject to the public equity support tool shall be managed on a commercial and professional basis.**
- 3. The instruments of ownership referred to in paragraph 1 shall be sold to a private purchaser as soon as commercial and financial circumstances allow.**

Or. en

Amendment 553

Molly Scott Cato

on behalf of the Verts/ALE Group

Proposal for a regulation
Article 47

Text proposed by the Commission

Amendment

Article 47

deleted

Temporary public ownership tool

- 1. A CCP may be taken into temporary public ownership by means of one or more transfer orders of instruments of ownership executed by a Member State to a transferee which is either of the following:**
 - (a) a nominee of the Member State;**
 - (b) a company wholly owned by the Member State.**

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.

Or. en

Amendment 554
Miguel Viegas

Proposal for a regulation
Article 47 – title

Text proposed by the Commission

Amendment

Temporary public ownership tool

Public ownership tool

Or. en

Amendment 555
Pervenche Berès

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

Text proposed by the Commission

Amendment

(ba) the power to refrain from enforcing certain contractual obligations under the CCP's rules and arrangements or otherwise depart from the CCP's rules and arrangements where necessary to achieve the resolution objectives and to avoid significant adverse effects on the financial system;

Or. en

Amendment 556
Burkhard Balz

Proposal for a regulation

Article 48 – paragraph 1 – subparagraph 1 – point i

Text proposed by the Commission

(i) the power to require a CCP under resolution *or its parent undertaking* to issue new instruments of ownership, including preference shares and contingent convertible instruments;

Amendment

(i) the power to require a CCP under resolution to issue new instruments of ownership, including preference shares and contingent convertible instruments;

Or. en

Amendment 557

Burkhard Balz

Proposal for a regulation

Article 51 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The resolution authority may require a CCP under resolution, or *any of its group* entities or clearing members, to provide any services or facilities that are necessary to enable a purchaser or bridge CCP to operate effectively the business transferred to it.

Amendment

The resolution authority may require a CCP under resolution, or *service providers including* entities *belonging to the same group as the CCP* or clearing members, to provide any services or facilities that are necessary to enable a purchaser or bridge CCP to operate effectively the business transferred to it.

Or. en

Amendment 558

Danuta Maria Hübner

Proposal for a regulation

Article 60

Text proposed by the Commission

Article 60

No Creditor Worse Off principle

Where the resolution authority uses one or more resolution tools, it shall ensure

Amendment

deleted

that shareholders, creditors and clearing participants do not incur:

(a) in the event of the default of a clearing member, 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 possible outstanding obligations pursuant to the CCP's recovery plan or other contractual arrangements in its operating rules;

(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.

Or. en

Justification

Replaced by a new amendment fully redrafting the Article.

Amendment 559 **Markus Ferber**

Proposal for a regulation **Article 60 – paragraph 1**

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* ensure that shareholders, creditors and clearing participants do not incur *more losses than would be incurred if the resolution authority takes no resolution action in relation to the CCP and instead honours all possible outstanding obligations in accordance with the CCP's recovery plan,*

together with all other contractual arrangements in its operating rules, and the CCP is wound up under normal insolvency proceedings. In the process, plausible adverse effects as regards systemic instability and market turbulence should be appropriately taken into consideration, with particular account being taken of the following:

(a) *in the event of the default of a clearing member, 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 possible outstanding obligations pursuant to the CCP's recovery plan or other contractual arrangements in its operating rules;*

(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.*

(a) *replacement costs;*

(b) *contract cancellation costs;*

(ba) *less income because of less demand for indirect clearing.*

Or. de

Amendment 560

Molly Scott Cato

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 60 – paragraph 1

Text proposed by the Commission

Where the resolution authority uses one or more resolution tools, it *shall* ensure that shareholders, creditors *and* clearing

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

participants 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 they 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 a non-default event and had the CCP been a gone concern with no residual franchise value and wound up under normal insolvency proceedings, properly taking into account any plausible adverse effects of systemic instability and market turmoil, including fire sales, replacement costs and the breakdown of entire segments of the financial market on the positions of the stakeholders in question.

(a) in the event of the default of a clearing member, 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 possible outstanding obligations pursuant to the CCP's recovery plan or other contractual arrangements in its operating rules;

(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.

Or. en

Amendment 561
Jakob von Weizsäcker

Proposal for a regulation
Article 60 – paragraph 1

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:

(a) in the event of the default of a clearing member, 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 possible outstanding obligations pursuant to the CCP's recovery plan or other contractual arrangements in its operating rules;

(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.

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 they 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 a non-default event and had the CCP been wound up under normal insolvency proceedings, properly taking into account any plausible adverse effects of systemic instability and market turmoil, including fire sales, replacement costs and the breakdown of entire segments of the financial market on the positions of the stakeholders in question.**

Amendment 562
Pervenche Berès

Proposal for a regulation
Article 60 – paragraph 1

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:

- (a) *in the event of the default of a clearing member, 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 possible outstanding obligations pursuant to the CCP's recovery plan or other contractual arrangements in its operating rules;*
- (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*

Amendment

Where the resolution authority uses one or more resolution tools, it **should aim to** ensure that shareholders, creditors and clearing **members** 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 they instead been subject to all possible outstanding obligations pursuant to the CCP recovery plan and all other contractual arrangements in its operating rules for either a default or a non-default event and had the CCP been wound up under normal insolvency proceedings, properly taking into account any plausible adverse effects of systemic instability and market turmoil.**

proceedings including by taking account of its contractual arrangements in its operating rules.

Or. en

Amendment 563

Kay Swinburne

on behalf of the ECR Group

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 they instead been subject to all possible outstanding obligations pursuant to the CCP's recovery plan, including termination of all outstanding contracts held in the CCP and all other contractual arrangements in its operating rules for either a default or a non-default event and had the CCP been wound up under normal insolvency proceedings.**

Or. en

Amendment 564

Miguel Viegas

Proposal for a regulation

Article 60 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

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

Or. pt

Amendment 565

Markus Ferber

Proposal for a regulation

Article 60 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) in the event of the default of a clearing member, 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 possible outstanding obligations pursuant to the CCP's recovery plan or other contractual arrangements in its operating rules;

deleted

Or. de

Amendment 566

Kay Swinburne

on behalf of the ECR Group

Proposal for a regulation

Article 60 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

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 567

Markus Ferber

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. de

Amendment 568

Kay Swinburne

on behalf of the ECR Group

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 *deleted*

operating rules.

Or. en

Amendment 569
Danuta Maria Hübner

Proposal for a regulation
Article 60 a (new)

Text proposed by the Commission

Amendment

Article 60a

Where the resolution authority uses one or more resolution tools, it shall 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 the CCP instead been wound up under normal insolvency proceedings, assuming in such proceedings the enforcement of all possible outstanding obligations pursuant to the CCP's recovery plan, including the termination of all outstanding contracts, and of all other contractual arrangements in the CCP's operating rules relevant to the case considered, be it a default or a non-default event.

Or. en

Justification

It should be made clear that the counterfactual is the application of the CCP rulebook, plus, when these are not comprehensive enough, typically in a non-default event, other decisions by an insolvency judge. This is the closest wording to the FSB guidance, point 5.5 and 5.6.

Amendment 570
Molly Scott Cato
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 61 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. For the purpose of informing stakeholders exposed to the CCP, the CCP shall produce a daily estimate of how losses would affect each category of creditor under extreme but plausible scenarios for a default and non-default event leading to the insolvency of the CCP.

This estimate shall fully reflect the contractual arrangements governing the CCP's loss waterfall and be consistent with the margining and stress testing methodology used to fulfil the CCP's obligations under Regulation (EU) No 648/2012.

Or. en

Amendment 571
Markus Ferber

Proposal for a regulation
Article 61 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(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

(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, **when** the resolution authority considered that the conditions for resolution pursuant to Article 22(1) were met, and they had instead been subject to **enforcement of** possible outstanding obligations pursuant to the CCP's recovery plan **and** other arrangements in its operating rules **and** the CCP had been

proceedings;

wound up under normal insolvency proceedings, *taking account of possible adverse effects of systemic instability and market turbulence and taking particular account of Article 60(a)-(c)*;

Or. de

Amendment 572
Danuta Maria Hübner

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 participants would have received 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 they had instead been subject to *normal insolvency proceedings assuming in such proceedings the enforcement of all* possible outstanding obligations pursuant to the CCP's recovery plan, *including the termination of all outstanding contracts, and of* other arrangements in its operating rules *relevant to the case considered, be it a default or a non-default event*;

Or. en

Amendment 573
Molly Scott Cato
on behalf of the Verts/ALE Group

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 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 ***as a gone concern with no residual franchise value, properly taking into account any plausible adverse effects of systemic instability and market turmoil, including fire sales, replacement costs and the breakdown of entire segments of the financial market on the positions of the stakeholders in question ;***

Or. en

Amendment 574

Jakob von Weizsäcker, Paul Tang

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 or 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, including fire sales, replacement costs and the breakdown of entire segments of the financial market on the positions of the stakeholders in question;*

Or. en

Amendment 575

Kay Swinburne

on behalf of the ECR Group

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 or 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, *including termination of all outstanding contracts held in the CCP and* other arrangements in its operating rules *and* the CCP had been wound up under normal insolvency proceedings;

Or. en

Amendment 576

Miguel Viegas

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 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;

Or. pt

Amendment 577

Jakob von Weizsäcker, Paul Tang, Cătălin Sorin Ivan

Proposal for a regulation
Article 61 – paragraph 3

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 paragraph 2(a), the valuation referred to in paragraph 1 shall disregard any provision of extraordinary public financial support to the CCP under resolution ***and the CCP's own pricing methodology shall be disregarded should this methodology fail to reflect the effective market conditions.***

Or. en

Amendment 578

Markus Ferber

Proposal for a regulation
Article 61 – paragraph 3

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 paragraph 2(a), the valuation referred to in paragraph 1 shall disregard any provision of extraordinary public financial support to the CCP under resolution.

Or. de

Amendment 579

Jakob von Weizsäcker, Paul Tang

Proposal for a regulation

Article 61 – paragraph 5 – subparagraph 1

Text proposed by the Commission

ESMA, taking into account any regulatory technical standards developed in accordance with Article 74(4) of Directive 2014/59/EU, shall develop draft regulatory technical standards specifying the methodology for carrying out the valuation referred to in paragraph 1.

Amendment

ESMA, taking into account any regulatory technical standards developed in accordance with Article 74(4) of Directive 2014/59/EU, shall develop draft regulatory technical standards specifying the methodology for carrying out the valuation referred to in paragraph 1, ***including, in particular, the calculation of the losses that would have been realistically incurred if the CCP had been put into liquidation, including fire sales, replacement costs, and the breakdown of entire segments of the financial market on the position of the stakeholders in question.***

Or. en

Amendment 580

Anne Sander, Alain Cadec

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

Amendment

Where, in accordance with the valuation carried out under Article 61, any shareholder, creditor or clearing **members** 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.

Or. en

Justification

NCWO principle needs to be restricted to clearing participants that have a contractual link with the CCP.

Amendment 581
Pervenche Berès

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

Amendment

Where, in accordance with the valuation carried out under Article 61, any shareholder, creditor or 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

insolvency proceedings, that shareholder, creditor or clearing participant shall be entitled to the payment of the difference.

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

Or. en

Amendment 582

Ramon Tremosa i Balcells, Lieve Wierinck

Proposal for a regulation

Article 62 a (new)

Text proposed by the Commission

Amendment

Article 62a

Recoupment of payments

The resolution authority shall recover any reasonable expenses incurred in connection with a payment as referred to in Article 62 in any of the following ways:

(a) from the CCP under resolution, as a preferred creditor;

(b) from any consideration paid by the purchaser where the sale of business tool has been used;

(c) from any proceeds generated as a result of the termination of the bridge CCP, as a preferred creditor;

(d) from any clearing member, to the extent that a clearing member does not incur 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.

Or. en

Amendment 583
Kay Swinburne

Proposal for a regulation
Article 65 – paragraph 1 – introductory part

Text proposed by the Commission

The resolution authority shall ensure that the use of a resolution tool does not result in any of the following with respect to security arrangements between a CCP under resolution and other parties to those arrangements:

Amendment

Without prejudice to the use of position allocation tools in Article 29, the resolution authority shall ensure that the use of a resolution tool does not result in any of the following with respect to security arrangements between a CCP under resolution and other parties to those arrangements:

Or. en

Amendment 584
Anne Sander, Alain Cadec

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

Text proposed by the Commission

Amendment

4a. The lodging of an appeal shall not entail any automatic suspension of the effects of the challenged decision.

Or. en

Justification

The risk to see a resolution decision annulled could create uncertainty for clearing members on the application of the decision. Therefore, the lodging of an appeal does not challenge the decision in question.

Amendment 585
Jakob von Weizsäcker, Paul Tang

Proposal for a regulation
Title 5 a (new)

The CCP - Single Resolution Fund

Or. en

Amendment 586

Jakob von Weizsäcker, Paul Tang

Proposal for a regulation

Article 73 a (new)

Text proposed by the Commission

Amendment

Article 73a

General provisions

- 1. The CCP-Single Resolution Fund ('CCP-SRF') is hereby established.***
- 2. Before a Single Resolution Board for CCPs (CCP-SRB) is established, its revenues shall accumulate for up to 10 years to be used by the SRB as an additional financial backstop to the SRF for the activities within its mandate***
- 3. Once the Single Resolution Board for CCPs is established, it shall use the CCP-SRF only for the purpose of ensuring the efficient application of the resolution tools and exercise of the resolution powers referred to in Chapter III and in accordance with the resolution objectives and the principles governing resolution referred to in Articles 21 and 23 of this Regulation. Under no circumstances shall the Union budget or the national budgets be held liable for expenses or losses of the CCP-SRF.***
- 4. The owner of the CCP-SRF shall be the Single Resolution Board. Once established, the CCP-SRB becomes the sole owner of the CCP-SRF.***
- 5. Contributions shall be raised in accordance with articles 73b and 73c.***

Amendment 587
Jakob von Weizsäcker, Paul Tang

Proposal for a regulation
Article 73 b (new)

Text proposed by the Commission

Amendment

Article 73b

Target level

The target level of the CCP-SRF is 0.25 percent of Union GDP. Any capital returns on this fund that accrue beyond the target level are to be used towards the Union Budget.

Or. en

Amendment 588
Jakob von Weizsäcker, Paul Tang

Proposal for a regulation
Article 73 c (new)

Text proposed by the Commission

Amendment

Article 73c

Contributions

The contributions shall

- (a) consist of a levy on average margin requirements posted by clearing members to CCPs in the previous month;*
- (b) always be set at a positive non-zero rate until the target level is reached; and*
- (c) be collected monthly.*

The Commission shall be empowered to adopt a delegated act in accordance with Article 73f defining the contributions to the CCP-SRF and their collection, using as basis any margin posted to any CCPs in the Union and any margin posted by

clearing members in the Union to CPPs outside the Union where no comparable levy falls due, allowing for differentiated rates taking into account, among others, competitiveness and cross border effects. This delegated act is to be reviewed every five years at the latest.

Or. en

Amendment 589
Jakob von Weizsäcker, Paul Tang

Proposal for a regulation
Article 73 d (new)

Text proposed by the Commission

Amendment

Article 73d

Administration and investments

- 1. Until a specific CCP-SRB is established, the Single Resolution Board, and afterwards, the CCP-SRB shall administer the CCP-SRF in application of Commission Delegated Regulation (EU) 2016/451 on general principles and criteria for the investment strategy and rules for the administration of the Single Resolution Fund.**
- 2. The amounts received from a CCP under resolution or a bridge institution, the interests and other earnings on investments and any other earnings shall only benefit the CCP-SRF.**
- 3. The Commission shall be empowered to adopt delegated acts further specifying the rules referred to in paragraph 1.**

Or. en

Amendment 590
Jakob von Weizsäcker, Paul Tang

Proposal for a regulation
Article 73 e (new)

Text proposed by the Commission

Amendment

Article 73e

Mission and use of the CCP-SRF

1. Within the resolution scheme, when applying the resolution tools to entities referred to in point 1 of Article 2, the Board may use the CCP-SRF only to the extent necessary to ensure the effective application of the resolution tools only where the following conditions are met:

(a) the financial support is necessary to meet the resolution objectives;

(b) the financial support is used as a last resort after having assessed and exploited all resolution tools other than government financial stabilisation tools according to article 45 of this Regulation to the maximum extent practicable whilst maintaining financial stability, as determined by the CCP-SRB;

(c) the financial support complies with the Union State aid framework; and only for the following purposes:

(a) to guarantee the liabilities of the CCP under resolution, its subsidiaries, or a bridge institution;

(b) to make contributions to a bridge institution;

(c) to make contributions to the CCP under resolution in lieu of the write-down or conversion tool;

(d) to take any combination of the actions referred to in points (a) to (c).

Or. en

Text proposed by the Commission

Amendment

VIIa. POWERS OF EXECUTION

Article 73f

Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
- 2. The delegation of power referred to in Article 73c shall be conferred for an indeterminate period of time from the relevant dates referred to in Article 83.***
- 3. The delegation of power referred to in Article 73c may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.***
- 4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.***
- 5. A delegated act adopted pursuant to Article 73c shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the***

European Parliament or the Council.

6. *The Commission shall not adopt delegated acts where the scrutiny time of the European Parliament is reduced through recess to less than five months, including any extension.*

Or. en

Amendment 592
Danuta Maria Hübner

Proposal for a regulation
Article 78 a (new)

Text proposed by the Commission

Amendment

Article 78a

Administrative penalties and other administrative measures

1. *Without prejudice to the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures applicable where the provisions of this Regulation have not been complied with, and shall take all measures necessary to ensure that they are implemented. Where Member States decide not to lay down rules for administrative penalties for infringements which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions. The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.*

2. *Member States shall ensure that, where obligations referred to in the first paragraph apply to CCPs, clearing members of CCPs or parent undertakings, in the event of an infringement, administrative penalties can be applied, subject to the conditions laid down in*

national law, to the members of the board of the CCP and to other natural persons who under national law are responsible for the infringement.

3. The powers to impose administrative penalties provided for in this Regulation shall be attributed to resolution authorities or, where different, to competent authorities, depending on the type of infringement. Resolution authorities and competent authorities shall have all information-gathering and investigatory powers that are necessary for the exercise of their respective functions. In the exercise of their powers to impose penalties, resolution authorities and competent authorities shall cooperate closely to ensure that administrative penalties or other administrative measures produce the desired results and coordinate their action when dealing with cross-border cases.

4. Resolution authorities and competent authorities shall exercise their administrative powers to impose penalties in accordance with this Regulation and national law in any of the following ways:

- (a) directly;*
- (b) in collaboration with other authorities;*
- (c) under their responsibility by delegation to such authorities;*
- (d) by application to the competent judicial authorities.*

Or. en

Justification

This set of amendments introduces in the text the standard provisions on administrative sanctions and other measures applicable to this Regulation and that the Commission had introduced through the BRRD review. If adopted, they shall form a new Title VIa and the corresponding amendments to BRRD shall be deleted.

Amendment 593
Danuta Maria Hübner

Proposal for a regulation
Article 78 b (new)

Text proposed by the Commission

Amendment

Article 78b

Specific provisions

1. Member States shall ensure that their laws, regulations and administrative provisions provide for penalties and other administrative measures at least in respect of the following situations:

(a) failure to draw up, maintain and update recovery plans infringing Article 9;

(b) failure to provide all the information necessary for the development of resolution plans, infringing Article 14;

(c) failure of the board of the CCP to notify the competent authority when the CCP is failing or likely to fail, infringing Article 68(1).

2. Member States shall ensure that, in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following:

(a) a public statement which indicates the natural person, institution, Union parent undertaking, CCP, or other legal person responsible and the nature of the infringement;

(b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;

(c) a temporary ban against the members of the senior management of the CCP or any other natural person, who is held responsible, to exercise functions in CCPs;

(d) in the case of a legal person, administrative fines of up to 10 % of the total annual net turnover of that legal person in the preceding business year. Where the legal person is a subsidiary of a parent undertaking, the relevant turnover shall be the turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;

(e) in the case of a natural person, administrative fines of up to EUR 5 000 000, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on [date of entry into force of the Regulation];

(f) administrative fines of up to twice the amount of the benefit derived from the infringement where that benefit can be determined.

Or. en

Amendment 594
Danuta Maria Hübner

Proposal for a regulation
Article 78 c (new)

Text proposed by the Commission

Amendment

Article 78c

Publication of administrative penalties

1. Member States shall ensure that resolution authorities and competent authorities publish on their official website at least any administrative penalties imposed by them for infringing the provisions laid down in this Regulation where such penalties have not been the subject of an appeal or where the right of appeal has been exhausted. Such publication shall be made without undue delay after the natural or legal person is

informed of that penalty including information on the type and nature of the infringement and the identity of the natural or legal person on whom the penalty is imposed.

Where Member States permit publication of penalties against which there is an appeal, resolution authorities and competent authorities shall, without undue delay, publish on their official websites information on the status of that appeal and the outcome thereof.

2. *Resolution authorities and competent authorities shall publish the penalties imposed by them on an anonymous basis, in a manner which is in accordance with national law, in any of the following circumstances:*

(a) where the penalty is imposed on a natural person and publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;

(b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

(c) where publication would cause, insofar as it can be determined, disproportionate damage to the CCP or natural persons involved.

Alternatively, in such cases, the publication of the data in question may be postponed for a reasonable period of time, if it is foreseeable that the reasons for anonymous publication will cease to exist within that period.

3. *Resolution authorities and competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years. Personal data contained in the publication shall only be kept on the official website of the resolution authority*

or the competent authority for the period which is necessary in accordance with applicable data protection rules.

4. By ... [PO: insert date: 18 months after the entry into force of this Regulation], ESMA shall submit a report to the Commission on the publication by Member States, on an anonymous basis as provided for under paragraph 2, of penalties for non-compliance with the provisions laid down in this Regulation and in particular whether there have been significant divergences between Member States in that respect. That report shall also address any significant divergences in the duration of publication of penalties under national law for Member States for publication of penalties.

Or. en

Amendment 595
Danuta Maria Hübner

Proposal for a regulation
Article 78 d (new)

Text proposed by the Commission

Amendment

Article 78d

*Maintenance of central database by
ESMA*

1. Subject to the professional secrecy requirements referred to in Article 71, resolution authorities and competent authorities shall inform ESMA of all administrative penalties imposed by them under Article 78a for infringements of the provisions laid down in this Article and of the status of that appeal and outcome thereof.

2. ESMA shall maintain a central database of penalties reported to it solely for the purpose of exchange of information between resolution

authorities which shall be accessible to resolution authorities only and shall be updated on the basis of the information provided by resolution authorities.

3. ESMA shall maintain a central database of penalties reported to it solely for the purpose of exchange of information between competent authorities which shall be accessible to competent authorities only and shall be updated on the basis of the information provided by competent authorities.

4. ESMA shall maintain a webpage with links to each resolution authority's publication of penalties and each competent authority's publication of penalties under Article 78c and indicate the period for which each Member State publishes penalties.

Or. en

Amendment 596
Danuta Maria Hübner

Proposal for a regulation
Article 78 e (new)

Text proposed by the Commission

Amendment

Article 78e

Effective application of penalties and exercise of powers to impose penalties by competent authorities and resolution authorities

Member States shall ensure that, when determining the type of administrative penalties or other administrative measures and the level of administrative fines, the competent authorities and resolution authorities take into account all relevant circumstances, including where appropriate:

(a) the gravity and the duration of the

infringement;

(b) the degree of responsibility of the natural or legal person responsible;

(c) the financial strength of the natural or legal person responsible, for example, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;

(d) the amount of profits gained or losses avoided by the natural or legal person responsible, insofar as they can be determined;

(e) the losses for third parties caused by the infringement, insofar as they can be determined;

(f) the level of cooperation of the natural or legal person responsible with the competent authority and the resolution authority; (g) previous infringements by the natural or legal person responsible;

(h) any potential systemic consequences of the infringement.

Or. en

Amendment 597
Markus Ferber

Proposal for a regulation
Article 80 – paragraph 1 – point 1
Regulation (EU) No 648/2012
Article 6a – paragraph 1 – introductory part

Text proposed by the Commission

1. Where a CCP meets the conditions under Article 22 of Regulation (EU) [on CCP recovery and resolution], the resolution authority of the CCP designated under Article 3(1) of that Regulation **or the competent authority of a clearing member of the CCP in resolution** may request the

Amendment

1. Where a CCP meets the conditions under Article 22 of Regulation (EU) [on CCP recovery and resolution], the resolution authority of the CCP designated under Article 3(1) of that Regulation may request the Commission to temporarily suspend the clearing obligation laid down

Commission to temporarily suspend the clearing obligation laid down in Article 4(1) for specific classes of OTC derivatives where the following conditions are met:

in Article 4(1) for specific classes of OTC derivatives where the following conditions are met:

Or. de

Justification

Suspending the clearing obligation is such a serious occurrence that it should only be proposed by a CCP's resolution authority.

Amendment 598

Danuta Maria Hübner

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 1 – introductory part

Text proposed by the Commission

1. Where a CCP meets the conditions under Article 22 of Regulation (EU) [on CCP recovery and resolution], the resolution authority of the CCP designated under Article 3(1) of that Regulation or the competent authority of a clearing member of the CCP in resolution may request the Commission to temporarily suspend the clearing obligation laid down in Article 4(1) for specific classes of OTC derivatives where the following conditions are met:

Amendment

1. Where a CCP meets the conditions under Article 22 of Regulation (EU) [on CCP recovery and resolution], the resolution authority of the CCP designated under Article 3(1) of that Regulation or the competent authority of a clearing member of the CCP in resolution may request the Commission to temporarily suspend the clearing obligation laid down in Article 4(1) for specific classes of OTC derivatives where **all of** the following conditions are met:

Or. en

Amendment 599

Danuta Maria Hübner

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 1 – point b – introductory part

Text proposed by the Commission

(b) the suspension of the clearing obligation laid down in Article 4 for those specific classes of OTC derivatives is necessary to avoid a serious threat to financial stability in the Union in connection with the resolution of the CCP, in particular where **both** of the following criteria are met:

Amendment

(b) the suspension of the clearing obligation laid down in Article 4 for those specific classes of OTC derivatives is necessary to avoid a serious threat to financial stability in the Union in connection with the resolution of the CCP, in particular where **all** of the following criteria are met:

Or. en

Amendment 600

Molly Scott Cato

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 1 – point b – introductory part

Text proposed by the Commission

(b) the suspension of the clearing obligation laid down in Article 4 for those specific classes of OTC derivatives is necessary to avoid a serious threat to financial stability in the Union in connection with the resolution of the CCP, in particular **where both of** the following criteria are met:

Amendment

(b) the suspension of the clearing obligation laid down in Article 4 for those specific classes of OTC derivatives is necessary to avoid a serious threat to financial stability in the Union in connection with the resolution of the CCP, in particular the following criteria are met:

Or. en

Amendment 601

Markus Ferber

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 1 – point b – indent ii

Text proposed by the Commission

(ii) the measure is necessary to address the threat and will not have a detrimental effect on financial stability which is disproportionate to its benefits.

Amendment

(ii) the measure is necessary to address the threat and will not have a detrimental effect on financial stability which is disproportionate to its benefits, ***and it has been established that taking the measure will have no procyclical impact on confidence in financial market stability.***

Or. de

Justification

Suspending the clearing obligation is such a serious occurrence that it could shatter confidence in financial market stability. That really should be taken into consideration when the decision is made.

Amendment 602

Markus Ferber

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 1 – point b – indent ii a (new)

Text proposed by the Commission

Amendment

(iia) it can be established that taking the measure will not have an unequal effect on market participants or put some of them at a competitive disadvantage.

Or. de

Amendment 603

Danuta Maria Hübner

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 1 – point b – indent ii a (new)

Text proposed by the Commission

Amendment

(iia) the measure is applied in such a manner as to minimise its procyclical effects, stemming in particular from the impact of such a measure on market confidence;

Or. en

Amendment 604

Danuta Maria Hübner

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation 648/2012

Article 6a – paragraph 1 – point b – indent ii b (new)

Text proposed by the Commission

Amendment

(iib) the measure is applied in such a manner as to ensure that its impact will be equally spread among market participants and no participant will be put at a competitive disadvantage.

Or. en

Amendment 605

Molly Scott Cato

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) no alternative CCPs are available to offer the clearing service to the clearing participants of the CCP in resolution, or clearing members and clients are not operationally and technically able to meet

within a reasonable timeframe all legal or operational requirements of those alternative CCPs

Or. en

Amendment 606
Danuta Maria Hübner

Proposal for a regulation
Article 80 – paragraph 1 – point 1
Regulation (EU) No 648/2012
Article 6a – paragraph 1 – subparagraph 2

Text proposed by the Commission

The request referred to in the first subparagraph shall be accompanied by evidence that the conditions laid down in points (a) and (b) of the first subparagraph are fulfilled.

Amendment

The request referred to in the first subparagraph shall be accompanied by evidence that the conditions laid down in points (a) and *in point i) and ii) of point* (b) of the first subparagraph are fulfilled.

Or. en

Justification

New points b iia) and b iib) relate to the application of the measure and not to conditions that can be verified ex ante.

Amendment 607
Danuta Maria Hübner

Proposal for a regulation
Article 80 – paragraph 1 – point 1
Regulation (EU) No 648/2012
Article 6a – paragraph 1 – subparagraph 3

Text proposed by the Commission

The authority referred to in the first subparagraph shall notify its reasoned request to ESMA and the ESRB at the same time that the request is notified to the Commission.

Amendment

The *resolution* authority referred to in the first subparagraph shall notify its reasoned request to ESMA and the ESRB at the same time that the request is notified to the Commission.

Amendment 608

Markus Ferber

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 1 – subparagraph 3

Text proposed by the Commission

The authority referred to in the first subparagraph shall notify its reasoned request to ESMA and the ESRB at the same time that the request is notified to the Commission.

Amendment

The **resolution** authority referred to in the first subparagraph shall notify its reasoned request to ESMA and the ESRB at the same time that the request is notified to the Commission.

Or. de

Amendment 609

Danuta Maria Hübner

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 6

Text proposed by the Commission

6. The Commission may decide to temporarily suspend the clearing obligation referred to in paragraph 1 for the specific class of OTC derivatives provided that the conditions in point (a) and (b) of paragraph 1 are fulfilled. In adopting such a decision, the Commission shall take into account the opinion issued by ESMA referred to in paragraph 2, the resolution objectives referred to in Article 21 of Regulation (EU) [on CCP recovery and resolution], the criteria set out in paragraphs 4 and 5 of Article 5 regarding those OTC derivative classes and the necessity of the suspension to avoid a serious threat to financial

Amendment

6. The Commission may decide to temporarily suspend the clearing obligation referred to in paragraph 1 for the specific class of OTC derivatives provided that the conditions in point (a) and **in point i) and ii)** of point (b) of paragraph 1 are fulfilled. In adopting such a decision, the Commission shall take into account the opinion issued by ESMA referred to in paragraph 2, the resolution objectives referred to in Article 21 of Regulation (EU) [on CCP recovery and resolution], the criteria set out in paragraphs 4 and 5 of Article 5 regarding those OTC derivative classes and the necessity of the suspension

stability.

to avoid a serious threat to financial stability.

Or. en

Amendment 610

Danuta Maria Hübner

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 7

Text proposed by the Commission

7. The suspension of a clearing obligation pursuant to paragraph 4 shall be valid for an initial period not exceeding **three months** from the date of its publication in the Official Journal of the European Union.

Amendment

7. The suspension of a clearing obligation pursuant to paragraph 4 shall be valid for an initial period not exceeding **one month** from the date of its publication in the Official Journal of the European Union.

Or. en

Amendment 611

Markus Ferber

Proposal for a regulation

Article 80 – paragraph 1 – point 1

Regulation (EU) No 648/2012

Article 6a – paragraph 7

Text proposed by the Commission

7. The suspension of a clearing obligation pursuant to paragraph 4 shall be valid for an initial period **not exceeding three months** from the date of its publication in the Official Journal of the European Union.

Amendment

7. The suspension of a clearing obligation pursuant to paragraph 4 shall be valid for an initial period **of one month** from the date of its publication in the Official Journal of the European Union.

Or. de

Justification

The period for which a clearing obligation is suspended should, on principle, be as short as possible.

Amendment 612

Danuta Maria Hübner

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, ***with the approval of the resolution authority***, may renew the suspension referred to in paragraph 7 for ***an additional one-month period*** from the end of the initial suspension period where ***it is assessed and proven that*** the grounds for the suspension ***referred to in points a) and b) of paragraph 1*** continue to apply.

Or. en

Amendment 613

Markus Ferber

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. ***With the agreement of the resolution authority***, the Commission may renew the suspension referred to in paragraph 7 for ***a further period of no more than one month*** from the end of the initial suspension period where the grounds for the suspension continue to apply.

Amendment 614
Danuta Maria Hübner

Proposal for a regulation
Article 80 – paragraph 1 – point 1
Regulation (EU) No 648/2012
Article 6a –paragraph 10

Text proposed by the Commission

10. The Commission shall notify ESMA of its intention to renew the suspension of the clearing obligation.

Amendment

10. The Commission shall notify ESMA **and the ESRB** of its intention to renew the suspension of the clearing obligation.

Or. en

Amendment 615
Pervenche Berès

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 accompanied by a legislative proposal.

Amendment

By ... [***date to be inserted: two years after date of entry into force of this Regulation***], the Commission shall review this Regulation and ***its implementation in the light of the shifting European institutional architecture for CCP supervision and resolution and in the light of the progress in international efforts on recovery and resolution of CCPs, notably assessing whether a CCP should use, prior to the use of the tools pertaining to arrangements and measures foreseen in the recovery plan:***

– ***following a default scenario, an additional amount of dedicated own resources equivalent to the amount specified in Article 45(4) of Regulation (EU) No 648/2012;***

– *following a non-default scenario, 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.*

The Commission 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 616

Jakob von Weizsäcker, Cătălin Sorin Ivan, Pervenche Berès

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 accompanied by a legislative proposal.

Amendment

By ... [*date to be inserted: two years after date of entry into force of this Regulation*] the Commission shall review *this Regulation and its* implementation *in the light of the shifting European institutional architecture for CCP supervision and resolution and in the light of the progress in international efforts on recovery and 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 617

Danuta Maria Hübner

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 accompanied by a legislative proposal.

Amendment

By [...], the Commission shall review the implementation of this Regulation, ***also having regard to the progress in international efforts on recovery and 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 618

Danuta Maria Hübner

Proposal for a regulation

Article 82 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

By ... [three years after the entry into force of this Regulation], the Commission shall assess the effectiveness of the governance arrangements for the recovery and resolution of CCPs in the Union and submit a report thereon to the European Parliament and to the Council.

This report shall in particular:

(a) assess whether establishing a single resolution authority for Union CCPs would be beneficial, timely and consistent with the developments regarding the supervisory architecture for CCPs in the Union and with the state of integration of such supervisory architecture; and

(b) review the Union institutions, bodies and agencies that could take up the duties of a single resolution authority for Union CCPs and assess their suitability.

Should by the time of this report a single supervisor for Union CCPs have been

established or should the report conclude that the supervisory architecture for Union CCPs is sufficiently integrated for a single resolution authority for CCPs to be consistent with it, the Commission shall present a proposal to amend this Regulation in order to create a single resolution authority for CCPs or, as the case may be, in order to entrust the resolution of Union CCPs to any suitable Union institution, body or agency.

Or. en

Amendment 619
Jakob von Weizsäcker

Proposal for a regulation
Article 82 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

By ... [date to be inserted: two years after date of entry into force of this Regulation], the Commission shall review the effects of the levy on average margin requirements posted by clearing members to the CCP as the sole source of funding for the CCP-SRF, specifically examining potential shifts to a reliance on derivative instruments not subject to central clearing, 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 expanding the funding source to parties to derivative contracts which are not centrally cleared.

Or. en